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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 209 of 2014

{Arising out of order dated 23.07.2013 passed by learned 1st Additional Motor Accident Claims Tribunal, Baloda Bazar-Bhatapara in Claim Case No. 176/2011}

1. Prameela Bai, Wd/o Late Ramsingh Thakur, aged about 36 years.
2. Minor Ku. Pooja, D/o Late Ramsingh Thakur, aged about 11 years.
3. Minor Ku. Veena, D/o Late Ramsingh, aged about 9 years.
4. Minor Ku. Tamanna, D/o Late Ramsingh Thakur, aged about 9 years.
5. Minor Harish, S/o Late Ramsingh Thakur, aged about 5 years.
   No. 2 to 5, through natrual guardian, mother Prameela Bai, Wd/o Late Ramsingh Thakur.
6. Purushottam Singh Thakur, S/o Late Mannu Singh Thakur, aged about 56 years.
7. Smt. Siya Bai, W/o Purushottam, aged about 55 years.
   All R/o village Tilda, Police Station Kasdol, Tahsil Baloda Bazar, District Raipur (C.G.)

---- Appellants

Versus

1. Ashik Ali, S/o Basarat Ali, aged about 55 years, R/o Sanjay Colony, Baloda Bazar, Distt. Raipur (C.G.)
2. M/s Durga Carrier Private Limited, R/o Krishna Rice Mill, Baloda Bazar, Distt. Raipur (C.G.)
3. Bhartiya Axa General Insurance Company, 2nd Floor, Khichariya Complex, Nehru Parisar, Bhilai Nagar, Distt. Durg (C.G.)

---- Respondents

For Appellants	:	Shri Anil Gulati, Advocate.
For Respondent No. 1	:	None.
For Respondent No. 2	:	Shri Anil Singh Rajput, Advocate.
For Respondent No. 3	:	Shri Bhavesh Acharya, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

25.08.2020

1. Inadequacy of the compensation awarded by the Tribunal in a death case, pursuant to a road traffic accident, is the subject matter of challenge in this appeal preferred by the claimants.

2. On the date of incident *i.e.* 01.03.2011, the deceased was returning after completion of his work on his Motorcycle, when the offending Truck bearing No. C.G. 04-J-5986, driven by the 1st Respondent, owned by the 2nd Respondent and insured by the 3rd Respondent, knocked him down causing fatal injuries, leading to his death. This led to the claim petition filed before the Tribunal by the widow, four minor children and parents of the deceased.

3. The claim was resisted by the Respondents concerned, mainly on quantum and negligence. Based on the pleadings and evidence brought on record, the Tribunal, on conclusion of the trial, arrived at a finding that the accident was solely because of the negligence on the part of the driver of the offending Truck and proceeded to workout the compensation payable.

4. It was contended by the claimants before the Tribunal that the deceased was having a monthly income of Rs. 3,500/- by virtue of his avocation as a 'Bus Conductor'. The Tribunal however, chose to reckon a notional sum of Rs. 3,000/- as the monthly income and adopting a multiplier of '15', the loss of dependency was worked out to an extent of Rs. 4.32 lacs. Awarding some amounts under the other relevant heads, the total compensation was fixed as Rs. 4,55,174/-, which was directed to be satisfied with interest @ 6% per annum from the date of filing of the claim petition till satisfaction by the insurer of the offending vehicle. Quantum of compensation is sought to be enhanced in this appeal.

5. The learned counsel for the Appellants submits that fixation of the monthly income is on the lower side and no proper amounts have been awarded by the Tribunal under various heads, which requires to be enhanced in view of the settled position of law, by virtue of the binding judicial precedents.

6. As mentioned already, the Tribunal reckoned only a sum of Rs. 3,000/- as the monthly income of the deceased, which according to is much on the lower side. The claim put forth by the Appellants/Claimants that the deceased was having a monthly income of a sum of Rs. 3,500/- as on the date of accident occurred in the year 2011 is never liable to be termed as on the higher side. It is quite reasonable and evident from the fact that he was maintaining a family consisting of his widow and four minor children, besides the parents. That apart, he was also sporting a Motorcycle and it was while riding a Motorcycle, that the accident had happened which is an indicator as to his purchasing capacity / affordibility of the expenses in this regard. In the said circumstance, we accept the claim that the deceased was having a monthly income of Rs. 3,500/- for working out the loss of dependency. Based on the number of dependents, the Tribunal has deducted only $1/5^{th}$ towards the personal expenses and the remaining income was taken as the contribution to the family. On re-working the compensation towards the loss of dependency, it comes to Rs. 3,500 x 12 x 4/5 x 15 = Rs. 5,04,000/-. After giving credit to the sum of Rs. 4,32,000/- ordered by the Tribunal, the balance payable under this head comes to be **Rs. 72,000/-**.

7. The Tribunal has awarded a sum of Rs. 5,000/- towards the funeral expenses and a sum of another Rs. 5,000/- towards the loss of estate; which in the light of the verdict passed by the Apex Court in ***Sarla Verma Vs. Delhi Transportation Corporation*** reported in **(2009) 6 SCC 121**, as affirmed by the Constitution Bench of the Apex Court in ***National Insurance Company Limited vs Pranay Sethi & Others*** reported in **(2017) 16 SCC 680** ought to have been Rs. 15,000/- each. In the said circumstance, a further sum of **Rs. 10,000/-** is awarded towards the funeral expenses and a similar amount of **Rs. 10,000/-** is awarded under

the head loss of estate, as the deficit compensation payable under these heads.

8. Coming to the compensation for loss of consortium, only a sum of Rs. 5,000/- has been awarded which actually should have been Rs. 40,000/- in view of the decisions cited supra. As it stands so, a further sum of **Rs. 35,000/-** is liable to be awarded towards the consortium awarded by the Tribunal which is granted accordingly.

9. The concept of 'consortium' has been further explained by the Apex Court in ***Magma General Insurance Company Limited vs Nanu Ram Alias Chuhru Ram & Others*** reported in **(2018) 18 SCC 130**. It can be of three types; **Parental consortium** (payable to children because of the death of parents); **Spousal consortium** (payable to the spouse because of the death of the partner) and **Filial consortium** (payable to the parents because of the death of children). In the instant case, the consortium which the Tribunal has awarded and the balance payable as ordered in the previous paragraph is treated as the 'Spousal consortium'. Since four minor children are involved, they are entitled to get 'Parental consortium' to a total extent of **Rs. 40,000/-,** which is awarded in the light of verdict passed in ***Magma General Insurance (supra)***. Similarly, the parents are also entitled to get 'Filial consortium' and it is awarded to an extent of **Rs. 40,000/-**, based on the decision cited supra. In the above circumstance, the total additional compensation payable comes to **Rs. 72,000 + 10,000 + 10,000 + 35,000 + 40,000 + 40,000 = Rs. 2,07,000/- (Two lacs seven thousand only)**.

10. The said amount is to be satisfied with interest @ 7% per annum from the date of filing the claim petition till satisfaction. Since the vehicle was covered under a valid policy, we direct the 3rd Respondent/Insurance

Company to deposit the above additional compensation of **Rs. 2,07,000/-** with interest as specified, giving intimation to the Appellants/Claimants, before the Tribunal, as expeditiously as possible, at any rate within 'six weeks' from the date of receipt of a copy of this judgment.

The appeal stands allowed to the said extent.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Brijmohan