NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 989 of 2014

{Arising out of order dated 13.05.2014 passed by learned First Additional Motor Accident Claims Tribunal, Raigarh Chhattisgarh in Claim Case No.42 of 2012}

1. Hanskunwar Patel Wd/o Late Manohar Lal Aged About 45 Years, Occupation Nil
2. Smt. Mandali D/o Late Manohar Lal Aged About 28 Years, Occupation House Wife
3. Digambar S/o Late Manohar Lal Aged About 23 Years, Occupation Study
4. Haramati Wd/o Sakhiram Aged About 70 Years, Occupation Nil

All are R/o Temtema, P.S. Kharsia, Tah. Kharsia, Distt. Raigarh C.G.

---- Appellants

Versus

1. Niraj Corporation (Vehicle Owner) Transport Nagar, J.S.P.L. Road, Raigarh, Tah. And Distt. Raigarh C.G.
2. Ganga Ram S/o Kshaja Ram Aged About 25 Years R/o Mukhala, P.S. Indari, Distt. Karnal (Haryana), At Present Police Line, Urdana, Raigarh, P.S. Kotwali, Tah. And Distt. Raigarh C.G.
3. Through- The Branch Manager Reliance General Insurance Company Limited Shop No. 4/2, 4/3, 4th Flor, Ravi Bhawan, Jai Stambh Chowk, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellants	:	Shri Raghvendra Pradhan, Advocate.
For Respondents No.1 & 2	:	None
For Respondent No.3	:	Shri Nilesh Kumar Thakur, 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

21.09.2020

1. The appeal is at the instance of the Claimants. Grievance is with regard to the extent of compensation awarded by the Claims Tribunal in respect of the death of a deceased in a road traffic accident, which according to the Appellants, is on the lower side.

2. On the ill-fated day i.e. on 09.02.2012, the deceased while proceeding along the road on his bicycle, was knocked down by the offending vehicle bearing No.CG-13/D/6119 owned by the 1st Respondent, driven by the 2nd Respondent and insured by the 3rd Respondent, causing fatal injuries, leading to his death. This was sought to be compensated by filing claim petition before the Claims Tribunal by the widow, children and mother of the deceased. The claim was resisted from the part of the Respondents mainly on quantum and negligence. Existence of valid insurance policy for the offending vehicle was conceded. Negligence was found against the Driver of the offending vehicle. Though it was contended by the Claimants before the Claims Tribunal that the deceased was having an annual income of Rs.42,000/- from vending milk, it was held as not properly proved and the Claims Tribunal reckoned only Rs.36,000/- as the annual income of the deceased. After deducting 1/3rd towards his personal expenses and adopting the multiplier of 11, loss of dependency was worked out as Rs.2,44,000/-. Awarding a further sum of Rs.2,000/- towards funeral expenses and Rs.20,000/- (at the rate of Rs.5,000/- to each of the claimants) towards loss of love and affection, the total compensation was fixed at Rs.2,66,000/-, which was required to be satisfied with interest at the rate of 6% per annum from the date of filing of claim application till satisfaction. In view of the existence of a valid insurance policy issued by the 3rd Respondent/Insurer, the same came to be mulcted upon the shoulders of the said Respondent.

3. Shri Raghvendra Pradhan, the learned counsel for the Appellants/Claimants submits that fixation of the monthly income is not correct and the deduction to an extent of 1/3rd is also wrong. It is also pointed out that the Claims Tribunal has not considered the 'future prospects' while working out the compensation.

4. The law is now well settled by virtue of the decisions rendered by the Apex Court in **Sarla Verma v. Delhi Transportation Corporation** reported in **(2009) 6 SCC 121** and the Constitution Bench in **National Insurance Company Limited v. Pranay Sethi & Others** reported in **(2017) 16 SCC 680** that, in the case of persons above 50 years with no fixed income, enhancement by 10% towards future prospects is to be provided. Similarly, since the number of dependents are more than three (below six), the deduction should be 1/4th. We are of the view that since the accident was in the year 2012, the monthly income claimed by the Claimants at Rs.42,000/- per annum (3,500 x 12) is not on the higher side and we find it appropriate to have it fixed accordingly, for payment of compensation.

5. For re-computing the loss of dependency, the monthly income factor of deceased, reckoning the future prospects is taken as Rs.3,850/- (3500 + 10%). The appropriate multiplier to be taken is '11', based on the age of the deceased. Dependency compensation, after deducting 1/4th income towards personal expenses, comes to Rs.3,850 x 12 x 3/4 x 11 = Rs.3,81,150/-. After giving credit to the sum of Rs.2,44,000/- already awarded by the Claims Tribunal, the balance payable under this head is **Rs.1,37,150/-**.

6. By virtue of the decisions rendered by the Apex Court as mentioned above, it stands settled that the Claimants are entitled to have compensation under the conventional heads, such as, funeral expenses and loss of estate at Rs.15,000/- each. Since the Tribunal has awarded only a sum of Rs.2,000/- towards funeral expenses, a balance amount of **Rs.13,000/-** is payable under this head. Since the Claims Tribunal has not awarded any amount towards loss of estate, the claimants are

entitled to get **Rs.15,000/-** under this head as well.

7. The scope of 'consortium' has been explained by the Apex Court in the subsequent verdict in **Magma General Insurance Company Limited v. 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 surviving spouse because of the death of the partner) and **Filial consortium** (payable to the parents because of the death of children). The 1st Respondent-widow is entitled to get a sum of **Rs.40,000/-** towards spousal consortium. The children i.e. Appellants No.2 and 3 are entitled to get 'Parental consortium' and as such, a sum of **Rs.40,000/-** is awarded under this head. Similarly, towards Filial consortium, the mother (Appellant No.4) is entitled to get sum of **Rs.40,000/-**. Since the Claims Tribunal has awarded only a sum of Rs.20,000/- (at the rate of Rs.5,000/- to each of the claimants) under this head, a balance amount of **Rs.1,00,000/-** is payable under the above heads. It is awarded accordingly. Thus, the total balance compensation payable comes to **Rs.2,65,150/- (Two lacs sixty five thousand one hundred fifty only)**.

8. The balance compensation awarded as above shall be paid with interest @ 7% per annum from the date of the accident, till the date of deposit. Since the policy is admitted, we direct the 3rd Respondent/Insurer to deposit the amount due as above before the Tribunal, with notice to the Appellants/Claimants, as expeditiously as possible, at any rate within 'one month' from the date of receipt of a copy of this judgment. The appeal stands allowed to the said extent.

Sd/-	**Sd/-**
(P. R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

Anu