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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 840 of 2014

{Arising out of order dated 21.03.2014 passed by learned Second Additional Judge to the Court of First Additional Motor Accident Claims Tribunal, Bilaspur Chhattisgarh in Claim Case No.12 of 2013}

1. Smt. Savitry Dahriya W/o Late Poshan Dahriya Aged About 23 Years
2. Ku. Vanshika Dahriya D/o Late Poshan Dahriya Aged About 2 Years
3. Ku. Khayati Dahriya D/o Late Poshan Dahriya Aged About 2 Months

   Applicant No. 2 & 3 Are Minor And Represented Through Her Mother Namely Savitry Dahriya (Appellant No. 1)

   All R/o Village Juda, At Present Village Darrighat, P.S. and Tahsil Mastori, District Bilaspur, Chhattisgarh

---- Appellants

Versus

1. Shailendra Kumar Vaishnav S/o Baldau Das Vaishnav Aged About 42 Years R/o Ward No. 43, Chantidih, P.S. Sarkanda, District Bilaspur C.G.

   At Present Purani Basti, Balouda-Bazar, P.S. Tahsil and District Balouda Bazar, Chhattisgarh Through Lakhan Lal Patwa S/o Late Ramayan Lal Patwa Aged About 41 Years R/o Kamal State Balook No. 2, Lavan Road P.S. and Tah. And District Balouda Bazar, Chhattisgarh
2. Lakhan Lal Patwa S/o Late Ramayan Lal Patwa Aged About 41 Years R/o Kamal State Balook No. 2, Lavan Road P.S. And Tah. and Dist. Balouda Bazar, Chhattisgarh
3. Shriram General Insurance Company Limited issued By Office 214007 1st Floor, Plot No. 48 M.P. Nagar Zone- II Bhopal M.P. 462011. Smt. Kusum Patel Through Owner Locale Office Branch Manager, Shriram General Insurance Company Limited, Rajeev Plaza, Garden Side, Bus Stand Bilaspur, District Bilaspur, Chhattisgarh
4. Smt. Sushila Dahriya W/o Muktavan Dahria, Aged About 55 Years R/o Village Juda, Chouki Lavan, P.S. Kasdol District Baloda Bazar, Chhattisgarh
5. Muktavan Dahria S/o Munaru Aged About 60 Years R/o Village Juda, Chouki Lavan, P.S. Kasdol District Baloda Bazar, Chhattisgarh

---- Respondents

For Appellants	:	Shri Keshav Dewangan, Advocate.
For Respondents No.1 & 2	:	Shri Chakresh Tiwari, Advocate.
For Respondent No.3	:	Shri Sachin Singh Rajput, 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

29.09.2020

1. Inadequacy of the compensation awarded by the Tribunal in connection with the death of the deceased occurred in a road traffic accident, is the subject matter of challenge in this appeal filed by the Appellants/Claimants.

2. On the ill-fated day i.e. on 12.01.2013, the deceased, by name Poshan Dahariya was proceeding on the Motorcycle along with his friend. When the Motorcycle reached the place of occurrence, a Bus bearing No.CG-04/E/1992 driven by the 1st Respondent, owned by the 2nd Respondent and insured by the 3rd Respondent, dashed against the Motorcycle, causing fatal injuries, leading to death of the person concerned. This was sought to be compensated by filing claim petition under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before the Claims Tribunal by the widow and the two minor children of the deceased. It was contended before the Tribunal that the deceased was running a 'Pan Shop' earning a monthly income of Rs.3,300/-. Different amounts were claimed under various heads. After considering the facts and figures, the Tribunal reckoned only Rs.3,000/- as the notional monthly income of the deceased. After deducting 1/3rd towards his personal expenses and adopting the multiplier of 17, loss of dependency was worked out as Rs.4,08,000/-. Awarding a further sum of Rs.2,000/- towards funeral expenses, Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate, the total compensation was fixed at Rs.4,17,500/-, 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 liability came to be mulcted upon the shoulders of the said Respondent.

3. Shri Keshav Dewangan, the learned counsel for the Appellants/Claimants submits that the amount awarded by the Tribunal is quite on the lower side. The Tribunal has gone wrong in not reckoning the 'future prospects' while fixing the amount of compensation. Similarly, the amount awarded under the conventional heads such as, funeral expenses, loss of estate and loss of consortium are not in conformity with the law declared by the Apex Court on the point. It is also pointed out that there were five dependents including Respondents No.4 and 5 (parents of the deceased) and as such, deduction of only 1/5th would have been appropriate. It is in the said circumstance, the interference is sought for in this appeal.

4. Heard Shri Chakresh Tiwari, the learned counsel appearing for Respondents No.1 and 2 as well as Shri Sachin Singh Rajput, the learned counsel representing the 3rd Respondent-Insurer.

5. At the very outset, it is to be noted that the accident was in the year 2013 and as such, even a casual labourer would have earned much more than the notional income reckoned by the Tribunal as Rs.3,000/- per month. However, in the instant case, the admitted case was only that the deceased was earning a monthly income of Rs.3,300/- from the 'Pan Shop' he was conducting. The said figure of Rs.3,300/- per month can never be said to be on the higher side with regard to the probable income of the person concerned in the year 2013 when the accident occurred. In the said circumstance, we are of the view that, since the accident was in the year 2013, the income claimed by the Claimants at Rs.3,300/- per

month is accepted, for working out the compensation payable.

6. The question is whether any amount towards 'future prospects' can be granted in this case. Admittedly, the claim petition was filed under Section 163-A of the M.V. Act and not under Section 166 of the M.V. Act. The precedents sought to be relied on by the learned counsel for the Appellants, particularly, the verdict 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** are in respect of the claims preferred under Section 166 of the M.V. Act based on the 'principle of negligence'. Unlike this, Section 163-A of the M.V. Act is a different channel for claiming the compensation, on the basis of 'structured formula', strictly in conformity with the Second Schedule. Under Section 163-A, it is not necessary for the Claimants to plead or prove the negligence either on the part of the driver or owner or anybody else. Claim petition under Section 163-A of the M.V. Act stands on a different footing and it is intended only for the particular class/group whose actual income does not exceed Rs.40,000/- and in the case of the persons having income above Rs.40,000/-, it has to be dealt with under Section 166 of the M.V. Act. This is the law declared by the Apex Court in **Deepal Girishbhai Soni and Others v. United India Insurance Company Limited, Baroda** reported in **(2004) 5 SCC 385**.

7. For the very same reason as mentioned above, the deduction towards personal expenses has to be 1/3rd and only 2/3rd can be reckoned as the contribution to the family. The amounts payable under the conventional heads can only be to the extent as specified in the Second Schedule.

8. In the said circumstances, loss of dependency (based on the higher notional monthly income fixed by this Court in this appeal) comes to Rs.4,48,800 (3,300 x 12 x 2/3 x 17). After giving credit to the sum of Rs.4,08,000/- already awarded by the Claims Tribunal, the balance payable under this head is **Rs.40,800/-**.

9. As mentioned already, the amounts awarded by the Tribunal towards funeral expenses, loss of estate and loss of consortium are Rs.2,000, Rs.2,500 and Rs.5,000/- respectively. Since these amounts are strictly in conformity with the amounts payable under the Second Schedule, no variation is possible under these heads.

10. In the above circumstance, the total balance compensation payable comes to **Rs.40,800/- (Rupees forty thousand eight hundred only)**. The said amount 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**

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