NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 54 of 2015

Reserved on 17.11.2020
Pronounced on 20.11.2020

1. Smt. Sushila Devi W/o Late Krishna Kumar Gupta Aged About 50 Years R/o Bramh Road, Ambikapur, P.S. And Tah. Ambikapur, Revenue and Civil Distt. Surguja C.G., Chhattisgarh
2. Manoj Kumar Gupta S/o Late Krishna Kumar Gupta Aged About 28 Years R/o Bramh Road, Ambikapur, P.S. And Tah. Ambikapur, Revenue and Civil, Distt. Surguja C.G.
3. Kumari Kamini Gupta D/o Late Krishna Kumar Gupta Aged About 25 Years R/o Bramh Road, Ambikapur, P.S. And Tah. Ambikapur, Revenue and Civil Distt. Surguja C.G.

---- Appellants

Versus

1. Sahit Ram Paikra S/o Chherta Ram Paikra Aged About 28 Years occupation driver R/o Village- Jhargava, Post- Batauli, P.S. And Tah. Batauli, Revenue and Civil Distt. Surguja C.G. (Driver of the offending vehicle)
2. Dinesh Gupta S/o Baccha Lal Gupta Aged About 38 Years occupation business R/o Village- Badadamali, Post- Nanadmali, P.S. Darima, Tah. Ambikapur, Distt. Surguja C.G. (owner of the offending vehicle)
3. Branch Manager The Oriental Insu.Co.Ltd., Branch Office, The Oriental Insu.Co.Ltd., Near Ambedkar Chowk, Manendragarh Road, Ambikapur, Distt. Surguja C.G.(insurer of the offending vehicle) **---- Respondents**

For Appellants: : Smt. N. K. Kashyap, Advocate
For Respondents No.1 and 2 : None, though served.
For Respondent No.3: : Shri Raj Awasthi, Advocate

Hon'ble Shri Justice Sanjay S. Agrawal
CAV Judgment order

1. This Miscellaneous Appeal has been preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act of 1988') for enhancement of the award impugned dated 05.12.2014 passed by Motor Accident Claims Tribunal, Surguja (Ambikapur), District Surguja, in Claim Case No.26 of 2014, whereby, the Tribunal has awarded a total amount of compensation to the tune of

Rs.1,54,140/- with 6% interest per annum from the date of filing of the claim petition till the date of actual payment. The parties to this appeal shall be referred hereinafter, as per their description in the Tribunal.

2. Briefly stated, the facts of the case are that on 22.09.2013, the deceased Krishna Prasad Gupta was going by his motorcycle to village Karji and as soon as he reached near the village Katkalo, he was dashed vehemently by the offending vehicle 'Bus' bearing registration No. CG-15/-ZB-0155, which was being driven in a rash and negligent manner by its driver namely, Sahit Ram Paikra. Owing to the alleged accident, he sustained serious multiple injuries and died during the course of his treatment in hospital giving rise to the institution of the claim petition by his legal representatives, who are widow, son and daughter of him. According to them, the deceased, 52 years old, was an agriculturist and was running a grocery shop apart from working as an agent in Sahara India Financial Corporation Limited and used to earn Rs.10,000/-, per month and, thus, claimed total sum of Rs.16,04,000/- under various heads.

3. Non-Applicants No.1 and 2, the driver and owner of the vehicle in question have contested the aforesaid claim on the ground that the deceased himself was responsible for the alleged accident and pleaded further that since the alleged offending vehicle was insured with Non-Applicant No.3/The Oriental Insurance Company Limited, therefore, in case of any liability being fastened, the same could be indemnified by the said company. While, the insurer of it, contested the claim on the ground that the alleged offending vehicle was being used in violation of the policy, as it was being used without permit and fitness certificate by

its driver, who was even not possessing the valid and effective driving licence.

4. In support, the claimants have examined as many as 3 witnesses, while none was examined by the Non-Applicants in rebuttal.

5. After considering the evidence led by the claimants, it has been held by the Tribunal that the alleged accident occurred on 22.09.2013 due to rash and negligent driving by the driver of the offending vehicle 'Bus', resulting into, the sad demise of Krishna Prasad Gupta, who was 67 years old at the relevant time. It held further that the vehicle in question was not being used in violation of the policy, as alleged by the insurer, and that by considering the annual income of the deceased to the tune of Rs.35,742/-, assessed the total amount of compensation as mentioned herein above, while fastening the liability upon the insurance company.

6. Smt. N. K. Kashyap, learned counsel appearing for the Appellants/Claimants submits that the Tribunal, while determining the amount of compensation has committed an illegality in assessing the income of the deceased only to the tune of Rs.35,742/- per annum and thereby, erred further in awarding the meagre amount of compensation even without awarding the proper amount of compensation under the conventional heads.

7. On the other hand, Shri Raj Awasthi, learned counsel appearing for Respondent No.3, the insurer of the alleged offending vehicle has supported the award under appeal as passed by the Tribunal.

8. I have heard learned counsel for the parties and perused the entire record carefully.

9. From perusal of the record, it appears that the amount of compensation as determined by the Tribunal, while assessing the annual income of the deceased only to the tune of Rs.35,742/-, even without awarding the proper amount of compensation under the conventional heads, is unjustified and deserves to be modified.

10. According to the claimants, the deceased was an agriculturist and was running a grocery shop, apart from working as a Commission Agent-cum-Field Worker in Sahara India Financial Corporation Limited and unrebutted statement of his wife Smt. Sushila Devi (AW-1) and Manoj Kumar Gupta (AW-3), the Branch Manager of the said Corporation, it is evident that the deceased was engaged as such. Ex.P-13 is the particulars showing the amount of commission, which the deceased earned for the year 2011-2012 and 2012-2013, while working as a Commission Agent of the said corporation and while considering the same, the Tribunal has rightly observed that he earned a sum of Rs. 35,742/- (After deducting the tax amount of Rs.3,910/-) from the said corporation at the relevant point of time. That apart, unrebutted statements of the applicants would reveal that he (Deceased) was an agriculturist and was running a grocery shop also. Although, the claimants have failed to establish the income of the deceased in this regard but it appears that he must have used to earn something, while engaging himself as such. The Tribunal has, however, failed to consider his income on this aspect, in order to provide just and proper compensation payable to the claimants.

11. According to the claimants, the monthly income of the deceased was Rs.10,000/-, however, in absence of any evidence, it is difficult to hold

the actual income of the deceased as such. His income, under such circumstances, however, cannot be less than the income of the skilled worker, as provided under the Minimum Wages Act, 1948. It could, thus, looking to his involvement as such, be presumed to be a sum of Rs.5,500/- per month, which is slightly above to the Minimum Wages of the skilled worker of Rs.5,385/-, as provided under the Minimum Wages Act, 1948, prevailing at the relevant point of time. The annual income of the deceased is accordingly held to be Rs.66,000/-. Since the number of dependents upon the deceased, as found by the Tribunal are 3, deduction of 1/3rd of his income, i.e., Rs.22,000/-, towards his personal and living expenses would be appropriate and yearly dependency would, thus, come to Rs.44,000/- (Rs.66,000/- – Rs.22,000/-). As the age of the deceased, at the time of the accident was 67, the multiplier applicable would be 5, as rightly applied by the Tribunal in the light of the principles laid down by the Supreme Court in the matter of ***Sarla Verma (Smt) And Others vs. Delhi Transport Corporation And Another*** reported in ***(2009) 6 SCC 121.*** Therefore, the total amount of dependency would come to Rs.2,20,000/- (Rs.44,000/- x 5).

12. Besides, the wife, son and daughter are entitled to be awarded loss of consortium under the heads of spousal and parental consortium, as per the principles laid down by the Supreme Court in the matter of ***Magma General Insurance Company Limited*** vs. ***Nanu Ram Alias Chuhru Ram And Others*** reported in ***(2018) 18 SCC 130,*** at the rate, as held in the matter of ***National Insurance Company Limited*** vs. ***Pranay Sethi*** reported in **(2017) 16 SCC 680.**

13. The claimants are thus entitled to the following amount towards

conventional heads:-

	Mode of Compensation	Amount (in Rs.)
(I)	For loss of spousal consortium to widow	40,000/-
(ii)	For loss of parental consortium to son and daughter	40,000/-
(iii)	For funeral expenses	15,000/-
(iv)	For loss of estate	15,000/-
	Total	**Rs.1,10,000/-**

and, it is to be increased by 10% in the light of the dictum of the Constitution Bench of the Supreme Court as laid down in para 59.8 of the said matter of ***National Insurance Company Limited*** vs. ***Pranay Sethi*** (supra). Consequently,the claimants would be entitled to a sum of Rs.1,21,000/- (Rs.1,10,000 + 10% of it) under the conventional heads.

14. The claimants would, thus, be entitled to a total amount of compensation to the tune of Rs.3,41,000/- (Rs.2,20,000/- + Rs.1,21,000/-) with 6% interest per annum from the date of filing of claim petition till the date of actual payment.

14 (i). Out of the said awarded sum, a sum of Rs.2,20,000/- shall be given to wife Smt. Sunita Devi, out of it, a sum of Rs.1,20,000/- shall be given to her through account payee cheque, while rest i.e., Rs.1,00,000/- shall be deposited in her name, in any of the Nationalised Bank for a period of 3 years.

14(ii). Likewise Rs.71,000/- shall be deposited in the name of daughter namely Kumari Kamini Gupta (Applicant No.3) in any of the Nationalised Bank for the period of 3 years, which shall be disbursed to her, after its maturity, as per the direction of the

Executing Court.

14(iii). Rest of the amount of Rs.50,000/- shall be deposited in the name of son, Manoj Kumar Gupta (Applicant No.2), in any of the Nationalised Bank for the period of three years, which shall be disbursed through cheque, as per the direction of the Executing Court.

15. In so far the interest part is concerned, the same shall be calculated at the said rate of 6% per annum from the date of filing of the claim petition till the date of actual payment and be disbursed to them, through cheque, as per the direction of the Executing Court.

16. It is observed further that if the claimants want to withdraw a portion of it or the entire deposited amount of their respective share/interest, during the said period of 3 years, then they are at liberty to move an application for the said purpose before the concerned Executing Court, which may be considered by it and an appropriate order may be passed in this regard.

17. The appeal is accordingly allowed in part to the extent indicated herein above with the aforesaid observations. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE

Vivek