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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A (C) No. 1161 of 2014

{Arising out of Award dated 26.08.2014 passed in Claim Case No. 75 of 2013 by the Motor Accident Claims Tribunal, Mahasamund}

The Oriental Insurance Co. Ltd. Through Divisional Manager, Division Office, Madina Bulding, Jail Road, Raipur, Chattisgarh.

---- Appellant

Versus

1. Smt. Kumari Bai W/o Mohradan Rana, aged about 29 years.
2. Gulshan Kumar S/o Mohradan Age 5 years.

   For Respondent No. 2, Minor, Through Mother, Smt. Kumari Bai as a natural guardian.

   Both are Resident of village Kankewa, Thana and Tahsil Saraipali, District Mahasamund, Chhattisgarh.
3. Ayodhya S/o Ghanaram Bhatt, aged about 52 years, Resident of village Baratiabhata, Thana Basna, District Mahasamund, Chhattisgarh.
4. Sanjay Sharma S/o M.L. Sharma, R/o Rajiv Nagar, Tahsil and District Raipur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri N.K.Malviya, Advocate.
For Respondents No. 1 and 2	:	Shri J.A. Lohani, Advocate.
For Respondent No. 3 and 4	:	None

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

Judgment on Board

Per P.R. Ramachandra Menon, Chief Justice

10.08.2020

1. Correctness and sustainability of the award passed by the Motor Accident Claims Tribunal, Mahasamund (for short 'the Tribunal') in connection with death of the person concerned in a road accident, mulcting a liability of Rs. 8,93,000/- plus interest upon the Appellant-Insurer of the offending vehicle, is highlighted in this appeal.

2. At the very outset, it is to be noted that though this appeal was filed in the year 2014 and listed before this Court on different occasions, it has not so far been admitted. Still, we heard the learned counsel for the parties at length.

3. The appeal pertains to an accident occurred on 30.12.2012. On the ill-fated day, the deceased namely Mohardan Rana was going to Saraipali from Kanekewa on his motor-cycle bearing registration No. CG 06 B 9846 along with his friend by name Dhanurdhar (AW-2) who was the pillion rider. When they reached the place of occurrence, the offending Truck bearing registration No. CG 04 ZC 1825, driven by the 3rd Respondent, owned by the 4th Respondent, and insured by the Appellant, knocked them down causing serious injuries. The person by name Mohardan succumbed to the injuries whereas the other person by name Dharnurdhar survived and recovered from the injuries. The death of the deceased was sought to be compensated by filing a claim petition by his widow and the minor child aged about 5 years. It was contended that the deceased was a degree holder, being Bachelor of Ayurvedic Medicine and Surgery, and was earning a sum of Rs. 15,000/- per month by his practice as a Doctor. The Owner and the Driver of the offending vehicle filed written statement disputing the negligence and attributing contributory negligence on the part of the driver of the motorcycle. It was also contended that the deceased died issueless and that the 2nd Claimant was not the son of the deceased, who virtually has been included only to get more compensation. The Appellant contended that the deceased himself was responsible for the accident because of his negligence, or at least contributory negligence. The amount of compensation sought for was also disputed, as much on the higher side, besides contending that there was a breach of the policy conditions.

4. After hearing both the sides, the Tribunal rendered a finding on the basis of the materials and evidence brought on record that the accident was solely because of the negligence on the part of the 3rd Respondent-Driver of the Truck. The case put up by the Claimants that the deceased was working as a qualified BAMS Doctor and was earning a sum of Rs. 15,000/- per month, was not accepted; holding that the Claimants had not substantiated the factual position as above. However, observing that accident occurred was in December, 2012 and considering the higher cost of living as on that date, it was held as proper, that a notional income of Rs. 6000/- per month be reckoned for computation of the compensation. After deducting one-third towards the personal expenses, the loss of dependency was worked out, adopting a multiplier of 16, based on the age of the deceased as between 36 to 40 years. Awarding a sum of Rs. 1,00,000/- towards mental agony, consortium, and loss of love and affection and a further sum of Rs. 25,000/- towards funeral expenses; a total sum of Rs. 8,93,000/- was fixed as the total compensation payable to the Claimants. This was directed to be satisfied with interest at the rate of 6% per annum from the date of filing of the claim petition, if deposited within one month, or else to pay interest at the rate of '9%' per annum. This is under challenge in this appeal.

5. The learned counsel for the Appellant submits that the notional income reckoned as Rs. 6000/- per month is much on the higher side and is liable to be scaled down. It is also pointed out that the funeral expenses awarded as Rs. 25,000/- and the sum of Rs. 1,00,000/- towards consortium and loss of love and affection, are also on the higher side, in view of the settled position of law by virtue of the ruling rendered in ***Sarla Verma (Smt.) & Others v. Delhi Transport Corporation & Another****;* {(2009) 6 SCC 121)} and ***National Insurance Company Limited v. Pranay Sethi & Others****;* {(2017) 16 SCC 680}.

6. As mentioned already, the accident was on 30.12.2012 *i.e.* just two days prior to the commencement of the year 2013. Going by the cost of living index as on the said date, and the minimum wage payable to a labourer, it cannot be said that fixation of Rs. 6000/- is much on the higher side, to be interdicted by this Court in exercise of the appellate jurisdiction. Even if the notional income fixed by the Tribunal is to be reduced to some extent, to work out the compensation, we are of the view that it will not tilt the balance in any manner, insofar as the Tribunal has not reckoned the "future prospects" while fixing the multiplicand. This, in the instant case, will have to be fixed by adding 40% of the notional income in view of the fact that the deceased was below the age of 40 years with no fixed income, as held by the Apex Court in ***Sarla Verma*** (supra) and as affirmed by the Constitution Bench judgment in ***Pranay Sethi*** (supra). The resultant figure will make the loss of dependency to be much more than Rs.8,00,000/-. Even though, some scaling down is possible in respect of the amounts awarded by the Tribunal under other heads, it is to be noted at the same breath that the widow is entitled to get 'spousal consortium' to the extent of Rs. 40,000/-; while the child i.e. the 2nd Claimant is entitled to get Rs. 40,000/- towards 'parental consortium' in view of the judgment rendered by the Apex Court in ***Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram & Others****;* {(2018) 18 SCC 130}. Similarly, no amount has been awarded towards 'Loss of Estate' which is payable to an extent of Rs. 15,000/-, as held in ***Pranay Sethi's*** case (supra). In the above circumstances, the contention of the Appellant that the quantum of compensation awarded by the Tribunal is much on the higher side, is only to be repelled.

7. Despite the elaborate hearing, the Appellant could not demonstrate the alleged breach of the policy conditions so as to consider the question whether any right of recovery could be awarded. In the said circumstance, we

are of the view that the appeal is devoid of any merit and none of the grounds raised in support of the same could be held as tenable.

8. We note that the granting of 'penal interest' at the rate of 9% per annum (if the amount covered by the award with interest at the rate of 6% is not deposited within one month) is not based on any statutory provision or binding precedent. In the said circumstance, the liability fixed as per the award to pay 'penal interest', stands deleted.

9. There is no cross-appeal from the part of the Claimants. In the said circumstance, the amount due with interest at the rate of 6% per annum as awarded by the Tribunal shall be deposited by the Appellant-Insurance Company before the Tribunal, of course after giving credit to the amount, if any including the statutory deposit, already made, with intimation to the Claimants, as expeditiously as possible at any rate within 'six weeks' from the date of receipt of a copy of this judgment.

The appeal stands disposed of accordingly.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	(Parth Prateem Sahu)
CHIEF JUSTICE	**JUDGE**

Amit