

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc Appeal (C) No. 230 of 2014**

{Arising out of order dated 28.02.2013 passed by 4th Motor Accident Claims Tribunal, Raipur in Claim Case No.46 of 2013}

- Suny Kharsel, Jugeshwar Kharsel Aged About 27 Years R/o Jagannath Nagar, Pandari, P.S. Civil Line, Post Office- Raipur, Distt. Raipur (C.G.)
- Awinash Kharsel S/o Jugeshwar Kharsel R/o Jagannath Nagar, Pandari, P.S. Civil Line, P.O. Raipur, Distt. Raipur (C.G.)

---- Appellants

Versus

1. Rajkumar Gayakwad S/o Chhote Lal Gayakwad Aged About 28 Years R/o Devpuri, P.S. Tikrapara, Raipur, P.O. Raipur, District Raipur (C.G.) {Driver}
2. Proprietor/Principal M/s Jain Public School, R/o Devpur, P.S. Tikrapara, Tah. Raipur, P.O. And District : Raipur, Chhattisgarh {Owner}
3. Branch Manager Universal Sompo General Insu.Co.Ltd., R/o B-7, T.V. Tower Road, Via- Shree Ram Nagar, , P.S. Civil Line, Shankar Nagar, Raipur, P.O. Raipur, Tah. and District : Raipur, Chhattisgarh

---- Respondents

For Appellants/Claimants	:	Shri Badruddin Khan, Advocate
For Respondents 1&2/Owner&Driver	:	Shri Anmol Sharma, Advocate
For Respondent No.3/Insurer	:	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

23.09.2020

1. Claimants are the Appellants. Grievance is against the course pursued by the 4th Motor Accident Claims Tribunal, Raipur (for short, 'the Tribunal') in working out the compensation payable in respect of the death of their father, granting only a paltry sum of Rs.1,25,900/-, reckoning a meagre notional monthly income and still reducing 75% therefrom for the reason that the Claimants were 'married sons' of the deceased and hence there was no case of dependency.

2. The deceased, by name Jugeshwar Kharsel, aged 48 years, was working as a Rickshaw puller. On 11.02.2011, when he was proceeding along with road with his Rickshaw, he was knocked from behind by the offending Bus bearing No. CG 04 D 0399, driven by the 1st Respondent, owned by the 2nd Respondent and insured by the 3rd Respondent, causing fatal injuries leading to his death. The Appellants, who are the sons of the deceased, preferred a claim petition seeking for compensation before the Tribunal, contending that the deceased was having a monthly income of Rs.6,000/- as Rickshaw puller and Rs.3,000/- by doing a part time job. The claim was resisted from the part of the Respondents on quantum and negligence. Existence of a valid insurance policy was conceded. Based on the evidence available on record, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the 1st Respondent - Driver of the offending Bus.
3. With regard to the compensation payable, the Tribunal has reckoned only a notional income of Rs.3,000/- and observed that the appropriate multiplier was '13', by virtue of the age of the deceased. However, observing that both the Claimants, who are the sons of the deceased, were married, the dependency contribution to the family could be reckoned as only 25%. It was accordingly that, a meagre amount of Rs.1,17,000/- was awarded under this head. The Tribunal also awarded a sum of Rs.2,500/- towards the funeral expenses, another Rs.2,500/- towards the pain and suffering and a similar amount of Rs.2,500/-

towards the loss of estate; besides Rs.1,400/- towards the loss of Rickshaw; thus, granting a total compensation of 1,25,900/-; which was directed to be satisfied with interest @ 6% per annum from the date of filing of the claim petition, till satisfaction. Since the policy was admitted, the liability was fastened on the shoulders of the 3rd Respondent-Insurer.

4. The learned counsel for the Appellants/Claimants submits that the fixation of monthly income by the Tribunal is wrong and unfounded. Similarly, there is absolutely no basis for deducting 75% with reference to the marital status of the Appellants/Claimants. The learned counsel submits that, by virtue of the law declared by the the Supreme Court in ***Sarla Verma Vs. Delhi Transportation Corporation*** reported in (2009) 6 SCC 121, to the extent as affirmed by the subsequent Constitution Bench of the Apex Court in ***National Insurance Company Limited vs Pranay Sethi & Others*** reported in (2017) 16 SCC 680, 'future prospects' had to be considered, where the Tribunal has gone wrong. The amounts awarded under the conventional heads are also not in conformity with the law declared by the Supreme Court in the decisions mentioned above and hence requires interference.
5. Heard the learned counsel for the Appellants as well as the learned counsel appearing for the Respondents – Driver & Owner. None has appeared for the 3rd Respondent-Insurer.
6. The accident was in the year 2011 and the deceased was a man of '48' years. Even a manual labourer, as on the date of accident, would have earned more. We find it appropriate to refix the notional monthly income

as Rs.4,000/-. By virtue of the rulings rendered by the Apex Court as mentioned above, 'future prospects' are to be reckoned to an extent of 25% in the case of persons who are aged above 40 years but below 50 years with no fixed income. As such, the figure that is liable to be reckoned becomes $\text{Rs.4,000} + (4000 \times 25\%) 1000 = 5,000/-$. There is no dispute with regard to the appropriate multiplier, which has been taken as '13'. It has been held even recently by the Apex Court in ***National Insurance Company Limited v. Birender and others*** reported in ***AIR 2020 SC 434***, that the claim petition can be preferred and pursued by the "married sons" as well, as the compensation payable would form part of the estate of the deceased, which could be inherited by the persons eligible for the same. This being the position, the deduction made by the Tribunal to an extent of 75% is wrong. It requires to be reworked and only $1/3^{\text{rd}}$ can be deducted towards personal expenses of the deceased. On reworking the amount of compensation payable towards the loss of life, it comes to $\text{Rs.5,000} \times 12 \times 2/3 \times 13 = \text{5,20,000/-}$. The Claimants are entitled to get a sum of **Rs.15,000/-** towards the funeral expenses and another **Rs.15,000/-** towards loss of estate, as per the law declared by the Apex Court in the decisions cited (supra).

7. The concept of the term 'consortium' has been explained by the Apex Court in ***Magma General Insurance Company Limited vs Nanu Ram Alias Chuhru Ram & Others*** reported in **(2018) 18 SCC 130**, holding that the 'consortium' is of 'three' different 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). This being the position, the Appellants/Claimants, who are the children of the deceased, are entitled to get a sum of **Rs.40,000/-** towards the loss of 'Parental consortium'. We do not intend to make any change with regard to the amount of **Rs.1,400/-** awarded towards the loss of Rickshaw and it is sustained. Thus, the total compensation in respect of the death of deceased comes to Rs. 5,20,000 + 15,000 + 15,000 + 40,000 + 1,400 = **Rs.5,91,400/- (Five lacs ninety one thousand four hundred only)**.

8. Since the Tribunal has awarded only a sum of Rs.1,25,900/-, the balance compensation payable comes to Rs.5,91,400 – 1,25,900 = **Rs.4,65,500/- (Four lacs sixty five thousand and five hundred only)**. The said amount requires to be satisfied with interest @ 7% per annum from the date of filing of claim petition, till satisfaction. Since the existence of valid insurance policy is admitted, we direct the 3rd Respondent/Insurer to deposit the amount due before the Tribunal, with intimation 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. The Registry is directed to forward a copy of this judgment to the 3rd Respondent / Insurer for further steps.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge