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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1296 of 2014

{Arising out of order dated 03.09.2014 passed by Chief Motor Accident Claims Tribunal, Dhamtari in Claim Case No. 141 of 2012}

1. Smt.Chandani Wd/o Late Lalit Kumar Netam Aged About 20 Years R/o Village- Anjanipara, Ranigaon, Tah. Nagri, Distt. Dhamtari (C.G.)
2. Ku. Harshita D/o Lalit Kumar Netam Aged About 2 Years Minor, Thru-Mother Smt. Chandani, R/o Village- Anjanipara, Ranigaon, Tah. Nagri, District : Dhamtari (C.G.)
3. Ku. Ishika D/o Late Lalit Kumar Netam Age- 01 Month, Minor, Thru-Mother Smt. Chandani, R/o Village- Anjanipara, Ranigaon, Tah. Nagri, Distt. Dhamtari (C.G.)
4. Smt. Sunita W/o Ishwar Ram Netam Aged About 42 Years R/o Village-Anjanipara, Ranigaon, Tah. Nagri, Distt. Dhamtari (C.G.)
5. Ishwar Ram Netam S/o Late Pardeshi Ram Aged About 45 Years R/o Village- Anjanipara, Ranigaon, Tah. Nagri, Distt. Dhamtari (C.G.)

---- Appellants

Versus

1. Panna Lal Som S/o Ganesh Ram Som Aged About 26 Years R/o Mode, Tah. Nagri, Distt. Dhamtari (C.G.)
2. Mahendra Kumar Sahu S/o Khoman Lal Sahu R/o Village- Bhanpuri, Tah. And Distt. Dhamtari (C.G.)
3. Shriram General Insu.Co.Ltd. S/o Thru- Branch Manager, Branch Office, Plot No. 1, Maruti Heights Nearby, Maruti Dealership, G.E. Road, Raipur, Distt. Raipur (C.G.)

---- Respondents

For Appellants/Claimants	:	Shri Sameer Singh, Advocate
For Respondent No.1/Driver	:	None.
For Respondent No.2/Owner	:	None.
For Respondent No.3/Insurer	:	Shri S.S. Rajput, Advocate.

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

18.09.2020

1. Inadequacy of the compensation awarded by the Tribunal in respect of the loss of life of the deceased in a road traffic accident is the subject matter of challenge in this appeal preferred by the Claimants.

2. The deceased Lalit Kumar Netam was riding a Motorcycle bearing No. C.G.05-H-2695 alongwith one Nandkumar Netam on the pillion. The version of the Claimants is that when they were proceeding on the Motorcycle the deceased rider got the call of nature, for answering which the Motorcycle was stopped on the side of the road and after answering the call, when they were about to proceed on the Motorcycle, the offending Tractor bearing No. C.G. 05/G/1024, driven by the 1st Respondent, owned by the 2nd Respondent and insured by the 3rd Respondent, came in a rash and negligence manner and knocked them down causing fatal injuries to the rider leading to his death; besides injuries to the pillion rider.

3. The death was sought to be compensated by filing a claim petition before the Tribunal by the widow, minor children and the parents of the deceased. The claim was opposed by the Respondents by filing separate written statements. In the written statements filed by the 1st Respondent/Driver of the Tractor, it was contended that there was no negligence on his part and that the accident was solely because of the negligence of the deceased rider, who was riding the Motorcycle carrying two persons on the pillion and in violation of the statutory / policy conditions. It was also contended that the 1st Respondent / Driver of the Tractor was having valid driving license, whereas the deceased rider was not having any valid driving license at the relevant time. The case of the 3rd Respondent / Insurer was with reference to the negligence on the part of the rider of the Motorcycle and also as to the absence of valid driving

license for the rider/driver of both the vehicles. The quantum of compensation was also questioned by the Respondents.

4. Based on the evidence adduced, the Tribunal observed that the accident was because of the negligence equally attributable to the deceased rider of the Motorcycle and the 1st Respondent / Driver of the Tractor and a finding was rendered accordingly, fixing the ratio of negligence as 50:50. Observing that no positive evidence was adduced as to the alleged avocation of the deceased and his income, Rs. 3,000/- has been reckoned as notional monthly income. Since the deceased was aged about 26 years, appropriate multiplier was taken as '17' and after deducting 1/3rd towards the personal expenses, the loss of dependency was worked out as Rs. 4,08,000/-. Awarding a further sum of Rs. 20,000/- towards the love and affection, Rs. 5,000/- towards funeral expenses, Rs. 5,000/- towards loss of estate and another sum of Rs. 5,000/- towards loss of consortium, total compensation was fixed as Rs.4,43,000/-. However, in view of the finding on negligence (fixed to an extent of 50% upon the deceased rider) 50% of the compensation was deducted and only the remaining 50% *i.e.* Rs. 2,21,500/- was held as payable to the Claimants. The said amount was directed to be satisfied with interest @ 6% per annum from the date of filing of the claim petition, till satisfaction. In view of the fact that the offending Tractor was covered by the valid insurance policy, the amount due was directed to be satisfied by the Insurer.

5. The learned counsel for the Appellants/Claimants submits that the fixation of 50% negligence upon the deceased rider is not correct. It is stated that an eyewitness was examined before the Tribunal, who has deposed that the Motorcycle was stopped at the relevant time for answering the call of nature and it was then that the offending Tractor which was being driven from the opposite side in a rash and negligence manner came and knocked them down. We find it difficult to accept the said proposition or the version given by the eyewitness as a valid and reliable piece of evidence. The eyewitness who has given the version as above is a person who was riding alongwith the deceased rider of the Motorcycle as a pillion rider. He being an interested witness, the deposition made by him, cannot but be held as not reliable. At the same time, it is to be noted that the driver of the offending vehicle had also mounted the box and deposed about the occurrence of the accident with reference to the pleadings raised by him.

6. After going through the oral and documentary evidence, it was specifically held by the Tribunal in 'paragraph 10' of the Award that the accident had occurred on <u>the middle of the road</u> and as such, the negligence was liable to be apportioned equally between the deceased rider of the Motorcycle and the 1st Respondent who was the driver of the offending Tractor. We are of the view that the finding rendered by the Tribunal is perfectly in order and the same does not warrant any interference.

7. With regard to the claim for enhancement, the learned counsel for the Appellants/Claimants submits that the notional monthly income reckoned by the Tribunal as Rs. 3,000/- is quite on the lower side. We find some force in the said argument. The deceased was stated as having income from digging wells and also from the job as a mason. Even otherwise, since the accident had occurred in the year 2012, even a manual labourer would have earned much more than the notional income fixed by the Tribunal. Since the deceased was maintaining a family consisting of a wife, two minor children and parents and also sporting a Motorcycle, it could easily be presumed that he was having a reasonable income. We find it appropriate to fix the same as Rs. 4,500/- per month to work out the compensation.

8. It is to be noted that the Tribunal has not considered the future prospects. By virtue of the law declared by the Apex 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,** in the case of a person who is below 40 years of age with no fixed income, enhancement to an extent of 40% is permissible as 'future prospects'. Under such circumstance, the monthly income becomes Rs.4,500 + (4,500 x 40%) 1,800 = Rs. 6,300/-. It is also relevant to note that, by virtue of the above rulings rendered by the Apex Court, based on the number of dependants in the family, the Tribunal ought to have deducted only $1/4^{th}$ towards the personal expenses, instead of $1/3^{rd}$, to work out the loss of dependency. On

reworking the compensation as above, the amount that can to be awarded is 6,300 x 12 x 3/4 x 17 = **Rs. 9,63,900/-.**

9. 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). The Tribunal has awarded only a sum of Rs. 5,000/- towards loss of consortium. As per the above rulings, the consortium shall be to an extent of Rs. 40,000/- and as such, the deficit amount of **Rs. 35,000/-** is payable to the widow of the deceased i.e. the 1st Appellant herein towards the 'Spousal consortium', we award it accordingly. A sum of Rs.20,000/- has been awarded towards loss of love and affection. This we reckon as the amount awarded towards the minor children and in view of the rulings rendered by the Apex Court cited (supra), a further sum of **Rs.20,000/-** is awarded towards 'Parental consortium'. By virtue of the above rulings, the parents are also entitled to get a sum of **Rs.40,000/-** towards 'Filial consortium' and hence we award the said amount as well. The Tribunal has awarded only a sum of Rs. 5,000/- towards funeral expenses and another Rs. 5,000/- towards loss of estate. In view of the law declared by the Apex Court cited (supra), the amounts payable under these heads are Rs. 15,000/- each and as such, the deficit of **Rs.10,000/-** towards funeral expenses and another **Rs. 10,000/-**

towards loss of estate are also held as payable in the instant case. Thus, the total compensation in respect of the death of deceased comes to Rs.9,63,900 + 40,000 + 40,000 + 40,000 + 15,000 + 15,000 = **Rs.11,13,900/- (Eleven lacs thirteen thousand and nine hundred only)**.

10. However, in view of the finding that 50% negligence of accident was fixed on the part of the deceased rider of the Motorcycle, the Appellants/Claimants are entitled to get only 50% of the above compensation; which comes to Rs.11,13,900 x 50% = **Rs.5,56,950/- (Five lacs fifty six thousand nine hundred and fifty only)**. Since the Tribunal has awarded Rs.2,21,500/-, the balance compensation payable comes to Rs.5,56,950 – 2,21,500 = **Rs.3,35,450/- (Three lacs thirty five thousand four hundred and fifty only)**. The said amount shall carry interest @ 7% per annum from the date of filing of claim petition, till satisfaction. Since the existence of valid insurance policy is admitted and the liability mulcted upon the Insurer is not put to challenge, 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.

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

Chandra