NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 799 of 2014

(Arising out of order dated 08.05.2014 passed by the learned Motor Accident Claims Tribunal, Baikunthpur, District Korea (C.G.) in Claim Case No. 31/2010)

1. Smt. Fatma Begam W/o Late Mohd. Akaram Aged About 25 Years
2. Mohd. Ashrad @ Shahil S/o Late Mohd. Akram Aged About 3 Years (Minor, Through represented by his natural guardian - Mother Smt. Fatma Begam)

   Both are R/o Domanhil, P.S. Chirmiri, Distt. Korea (C.G.)

---- Appellants

Versus

1. Wahid Ali S/o Ramjan Ali, R/o Tina Dafai, P.S. Charcha, Distt. Korea (C.G.)
2. Subhash Kumar S/o Tara Prasad R/o Mansukh, P.S. Baikunthpur, Distt. Korea (C.G.)
3. Branch Manager S/o Iffco Tokyo General Insurance Compnay Limited, Jabalpur (M.P.)
4. Sher Mohammad Siddiqui S/o Dost Mohammad Siddiqui Aged About 58 Years
5. Smt. Jeenat Shajda Siddiqui W/o Sher Mohammad Siddiqui Aged About 50 Years

   Respondents No. 4 and 5 are R/o Domanhil, P.S. Chirmiri, Distt. Korea (C.G.)

---- Respondents

For Appellants : Shri Anil Gulati, Advocate.
For Respondents : None.

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

21.09.2020

1. Inadequacy of the compensation awarded by the Motor Accident Claims Tribunal, Baikunthpur, District Korea (C.G.) is the subject matter of challenge in this appeal preferred by the Claimants.

2. On the ill-fated day i.e. on 28.02.2010, the deceased, by name, Mohammad Akram (husband of the 1st Appellant, father of the 2nd Appellant and Respondents No. 4 and 5, who are father and mother of the deceased) was proceeding on his motor-cycle bearing Registration No. C.G.-16-F-0415 alongwith another person. When they reached the place of occurrence, they were knocked down by the Jeep bearing Registration No. M.P.-26-B-4664, owned by the 1st Respondent, driven by the 2nd Respondent and insured by the 3rd Respondent-Insurance Company, causing fatal injuries leading to death of the rider of the motor-cycle. This was sought to be compensated by filing a claim petition before the Tribunal. It was contended that the deceased was working as a mechanic and it was having substantial income from different sources. However, observing that the income was not properly proved, the Tribunal reckoned only Rs. 3,000/- as the notional monthly income. Since the deceased was aged 28 years, the appropriate multiplier was fixed as '17'. Deducting 1/3rd of the income towards personal expenses, the loss of dependency was worked out as Rs. 4,08,000/-. Awarding a further sum of Rs. 25,000/- towards loss of consortium, loss of love and affection and funeral expenses, the total compensation payable was fixed at Rs. 4,33,000/-. This was directed to be satisfied with interest at the rate of 6% per annum from the date of filing the application, till its realization and in view of the existence of a valid insurance policy, the liability was fastened on the 3rd Respondent-Insurer.

3. After hearing the learned counsel appearing for the parties, we are of the view that the notional monthly income reckoned by the Tribunal as Rs. 3,000/- is on the lower side and it is requires to be re-fixed as Rs. 4,000/-. The Tribunal has not reckoned future prospects. In the light of the rulings rendered by the Apex Court in ***Sarla Verma & Ors v. Delhi Transport Corp. & Anr.*** reported in **(2009) 6 SCC 12** and ***National Insurance***

Company Limited v. Pranay Sethi & Another, reported in **(2017) 16 SCC 680,** in the case of persons who are less than 40 years with no fixed income, 40% is to be enhanced towards future prospects. On re-calculating the loss of dependency in the said circumstance, it comes to **Rs. 7,61,600/-** (4,000 + 40% x 12 x 2/3 x 17). Since the Tribunal has awarded only a sum of Rs. 4,08,000/-, the balance payable under this head comes to Rs. **3,53,600/-.**

4. As per the decision rendered by the Supreme Court in **Sarla Verma** (supra) and **Pranay Sethi** (supra), Rs. 15,000/- is payable towards funeral expenses and Rs. 15,000/- towards loss of estate as well. Since the Tribunal has awarded only a sum of Rs. 25,000/-, the balance amount comes under these heads as **Rs. 5,000/-**.

5. The scope of 'consortium' has been explained by the Apex Court in ***Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram*****,** reported in **(2018) 18 SCC 130,** It can be of three types; Parental consortium (payable to children because of the death of parents); Spousal consortium (payable to the surviving spouse because of the death of the partner) and Filial consortium (payable to the parents because of the death of children). Since the Tribunal has not awarded any amount under this head, the 1st Appellant-widow is entitled to get **Rs.40,000/-** towards 'Spousal consortium'. We are also of the view that the son i.e. Appellant No.2 is entitled to get 'Parental consortium' and as such, a sum of **Rs.40,000/-** is awarded under this head. Similarly, towards Filial consortium, the parents (Respondents No.4 and 5) are entitled to get sum of **Rs.40,000/-**. Thus, the total balance compensation payable comes to **Rs.4,78,600/-** (Four lacs seventy eight thousand six hundred only), which shall be satisfied with interest at the rate of 7% from the filing of application, till its satisfaction. Since the policy stands admitted, we direct the 3rd Respondent-Insurer to deposit the amount due as

above, before the Tribunal with notice of the Appellants and also to the Respondents No. 4 and 5 as expeditiously as possible at any rate within 'one month' from the receipt of copy of the judgment.

Appeal stands allowed to the said extent.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Hem