**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 636 of 2013**

*{Arising out of order dated 07.04.2014 passed by learned 2nd Additional Motor Accident Claims Tribunal, Balod, District Balod, Chhattisgarh in Claim Case No.86 of 2013}*

1. Shrimati Dhurai Bai Sahu W/o Krishna Ram Sahu Aged About 42 Years
2. Roshan Kumar S/o Late Krishna Ram Sahu Aged About 25 Years
3. Lomesh Kumar S/o Late Krishna Ram Sahu Aged About 24 Years
4. Kumari Neelema D/o Late Krishna Ram Sahu Aged About 22 Years
5. Suklal Sahu S/o Late Guha Ram Sahu Aged About 70 Years R/o
6. Shrimati Jugbati Bai W/o Sukhlal Sahu Aged About 65 Years

All R/o Nipani, Tah. And Distt. Balod, Chhattisgarh

**---- Appellants**

**Versus**

1. Harish Chand Sahu S/o Shishupal Sahu Aged About 27 Years R/o Rajanagar, Jhalmala, Tah. And Distt. Balod, Chhattisgarh
2. Kishan Lal Yadav S/o Man Singh Yadav R/o Taroud, Tah. And Distt. Balod, Chhattisgarh
3. Shri Ram General Insu.Co.Ltd. S/o Thru- Its Prescribed Authority, E-8, E.P.I.P. Rico Industrial Area, Sitapur, Jaipur, Rajasthan, Pin- 302022

**---- Respondents**

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| For Appellants | : | Shri Shobhit Kosta, Advocate. |
| For Respondents No.1 & 2 | : | Shri Prasoon Agrawal, Advocate. |
| For Respondent No.3 | : | None |

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**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**

**15.09.2020**

1. Inadequacy of compensation awarded by the 2nd Additional Motor Accident Claims Tribunal, Balod, in respect of the demise of the deceased in a road traffic accident, is put to challenge in this appeal at the instance of the Appellants/Claimants.

2. Heard Shri Shobhit Kosta, the learned counsel for the Appellants at length.

3. Notice was ordered by the registered post to the 3rd Respondent/Insurer on 20.02.2020 and despite expiry of 30 days, there is no appearance for the Insurer. Since existence of the valid insurance policy was admitted before the Tribunal and the liability was mulcted upon the 3rd Respondent/Insurer and further since the enhancement sought for, is to be awarded only in tune with the law declared by the Apex Court in **Sarla Verma v. Delhi Transportation Corporation** reported in **(2009) 6 SCC 121** and the Constitution Bench in **National Insurance Company Limited v. Pranay Sethi & Others** reported in **(2017) 16 SCC 680** and the subsequent verdict in **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram & Others** reported in **(2018) 18 SCC 130**, we proceed to deal with the matter, on the basis of the materials available on record.

4. The accident was on 13.07.2012. The deceased Krishna Ram Sahu was proceeding on his motorcycle bearing No.CG-07/LZ/9232 and when he reached the place of occurrence by about 1:30 PM, the offending Goods Vehicle bearing No.CG-07/M/4633 driven by the 1st Respondent, owned by the 2nd Respondent and insured by the 3rd Respondent, dashed against the motorcycle, causing fatal injuries leading to death of the rider. This was sought to be compensated by the Claimants by filing claim petition before the Tribunal. It was contended before the Tribunal that the accident was because of the sole negligence on the part of the 1st Respondent/driver of the offending vehicle. The claim was put up with reference to the occupation and income of the deceased as a 'Building Contractor'. Some documents were also produced to show the work

contracts obtained by the deceased. But, the Tribunal, observing that income was not properly proved, reckoned only a notional sum of Rs.3,000/- as the monthly income for working out the loss of dependency. Based on the age of the deceased (47 years), appropriate multiplier was fixed and after deducting 1/4$^{th}$ towards personal expenses of the deceased (with reference to the number of dependents), the loss of dependency was worked out as Rs.3,51,000/-. Awarding a further sum of Rs.5,000/- towards funeral expenses, Rs.5,000/- towards loss of estate and a sum of Rs.10,000/- towards loss of consortium to widow, the total compensation was fixed as Rs.3,71,000/-. Tribunal arrived at a finding that the accident occurred was on account of sole negligence on the part of the 1$^{st}$ Respondent/driver of the offending vehicle and hence the liability as above was directed to be satisfied with interest at the rate of 6% per annum from the date of filing of claim application till satisfaction. In view of the existence of a valid insurance policy issued by the 3$^{rd}$ Respondent/Insurer, the same came to be mulcted upon the shoulders of the said Respondent.

5. Shri Shobhit Kosta, the learned counsel for the Appellants/Claimants submits that the Tribunal has gone wrong in reckoning only a meagre sum of Rs.3,000/- as the notional monthly income, despite the evidence adduced as to the avocation of the deceased on the relevant date.

6. It is to be noted that the accident was in the year 2012 and the deceased was maintaining his family consisting of his widow, two sons, a daughter and the parents (father and mother). The deceased was affording a motorcycle as well and it was while riding the motorcycle, that the accident had occurred. That apart, even though the documents produced as Ex.P/10 to Ex.P/13 showing the work contracts obtained by the

deceased (issued by the private parties) cannot be treated as proved properly, the document produced before the Tribunal as Ex.P/9C, is the 'Certificate of Registration' given to the deceased as a 'Government Contractor'. This shows the factum of occupation of the deceased as a 'Building Contractor' and his probable monthly income in the year 2012 could never have been Rs.3,000/- as reckoned by the Tribunal; but something more. Considering all the facts and circumstances, we are of the view that the notional income reckoned by the Tribunal at Rs.3,000/- per month it requires to be enhanced and re-fixed at Rs. 5,000/-.

7. There is no serious dispute with regard to appropriate multiplier of '13' and the extent of deduction made towards personal expenses i.e. 1/4$^{th}$, but the Tribunal has not reckoned the future prospects. In view of the decision rendered by the Apex Court in **Sarla Verma** (supra) and **Pranay Sethi** (supra) here should have been an addition of 25% more (considering the age of the deceased as above 40 years and with no fixed income). On re-computing the loss of dependency, the monthly income of deceased comes to Rs.6,250/- (5000 x 25% = 1250 and 5000 + 1250). The appropriate multiplier to be taken is '13', based on the age of the deceased. Dependency compensation, after deducting 1/4$^{th}$ income towards personal expenses, comes to Rs. 6,250 x 12 x 3/4 x 13 = Rs.7,31,250/-. After giving credit to the sum of Rs.3,51,000/- already awarded by the Tribunal, the balance payable under this head is **Rs.3,80,250/-**.

8. By virtue of the decisions rendered by the Apex Court as mentioned above, it stands settled that the Claimants are entitled to have compensation under the conventional heads, such as, funeral expenses and loss of estate at Rs.15,000/- each. Since the Tribunal has awarded

only a sum of Rs.5,000/- towards funeral expenses and Rs.5,000/- towards loss of estate, a balance amount of **Rs.10,000/-** is payable towards 'Funeral Expenses' and another **Rs.10,000/-** towards 'Loss of Estate' as well.

9. The scope of 'consortium' has been explained by the Apex Court in **Magma General Insurance Company Limited** (supra). 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 awarded only a sum of Rs.10,000/- as consortium, it has to be enhanced to Rs.40,000/-; thus satisfying the requirement of the 'Spousal consortium' in respect of 1st Appellant (widow); resulting in a balance of **Rs.30,000/-**. We are also of the view that the children i.e. Appellants No.2 to 4 are 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 (Appellants No.5 and 6) are entitled to get sum of **Rs.40,000/-**. Thus, the total balance compensation payable comes to **Rs.5,10,250/- (Five lacs ten thousand two hundred fifty only)**.

10. The balance compensation awarded as above shall be paid by the Insurance Company with interest @ 7% per annum from the date of the claim application, till satisfaction; since the existence of a valid insurance policy is admitted and the liability of the 3rd Respondent/Insurer is not disputed. We direct the 3rd Respondent/Insurer to deposit the amount due as above before the Tribunal, with notice 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.

11. Since the 3rd Respondent/Insurer is not represented, despite issuance of notice, we direct the Registry to forward a copy of the judgment to the 3rd Respondent/Insurer by Speed Post.

12. The appeal is allowed to the above extent. No costs.

Sd/- Sd/-

**(P. R. Ramachandra Menon)**
**Chief Justice**

**(Parth Prateem Sahu)**
**Judge**

Anu