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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1119 of 2013

{Arising out of order dated 03.10.2012 passed by the Additional Motor Accident Claims Tribunal, Bhatapara, District Raipur, C.G. in Claim Case No. 38/2010}

1. Smt.Geeta Bai Sahu, W/o Late Makhan Lal Sahu Aged About 21 Years
2. Tejram Sahu S/o Samaruram Sahu Aged About 45 Years
3. Smt. Sarojani Bai Sahu W/o Tejram Sahu Aged About 42 Years
4. Samaru Ram Sahu S/o Late Dirbi Sahu Aged About 71 Years
5. Smt. Mangtin Bai Sahu W/o Samaru Ram Sahu Aged About 67 Years

All are R/o Kamhariya, P.S. Bhatapara (Rural), Civil and Revenue District BalodaBazar-Bhatapara (C.G.)

---- Appellants

Versus

1. Babulal Patel S/o Darashram Patel Aged About 43 Years R/o Village Gordha, P.S. Kasdol, Civil and Revenue Distt. Raipur C.G., Chhattisgarh
2. Mohan Lal Sahu S/o Lalji Sahu Aged About 65 Years R/o Baingan Dabri, P.S. Kasdol, Civil and Revenue Distt. Raipur C.G.
3. Branch Manager, The New India Insurance Company Limited, Branch Office- Civil Lines, BalodaBazar, Civil and Revenue District : Balodabazar-Bhathapara, Chhattisgarh

---- Respondents

For Appellants	:	Shri Ashok Soni, Advocate.
For Respondent No. 1 and 3	:	None.
For Respondent No. 2	:	Shri A.P. Sharma, Advocate

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

06.10.2020

1. Inadequacy of the compensation awarded by the Tribunal, in respect of the death of the person concerned in a road traffic accident, is put to challenge in this appeal. The deceased by name Makhan Lal Sahu was proceeded on Motor-cycle, on 21.07.2010. When he reached the place of occurrence, the offending vehicle Metador Van bearing Registration No. CG-07/ZB-0539, driven by the 1st Respondent, owned by the 2nd Respondent and insured by

the 3rd Respondent, knocked him down causing fatal injuries leading to death. This was sought to be compensated by filing a claim petition by the widow, parents and grand parents of the deceased.

2. The claim was resisted from the part of the Respondents mainly on quantum and negligence. Existence of a valid policy was admitted from the part of the 3rd Respondent. Based on the pleadings and evidence, the Tribunal held that the accident was solely because of the negligence from the part of the 1st Respondent-driver of the offending Van.

3. As against the claim of higher income of the deceased, the Tribunal chose to reckon only Rs.15,000/- as the notional annual income of the deceased. Applying a multiplier of '17', with reference to the age of the deceased and after deducting 1/3 income towards the personal expense, the loss of dependency was calculated as Rs.1.70 lacs. Awarding a sum of Rs. 10,000/- towards funereal expenses, another a sum of Rs.10,000/- towards loss of estate and a sum of Rs. 25,000/- towards loss of consortium, the total compensation fixed as Rs.2.15 Lacs; which was directed to be satisfied with interest @6% per annum from the date of filing the petition till its satisfaction.

4. The learned counsel for the Appellants submits that the deceased was maintaining his family consisting of his wife, parents and grand parents and hence the income reckoned by the Tribunal for fixing the loss of dependency is abysmally on the lower side. The Tribunal has not considered the 'future prospects' and further, the amounts awarded under the 'conventional heads' are also quite on the lower side.

5. Considering the fact that an able bodied youth like the deceased (who was stated as working as a driver) would earn much more than the amount fixed by the Tribunal, even as a manual labourer as on the date of accident

occurred in the year 2010, we find it appropriate to re-fix the notional income as Rs.4,000/- per month. We do not find it necessary to have any change with regard to the multiplier of '17', awarded by the Tribunal or as to the deduction towards the personal expenses by '1/3', as the grand parents cannot be treated as dependents of the deceased.

6. By virtue of the law declared by the Apex Court in ***Sarla Verma & Ors v. Delhi Transport Corp. & Anr.*** reported in **(2009) 6 SCC 12** and to the extent as affirmed by the Constitution Bench in ***National Insurance Company Limited v. Pranay Sethi & Another***, reported in **(2017) 16 SCC 680,** in the case of a person of less than 40 years of age, with no fixed income, enhancement to an extent of 40% is necessary towards 'future prospects'. On re-working the monthly income with future prospects, it comes to Rs.5,600 (4000 + 40%) and on re-calculating the loss of dependency, it will come to **Rs.7,61,600** (5600 x 12 x 2/3 x17). Since the Tribunal awarded only a sum of Rs.1.70 Lacs, the balance payable under this head is **Rs.5,91,600/-**.

7. As per the above decisions of the Apex Court, the amount payable towards funereal expenses and loss of estate shall be at the rate of Rs.15,000/- each. Since the Tribunal has awarded only sum of Rs. 10,000/- under each of these two heads, a balance sum of **Rs.10,000/-** (5000 + 5000) is payable and it is awarded. It is true that the Tribunal has awarded the loss of consortium of Rs. 25,000/-, which ought to have been Rs.40,000/- in the light of the rulings cited above. This being the position, we Award further sum of **Rs.15,000/-** towards loss of consortium to the 1st Appellant-widow of the deceased, as spousal consortium.

8. The concept of '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**. It can be of three

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). In the said circumstance, the 2nd and 3rd Appellants who are parents of the deceased are entitled to get a sum of **Rs.40,000/-** towards 'Filial consortium' in view of the law declared by the Supreme Court as above. It is awarded accordingly. Thus, the total additional compensation payable comes to **Rs. 6,56,600/-**, **(Six Lac Fifty Six Thousand Six Hundred only)**, which is required to be satisfied with interest @ 7% per annum from the date of filing the application, till its satisfaction.

9. It is noted that notice was issued to the 3rd Respondent-Insurer by registered post, but there is no appearance. Since the policy is admitted as borne by the Award and the liability stands mulcted upon the Insurance Company, we direct the 3rd Respondent-Insurance Company to satisfy the amount due as above before the Tribunal, with intimation to the Appellants/Claimants, as expeditiously as possible, at any rate within 'six weeks' from the date of receipt of a copy of this judgment. The widow and parents of the deceased are declared as entitled to receive the compensation in the ratio of 60% : 40% respectively. It is open for the said Appellants to move the Tribunal in this regard for disbursement, once the deposit is made.

10. The appeal stands allowed to the said extent.

11. 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

Hem