

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 88 of 2013**

1. Smt. Kaushaliya Devi, Wd/o. Late Rameshchandra Chouhan, aged about 24 years.
2. Ku. Reshaim Chouhan, D/o Late Rameshchandra Chouhan, aged about 6 years.
3. Ku. Neha Chouhan, D/o Late Rameshchandra Chouhan, aged about 4 years.
4. Bishun Das Chouhan, S/o Manbodh, aged about 50 years.
5. Smt. Shyampati Bai, W/o Bishun Das Chouhan, aged about 45 years.
6. Duleshwarchand Chouhan, S/o Bishun Das Chouhan, aged about 18 years.

Appellant No. 2 & 3 through their natural guardian Mother Smt. Kaushaliya Devi, Wd/o. Late Rameshchandra Chouhan, aged about 24 years all above R/o Village – Kenapara, Police Station & Thasil Sitapur, District Surguja, Chhattisgarh.

---- Appellants**Versus**

1. Angira Prasad Dwivedi, S/o Kunjal Dwivedi, R/o Amriyapara, Post Korba, District Korba (C.G.)
2. New India Insurance Company Limited, Through; Divisional Officer New India Insurance Company Limited Division Office, Sada Complex, Transport Nagar, Police Station, Transport Nagar, Korba, District Korba, Chhattisgarh.
3. Iffco Tokio General Insurance Company, 3rd Floor, Lal Ganga Shopping Mall, G.E. Road Raipur Police Station G.E. Road Raipur, post Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellants	:	Shri Manoj Paranjpe, Advocate.
For Respondent No. 2	:	Shri Shivendu Pandya, Advocate appears on behalf of Shri Qamrul Aziz, Advocate.
For Respondent No. 3	:	Shri K. Rohan, Advocate appears on behalf of Shri Amrito Das, 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****20.05.2020**

1. Inadequacy in the compensation awarded by the Tribunal in respect of the deceased aged about 40 years is the challenge raised in this appeal.

2. Heard Shri Manoj Paranjpe, the learned counsel appearing for the Appellants, Shri Shivendu Pandya, the learned counsel appearing for 2nd Respondent and Shri K. Rohan, the learned counsel representing the 3rd Respondent.
3. On 06.12.2006, the deceased was riding a Motorcycle which dashed against a Truck bearing No. CG 15 ZC/1503, insured by the Respondent company which was lying parked on the road; leading to the claims. The deceased was employed as a 'Panchayat Karmi' and was stated as having separate income as well from agricultural source. The claim was resisted from the part of Respondents mainly on negligence on quantum. Policy stands admitted. After evaluation of the evidence on record, the Tribunal rendered a finding that the accident was because of the negligence on the part of the driver of the offending Truck and also due to contributing negligence on the part of deceased rider of the Motorcycle. It was accordingly, that the negligence was fixed in the ratio of 75%:25% (3/4th on the part of Truck driver and 1/4th on the part of the deceased).
4. It was contented that the deceased was only aged about 29 years. With reference to the evidence on record, the Tribunal rendered a finding that he was aged above 40 years and in the said circumstance, appropriate multiplier was fixed as '15' (as shown in column No. 4 of the verdict passed by the Apex Court in ***Sarla Verma Vs. Delhi Transportation Corporation*** reported in **(2009) 6 SCC 121**). The monthly income was reckoned notionally as Rs. 1,500/-, as no higher income was proved from the part of the claimants. Accordingly, the loss of dependency was worked out, after deducting 1/3rd towards the personal expenses, to be Rs. 1,80,000/-. The Tribunal also awarded a sum of Rs. 2,000/- towards funeral expenses, Rs. 3,000/- towards conveyance expenses and a further sum of Rs. 15,000/- towards loss of consortium/love and affection; thus, fixing the total compensation payable as Rs. 2,00,000/-. Based on the

contributory negligence fixed on the part of the deceased to the extent of 25%, 1/4th of the compensation was deducted from the above total sum and the balance was awarded with interest @ 6% per annum. By virtue of the valid policy, the said liability was directed to be satisfied by the 2nd Respondent/Insurance Company. No appeal has been preferred by the 2nd Respondent/Insurance Company. The dispute is only with regard to the 'just' compensation payable to the claimants in terms of Section 168 of the Motor Vehicle Act, 1988.

5. The learned counsel for the Appellants fairly submits that the grounds raised with reference to the fixation of the contributory negligence and also the fixation of multiplier as '15' are not pressed; but the quantum fixed requires much enhancement. The Tribunal, for want of better evidence, fixed the monthly income as Rs. 1,500/-. The certificate produced showing the engagement of the deceased as a Panchayat Karmi (issued by the Sarpanch) was not accepted for the reason that the Sarpanch was not examined. So also, it was held that there was no evidence with regard to the alleged income from other sources. But the fact remains that the deceased was maintaining a family consisting of 6 persons; the 1st claimant being the widow, 2nd and 3rd being children, 4th and 5th being the parents and the 6th one, a sibling. Eventhough, the sibling is not liable to be treated as a dependent, also having attained majority, the deceased was still maintaining a family consisting of 5 persons. That apart, admittedly, the accident occurred when the deceased was riding his Motorcycle and the fact that he was able to maintain a Motorcycle itself is a pointer as to the possible income.
6. The learned counsel for the Appellants also seeks for reckoning of higher income in view of the course pursued by the Apex Court in **Laxmi Devi & Others vs. Mohammad Tabbar & Another** reported in (2008) 12 SCC 165 and

in ***Sanjay Kumar vs Ashok Kumar & Another*** reported in **(2014) 5 SCC 330**.

The factual situation considered in the said cases may be different with reference to the wage structure prevailing in the particular area. However, considering the totality of the circumstances as discussed above, it would be only just and proper to double the income reckoned by the Tribunal and fix it notionally as Rs. 3,000/- per month.

7. Going by the law declared by the Constitutional Bench of Apex Court in ***National Insurance Company Limited vs Pranay Sethi & Others*** reported in **(2017) 16 SCC 680**, the dependents are entitled to get compensation of Rs. 15,000/- towards funeral expenses, Rs. 15,000/- towards loss of estate and a sum of Rs. 40,000/- towards the loss of consortium. In a subsequent decision in ***Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram & Others*** reported in **(2018) 18 SCC 130** it has been made clear by the Apex Court that the term '**Consortium**' can be '**Parallel Consortium**' (payable to the children because of the death of parents, '**Spousal Consortium**' payable to the spouse because the demise of the partner and '**Final Consortium**' payable to the parents because of the death of children). As it stand so, apart from the '**Spousal Consortium**' awarded to the 1st Appellant herein, we find it appropriate to award a sum of **Rs. 40,000/-** towards the '**Parallel Consortium**' and another **Rs. 40,000/-** towards the '**Final Consortium**'. Similarly, it has been held by the Apex Court in ***Sarla Verma's (supra)*** case that, in the case of the family dependents consisting of numbers between 4 to 6, deduction towards personal expenses shall be only 1/4th and not 1/3rd as above by the Tribunal.
8. '**Future prospects**' in the case of salaried person of the age group between 40 years - 50 years, it has been held in ***Sarla Verma (supra)*** that 30% has to be enhanced, whereas in the case of such other persons without a definite income, the enhancement towards future prospects for the age group of 40 to 50 years

has to be enhanced by 25%. Applying the said norm, which stands affirmed by the Constitution Bench of the Apex Court in the ***Pranay Sethi's (supra)*** case, the monthly income, after considering the 'future prospects' in the instant case, has to be re-fixed as Rs. $3,000 + 3,000 \times 25/100 = \text{Rs. } 3,750/-$ per month. The loss of dependency, thus comes Rs. $3,750 \times 12 \times \frac{3}{4} \times 15 = \text{Rs. } 5,06,250/-$. After deducting the compensation awarded by the Tribunal under the said head, the balance comes to **Rs. 3,26,250/-** (Rs. 5,06,250 – Rs. 1,80,000).

9. Towards the funeral expenses, the Tribunal has awarded only Rs. 2,000/- which requires to be stepped up to Rs. 15,000/- and hence the balance to be awarded in this regard will be **Rs. 13,000/-**. It is seen that no amount has been awarded by the Tribunal towards loss of estate and for pain and suffering. We find it appropriate to award a sum of Rs. 15,000/- and Rs. 10,000/- respectively under these heads. Thus, the total differential compensation comes to Rs. 4,44,250/-. Since 25% has to be deducted towards the contributory negligence on the part of the deceased, the actual additional compensation payable is only Rs. 3,33,187.50/-; which stands rounded to **Rs. 3,33,200/- (Three lakhs thirty three thousand two hundred)**.
10. The above compensation shall be paid with interest @ 7% per annum from the date of the accident, till the deposit. Since the policy coverage is admitted, we direct the 2nd Respondent/Insurance Company to remit the said amount with interest as aforesaid before the Tribunal, as expeditiously as possible, at any rate within 'two months' from the date of receipt of a copy of this judgment.

Appeal stands allowed to the said extent.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge