

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1104 of 2013**

{Arising out of order dated 07.09.2013 passed by learned Additional Motor Accident Claims Tribunal (F.T.C.) Ambikapur, District Surguja, Chhattisgarh in Motor Accident Claim Case No. 02 of 2013}

1. Praful Kumar Mitra S/o Mukund Bihari Mitra Aged About 37 Years
2. Usha Mitra W/o Praful Kumar Mitra Aged About 32 Years

Both the appellants are R/o village Batoli, Police Station and Tahsil Sitapur, Distt. Surguja C.G.

---- Appellants

Versus

1. Mohd. Fharukh S/o Abdul Rasid Aged About 50 Years New Shamim Bus R/o Kharsiya Chowk, Police Station and Tahsil Ambikapur, Distt. Surguja C.G.
2. Sukhvinder Singh S/o Datar Singh Aged About 47 Years R/o Babupara, Police Station and Tahsil Ambikapur, Distt. Surguja C.G.
3. New India Insurance Company Limited, Divisional Office, Korba C.G.

---- Respondents

For Appellants	:	Shri Jitendra Shrivastava, Advocate.
For Respondent No.1	:	Shri Sushil Dubey, Advocate.
For Respondent No.2	:	None
For Respondent No.3	:	Smt. Chitra Shrivastava, 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

10.07.2020

1. The worth of a minor child, aged 2 years, who lost the life in a motor accident occurred on 16.09.2006 fixed as just Rs.79,000/- by the Claims Tribunal by way of awarding compensation accordingly, is sought to be deprecated in this appeal preferred by the Parents/Claimants.

2. According to the Appellants/Claimants, the deceased child was playing in the front of his house on 16.09.2006 and while so, the offending vehicle bearing registration No.CG15/ZA/0141, which was being driven rashly and negligently by the 2nd Respondent, owned by the 1st Respondent and insured by the 3rd Respondent dashed against him, causing fatal injuries, leading to the death of the child. This led to the claim petition filed by the parents before the Tribunal seeking for compensation in respect of the loss of the one and only child.
3. The Respondents No.1 and 2 sought to dispute the accident involving their vehicle, whereas the 3rd Respondent/Insurance Company sought to dispute their liability on different counts.
4. On conclusion of the evidence, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the driver of the offending vehicle. As to the quantum of compensation payable, the Tribunal awarded only a sum of Rs.67,000/- towards loss of life, while a sum of Rs.10,000/- was awarded towards the loss of love and affection and a sum of Rs.2,000/- towards funeral expenses, thus granting a total sum of Rs.79,000/-. Inadequacy of compensation awarded by the Tribunal, is the subject matter of challenge in this appeal.
5. Heard Shri Jitendra Shrivastava, the learned counsel appearing for the Appellants, Shri Sushil Dubey, the learned counsel appearing for the 1st Respondent and also Smt. Chitra Shrivastava, the learned counsel appearing for the 3rd Respondent/Insurance Company.
6. The learned counsel for the Appellants submits that the compensation awarded by the Tribunal is abysmally low and without any regard to the hard reality that the death was of the one and only child of the Appellants/Claimants. The learned counsel submits that, in respect of the

demise of children aged between 1 to 4 years, a minimum compensation of **Rs.1,00,000/-** is to be awarded as held by the Apex Court in **Puttamma and Others v. K.L. Narayana Reddy and Another** reported in **(2013) 15 SCC 45**. The learned counsel also points out that, by virtue of the law declared by the Apex Court in **Sarla Verma Vs. Delhi Transportation Corporation** reported in **(2009) 6 SCC 121**, as affirmed by the Constitution Bench in **National Insurance Company Limited vs Pranay Sethi & Others** reported in **(2017) 16 SCC 680**, fixed amounts are to be awarded under conventional heads, whereas in the instant case, the amounts awarded by the Tribunal are quite paltry in all respects and requires enhancement to the appropriate extent.

7. There is no dispute with regard to the facts and figures as mentioned above from the part of the 3rd Respondent/Insurance Company. The learned counsel submits that no appeal has been preferred by the Insurance Company.
8. After hearing both the sides, we are of the view that the amount awarded by the Tribunal towards compensation, fixing the same as Rs.67,000/- towards loss of life is quite inadequate. Going by the law declared by the Apex Court in **Puttamma's** case (supra), we find it appropriate to award Rs.1,00,000/- towards loss of life, thus resulting in a balance compensation of **Rs.33,000/-** to be satisfied over and above the amount awarded by the Tribunal. In respect of demise of a person, towards loss of consortium/love and affection, a sum of Rs.40,000/- is liable to be paid by virtue of ruling rendered by learned Apex Court in **Pranay Sethi** (supra). The scope of 'consortium' has been subsequently 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 surviving spouse because of the death of the partner) and **Filial consortium** (payable to the parents because of the death of children). This being the position, the Appellants/Claimants are entitled to get a sum of Rs.40,000/- towards 'Filial Consortium'. Since the Tribunal has awarded only Rs.10,000/-, the balance payable comes to **Rs.30,000/-**. Similarly, the Appellants/Claimants are entitled to get a sum of Rs.15,000/- towards funeral expenses in view of law declared in **Pranay Sethi** (supra). Since the Tribunal has awarded only Rs.2,000/-, a balance amount of **Rs.13,000/-** is payable towards 'Funeral Expenses'. As per the decision rendered in **Pranay Sethi** (supra), the Appellants/Claimants are also entitled to get a sum of Rs.15,000/- towards loss of estate. Since the Tribunal has not awarded any amount under this head, we award a sum of **Rs.15,000/-** under this head. Even if the death was instantaneous, we find it appropriate to grant **Rs.10,000/-** towards 'Pain and Suffering'. In the said circumstance, the total balance compensation payable comes to **Rs.1,01,000/- (One lac one thousand rupees only)** and it stands awarded in this appeal.

9. Since the policy is admitted, the 3rd Respondent-Insurer is directed to satisfy the said amount with interest @ 7% per annum from the date of the application, till satisfaction. The Insurer of the offending vehicle is directed to deposit the said amount with notice to the Appellants/Claimants before the Tribunal, as expeditiously as possible, at any rate within 'six weeks' from the date of receipt of a copy of this judgment. The appeal stands allowed to the said extent.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge