NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A. (C) No. 816 of 2013

{Arising out of Award dated 29.09.2012 passed in Claim Case No. 89 of 2011 by the 4th Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh}

1. Smt. Jageshwari Bai widow of Late Bharat Singh, aged about 37 years.
2. Kumari Sangeeta, daughter of late Bharat Singh, aged about 15 years (Minor)
3. Basant Kumar son of Late Bharat Singh, aged about 17 years (Minor)
4. Hamraj son of Late Bharat Singh, aged about 16 years (Minor)

Appellants No. 2 and 4 are minors, through their natural guardian-Mother (Smt. Jageshwari Bai)

All are resident of village Mohanbhatha, Police Station Kota, Tahsil Kota, District Bilaspur, Chhattisgarh.

---- Appellants

Versus

1. Gyan Singh alias Jaanu Singh Gond, son of Shri Chhote Singh, aged about 27 years, resident of village Pathaiti, Police Station Rajendra Gram, District Anuppur, Madhya Pradesh.
2. Katni Boxite Private Limited, 24 Commercial Complex, Housing Board Colony, Katni, Madhya Pradesh.
3. Branch Manager, Bajaj Alliance General Insurance Company Limited, Lal Ganga Shopping Mall, GE Road, Raipur, Chhattisgarh.
4. Kaushal son of Late Dhan Singh, aged about 50 years.
5. Smt. Gulabi Bai, aged about 50 years, wife of Shri Kaushal.

Respondents No. 4 and 5 are resident of village Mohanbhatha, P.S. Kota, District Bilaspur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Narayan Prasad Chandravanshi, Advocate
For Respondents No. 1 and 2	:	None
For Respondent No. 3	:	Shri Sachin Singh Rajput, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per P.R. Ramachandra Menon, Chief Justice

30.06.2020

1. Inadequacy of the compensation awarded by the 4th Additional Motor Accident Claims Tribunal, Bilaspur (*for short, 'the Tribunal'*) in connection with the death of the sole bread winner of the family of the Appellants is put to challenge in this appeal.

2. The deceased- Bharat Singh was the husband of the first Appellant and father of the other Appellants. The 4th and 5th Respondents are the parents of the deceased. It is pointed out that the Appellants had earlier moved this Court by filing M.A (C) No. 1245 of 2012 without impleading the Respondents No. 4 and 5 in the party array. In the said circumstance, it was sought to be withdrawn with liberty to file a fresh appeal after bringing the parents also in the party array, and thus the present appeal.

3. The deceased was working as a Patwari in Rajendra Gram, District Bilaspur. On 17.11.2008, while he was proceeding on a motor-cycle alongwith another person and when they reached the place of occurrence, the offending vehicle *i.e*. the Dumper bearing registration No. MP 21-H/0561 driven by the 1st Respondent in a rash and negligent manner, owned by the 2nd Respondent and insured by the 3rd Respondent, knocked them down causing fatal injuries leading to the death of the person concerned. This led to the claim petition filed by the legal representatives before the Tribunal. Existence of a valid insurance policy was admitted. After appreciation of the evidence brought on record, the Tribunal rendered a finding that the accident was solely because of the negligence on the part of the 1st Respondent *i.e.* Driver of the offending vehicle.

4. It is contended by the Claimants that the deceased was having a monthly salary of Rs. 10,652/- per month and evidence was adduced by producing Exhibit P/4 pay slip as well in this regard. However, the Tribunal reckoned only the basic salary and worked out the dependency compensation adopting a multiplier of 15, based on the fact that the deceased was aged 38 years. After deducting 1/4th towards the personal expenses (based on the number of dependents/claimants) in terms of the verdict passed by the Apex Court in ***Smt. Sarla Verma & Others v. Delhi Transport Corporation & Another***; {(2009) 6 SCC 161), the dependency compensation was worked out. The Tribunal also awarded amounts under some other heads and the total compensation payable was fixed as Rs. 5,55,600/-. This was directed to be satisfied with interest at the rate of 6% per annum. By virtue of availability of valid insurance policy, it was directed to be satisfied by the 3rd Respondent, Insurance Company. The quantum is sought to be enhanced in this appeal.

5. Heard Shri Narayan Prasad Chandravanshi, the learned counsel for the Appellants and Shri Sachin Singh Rajput, the learned counsel for the Respondent No. 3.

6. The learned counsel for the Appellant submits that the course pursued by the Tribunal in fixing the multiplicand, only with reference to the basic salary, is contrary to the law declared by the Apex Court in ***National Insurance Company Limited v. Indira Srivastava & Others***; (2008) 2 SCC 763. It is also pointed out that the deceased was having a permanent employment and his 'future prospects' were not considered by the Tribunal, thus making the award contrary to the dictum laid down by the Apex Court in ***Sarla Verma*** (supra).

7. The learned counsel for the 3rd Respondent-Insurance Company submits that, pursuant to the demise of the deceased, 'compassionate appointment' was obtained; by virtue of which the loss of dependency worked out stands much on the higher side. It is pointed out that since the number of dependents came down to 3, by virtue of the compassionate appointment awarded to the 1st Appellant, deduction towards the personal expenses ought to have been '1/3rd' and not 1/4th (as adopted by the Tribunal).

8. There is no dispute with regard to the age, occupation or income of the deceased and the dispute is only with regard to the calculation. The deceased was having a stable monthly income of Rs. 10,652/- as disclosed from Exhibit P/4 'Last Pay Certificate'. But the basic salary of Rs. 4,060/- alone has been taken by the Tribunal to work out the dependency compensation. In view of the settled position of law, this is not at all correct and the entire salary (minus income tax) ought to have been taken for computation. Since the monthly salary of Rs.10,652/- does not come within the purview of taxable limit, the entire amount ought to have been reckoned in this regard. That apart, by virtue of the law declared by the Supreme Court in ***Sarla Verma*** (supra) as affirmed by the Constitution Bench in ***National Insurance Co. Ltd. v. Pranay Sethi & Others*** {(2017) 16 SCC 680}, in the case of a deceased below the age of 40 years, if he is permanently employed with a fixed salary, 50% of the monthly salary has to be added towards the 'future prospects'. This being the position, the multiplicand ought to have been Rs.10,652 + 50% i.e. Rs. 15,978/-.

9. In view of the fact that the deceased was 38 years of age, the appropriate multiplier has been chosen as 15 which is correct and in order. The remaining point is with regard to the extent of deduction towards personal expenses. Obtaining of compassionate appointment is not disputed by the Appellants and by virtue of this, the number of dependents has got

reduced at least by 1 since the remaining Appellants are only 3 (children of the deceased). As it stands so, there is some force in the submission made by the learned counsel for the 3rd Respondent Insurance Company, that deduction should have been 1/3rd and not 1/4th. We find considerable force in the said submission and accept the same, holding that the deduction towards personal expenses shall be 1/3rd. On re-working the compensation towards the loss of dependency, reckoning the entire monthly salary and also the future prospects, it comes to: Rs. 10,652 + Rs. 5326 (50% towards future prospects) X 12 X 2/3 X 15 = Rs. 19,17,360. The Tribunal has awarded only Rs. 5,48,100/- and after giving credit to the same, the balance amount towards loss of dependency comes to **Rs.13,69,260/-**.

10. By virtue of the ruling rendered by the Apex Court in ***Sarla Verma*** (supra) and ***Pranay Sethi*** (supra), loss of consortium payable is Rs. 40,000/-, loss of estate is to be compensated to an extent of Rs. 15,000/- and funeral expenses has to be awarded to an extent of Rs. 15,000/-. The Tribunal has awarded only Rs. 5000/- towards loss of consortium and hence a balance of **Rs. 35,000/-** is payable under this head. It is ordered accordingly. Similarly, only Rs. 2,500/- has been awarded towards funeral expenses, and hence a balance of **Rs. 12,500/-** is to be paid under this head as well. No amount has been awarded towards the loss of estate, and hence, a sum of **Rs. 15,000/-** is payable towards the loss of estate.

11. In this context, it is relevant to note that the term 'consortium' has been explained by the Apex Court in a subsequent decision *i.e.* ***Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram****;* {(2018) 18 SCC 130}, whereby it has been made clear that '**parental consortium**' is the compensation given to the children in respect of demise of the parents, '**spousal consortium**' to the living spouse because of the demise of the

partner and the '**filial consortium**' is payable to the parents on the demise of the children.

12. In the said circumstance, the 2nd to 4th Appellants who are the children of the deceased are entitled to get the 'Parental consortium' of **Rs.40,000/-**. Even in a case involving instantaneous death, it will only be proper to award a nominal amount towards 'pain and suffering' and we fix the same as **Rs. 10,000/-**. Thus, the total compensation payable comes to Rs. 20,42,360/-.

13. The Tribunal has awarded only Rs. 5,55,600/- as compensation and hence, the balance payable will be **Rs.14,86,760/- (Fourteen Lac Eighty Six Thousand Seven Hundred Sixty Rupees)**. The said amount shall be deposited before the Tribunal with interest at the rate of 7% per annum from the date of filing of the claim petition, till satisfaction. Since the policy is admitted, we direct the 3rd Respondent Insurance Company to have it satisfied as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment.

The appeal stands allowed to the above extent.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	(Parth Prateem Sahu)
CHIEF JUSTICE	**JUDGE**

Amit