NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 427 of 2014

{Arising out of order dated 29.01.2014 passed by the Second Additioanal Motor Accident Claims Tribunal, Balod, District Balod, C.G. in Claim Case No. 02/2013}

1. Chander Ram @ Chander Singh And Anr. S/o Dharam Singh Aged About 47 Years R/o Markatola, P.S. And Tah. Daundi, Distt. Balod, Chhattisgarh

2. Smt. Shanti Bai W/o Chander Ram Aged About 45 Years R/o Markatola, P.S. And Tah. Daundi, District : Balod, Chhattisgarh

---- Appellants

Versus

1. Chaman Lal Sahu S/o Shri Ram Sahu Aged About 30 Years R/o Kuvagodhi, P.S. Daundi, Distt. Balod, Chhattisgarh

2. Shri Ram Sahu S/o Maksudan Sahu Aged About 48 Years R/o Kuvagodhi, P.S. Daundi, District : Balod, Chhattisgarh

3. IFCO Tokiyo General Insu.Co.Ltd. S/o C/o Manager, Main Office, Lal Ganga Shopping Complex, 3rd Floor, Shop No. 345-347, G.E. Road, Raipur, Near Ravi Bhawan, Raipur, District : Raipur, Chhattisgarh

---- Respondents

For Appellants	:	Shri Pawan Kashyap, Advocate.
For Respondent No. 1 and 2	:	Shri Shikhar Bakhtiyar, Dy. GA.
For Respodent No. 3	:	Shri P. Acharya, 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

01.10.2020

1. This appeal preferred by the Claimants is for enhancement of the compensation in connection with the death of a person, in an accident involving the offending motor vehicle-Tractor/Trolley. The case of the Appellants is that the deceased by name Pawan Kumar was standing in the agricultural field on 30.10.2012, when the offending Tractor/Trolley bearing

Registration Nos. CG-07-NA-3679 and CG-07-NA-3680 driven by the 1st Respondent owned by the 2nd Respondent and insured by the 3rd Respondent knocked him down when the vehicle was proceeding on the reverse gear in the rash and negligent manner, virtually causing fatal injuries leading to the death of the person named above. This led to the claim petition filed by the Parents before the Tribunal.

2. It was contended by the Appellants / Claimants that the deceased, aged 21 years, was a labourer and was having a monthly income of Rs.4,500/-. The claim was contested by the Respondents both on quantum and negligence. The 3rd Respondent/Insurance Company specifically contended, while admitting the policy, that the deceased was virtually travelling as a passenger in the Trolley which instance was not covered under the statute/policy.

3. Evidence was adduced by both the sides in support of their contentions and after analysis of the facts and figures brought on record, the Tribunal held that the deceased was actually travelling in the Trolley at the relevant time and it was accordingly, that finding was rendered in favour of the Insurance Company, exonerating them from the liability.

4. With regard to the quantum of compensation payable, the Tribunal reckoned the notional monthly income as Rs.3,000/-. Observing that the claim petition was preferred by the parents, a multiplier of '10' was adopted and deducting 50% income towards the personal expenses and reckoning the remaining 50% as contribution to the family, the loss of dependency was worked out as Rs.1.8 lacs. Awarding a further sum of Rs. 5,000/- towards funeral expenses and another Rs.5,000/- towards loss of estate, the total compensation was fixed as Rs.1.9 lacs which was directed to be satisfied with interest @ 6% per annum from the date of filing the application, till its realization.

5. This, accordingly to the Appellants, is quite inadequate and hence the compensation is sought to be enhanced, also seeking to shift the liability to the shoulders of the Insurance Company.

6. Heard Shri Pawan Kashyap, the learned counsel for the Appellants as well as Shri Shikhar Bakhtiyar, the learned counsel appearing on behalf of the Respondent-Insurer.

7. At the very outset, it is to be noted that the liability fixed upon the owner and driver of the offending vehicle, absolving the Insurer from satisfying the Award amount was subjected to challenge by the owner and driver of the offending vehicle in MAC No. 347 of 2014. Despite the completion of service of notice, the present Appellants (who were Respondents No. 1 and 2 therein) were not present when the matter was heard and finalized by this Court as per judgment dated 27.08.2020. We have gone through a copy of the said judgment placed before us by the Registry.

8. The case put up by the owner and driver of the offending vehicle was mainly with reference to the case pleaded by the Claimants and the evidence adduced, that the deceased was actually 'standing in the agricultural field'; as against the case of the 3rd Respondent-Insurer, that the deceased was actually 'travelling in the Trolley' who fell down from the vehicle when the Tractor was taking a reverse move and suffered fatal injuries as reflected from the FIR and also the final report submitted by the Police, supported by the oral testimony given by the witnesses examined before the Tribunal. After threadbare analysis of the evidence brought on record and the judicial precedents cited from the part of both sides, including the decision rendered by the Apex Court in ***Oriental Insurance Company Limited v. Premlata Shukla and Others*** reported in ***(2007) 13 SCC 476*** as to sanctity of FIR, a finding was rendered holding that the conclusion made by the Tribunal that the deceased was travelling in the offending vehicle at the relevant time, did

not call for any interference. It was also observed by this Court that the offending vehicle (which is a Tractor/Trolley) was having only 'one seat' -solely for the driver and there was no provision in the vehicle to carry any passenger, in any capacity. More so, since such person, if permissible in law had to travel in the 'cabin' of the vehicle as held by the ***Apex Court in Oriental Insurance Co. Lid. v. Brij Mohan and Others*** reported in ***(2007) 7 SCC 56*** and ***Shivaraj v. Rajendra and Another*** reported in ***(2018) 10 SCC 432***; whereas no 'cabin' was there in the Tractor/Trolley to carry any passenger. In the said circumstances, this Court declined interference and the challenge against the Award raised at the instance of owner and driver of the offending vehicle was repelled and the said appeal was dismissed. This being the position, the finding rendered by the Tribunal that the deceased was actually travelling in the offending vehicle at the relevant time, (which did not come within a purview of the statutory / policy conditions as held by the Tribunal) cannot be re-agitated in this appeal preferred at the instance of Claimants.

9. Though the appeal preferred by the owner and driver of the offending vehicle has been finalized as per judgment dated 27.08.2020 in MAC No. 347 of 2014 as mentioned above, it does not act as any *res judicata* as far as the present Appellants are concerned (the Claimants), though they were parties to the appeal preferred by the owner and driver. In fact, the Appellants ought to have brought to the notice of this Court (when MAC No. 347 of 2014 preferred by the owner and driver was heard) that the present appeal preferred by the Parents/Claimants was also pending; so that the both the matters could have been taken up together and disposed off. However, since there is no legal bar in hearing the present appeal for enhancement of compensation payable to the Claimants, we have heard matter accordingly.

10. As mentioned already, the Tribunal has reckoned only Rs.3,000/- as monthly income of the deceased aged 21 years. Since the accident was in the year 2012, we are of the view that the deceased, an abled bodied youth could earn the livelihood by engaging himself as a labourer with more income than the said extent reckoned by the Tribunal on the given date. Hence, we find it appropriate to re-fix the same as Rs.4,000/- per month. It is also to be noted that no 'future prospects' have been considered by the Tribunal; which in the case of a deceased aged below 40 years with no fixed income would result in addition of 40% 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.** As it stands so, the monthly income to be reckoned for working out the compensation will come to Rs. Rs.5,600/- (4000 + 40%).

11. It is seen that the multiplier adopted by the Tribunal is with reference to the age of Claimants who were the parents of the deceased. It is settled law that the multiplier has to be fixed with reference to the age of the deceased, as held by the Apex Court in the decisions cited supra. Since the deceased was aged 21 years, the appropriate multiplier would be '18'. The Tribunal is justified in deducting 50% of the income towards the probably personal expenses and reckoning only the remaining 50% towards the contribution to the family; the deceased being a bachelor. On re-working the compensation for loss of life it comes to **Rs.6,04,800/-** (5600 x 12 x 50 / 100 x 18). Since the Tribunal has granted only Rs.1,80,000/-, the balance amount comes to **Rs. 4,24,800**.

12. By virtue of the law declared by the Supreme Court in the aforesaid decisions the amounts payable under the conventional heads of funeral expenses and loss of estate are to be at the rate of Rs.15,000/- each. In the instance case, since the Tribunal has awarded only Rs.5,000/- each under these two heads, we enhance the same to Rs. 15,000/- each and award a further sum of **Rs. 10,000/-** towards funeral expenses and another **Rs. 10,000/-** towards the loss of estate.

13. The scope of 'consortium' has been explained by the Apex Court in ***Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram***, reported in **(2018) 18 SCC 130.** Since the Appellants / Claimants are parents of the deceased, they 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. The total compensation payable comes to **Rs. 4,84,800/- (Four Lacs Eighty Four Thousand Eight Hundred Rupees).** Since the Insurer of the offending vehicle was absolved by the Insurance Company, which stands affirmed by this Court in the appeal preferred by the owner and driver in MAC No. 347 of 2014 (by judgment dated 27.08.2020), we fix the said liability upon the Respondents No. 1 and 2 / Owner and Driver of the offending vehicle, who are to satisfy the same with interest as specified by the Tribunal.

The appeal stands allowed to the said extent.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

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