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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A (C) No. 339 of 2014

{Arising out of Award dated 26.07.2013 passed in Claim Case No. 35 of 2012 by the 1st Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-Champa}

1. Mohanlal son of Balbhadra, aged about 46 years
2. Dhaneshwari Bai wife of Mohanlal, aged about 41 years.

   Both are by caste Dewangan, R/o Monhadikala (At present service at Kusmunda, Korba), District Janjgir-Champa, Chhattisgarh.

---- Appellants

Versus

1. Santosh Patel son of Sonsai, aged about 29 years, R/o Gatoura, PS Masturi, District Bilaspur, Chhattisgarh.
2. Rambilas Singh son of Mangal Singh, aged about 29 years, Caste Kshatriya, R/o New Chandaniyapara, Ward No. 8, District Janjgir-Champa Chhattisgarh
3. Bharti AXA General Insurance Company, First Floor, The Friends Icon, Survey No. 28, Dodankundi, Bangalore.

---- Respondents

For Appellant/Claimants	:	Shri Syed Majid Ali, Advocate.
For Respondents No. 1 and 2	:	None
For Respondent No. 3	:	Shri Bhavesh Acharya, Advocate.

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

Judgment on Board

Per P.R. Ramachandra Menon, Chief Justice

28.08.2020

1. Inadequacy of the compensation awarded by the Tribunal in respect of the demise of a youth aged 17 years, who was pursuing his status in Industrial Training Institute, is put to challenge in this appeal filed by the Appellants/Claimants.

2. The deceased by name Jagannath @ Jeet Dewangan alongwith another person by name Santosh Yadav, were proceeding on a motor-cycle *i.e.* Hero Honda bearing registration No. CG-11-CH/5403 on 07.09.2012. By about 6 pm, when they reached the place of occurrence, the Trailer bearing

registration No. CG-07-CA/1126, driven by the 1st Respondent, owned by the 2nd Respondent and insured by the 3rd Respondent, knocked them down causing fatal injuries leading to death of both the riders.

3. The claim petition filed by the Appellants herein seeking compensation was resisted mainly on quantum and negligence. Based on the evidence adduced, the Tribunal rendered a finding that the accident was solely because of the negligence on the part of the driver of the offending Trailer. Reckoning the notional monthly income of the deceased as Rs. 3000/- and adopting a multiplier of 18, the loss of dependency was worked out as Rs. 3,24,000/-. Awarding a sum of Rs. 10,000 towards loss of love and affection, Rs. 5000/- towards funeral expenses, and another Rs. 5000/- towards loss of estate, the total compensation was fixed as Rs. 3,44,000/-. This was directed to be satisfied with interest at the rate of 6% per annum from the date of filing of the claim petition; fixing the liability on the Insurer.

4. The learned counsel for the Appellants/Claimants points out that the notional monthly income reckoned by the Tribunal is much on the lower side, especially since the accident occurred was in the year 2012 and further being without any regard to the course in which the deceased was pursuing studies. It is also stated that the deceased was having a steady income from the agriculture and hence, the quantum requires to be re-worked. It is also pointed out that the amounts awarded under the conventional heads are abysmally low and not in conformity with the binding precedents of the Apex Court and this Court.

5. We have heard the learned counsel for the Respondent-Insurance Company as well. None appears for the 1st Respondent-Owner and the 2nd Respondent-Driver, though served.

6. Existence of a valid insurance policy in respect of the offending vehicle stands conceded. Similarly, the finding rendered by the Tribunal fixing

negligence solely on the Driver of the offending Trailer has not been subjected to challenge by filing any appeal from the part of the Insurance Company. This being the position, the only question in this appeal is with regard to the adequacy of compensation and whether the amounts awarded under the different heads are in conformity with the rulings rendered by the Apex Court.

7. With regard to the notional monthly income, it is to be noted that the Tribunal has reckoned only Rs. 3000/-. Since it is stated that the deceased was pursuing his studies, the version that he was an earing member does not stand substantiated. This is obviously for the reason that, if the deceased was pursuing his studies, he could not have devoted himself to the agriculture and even otherwise, since the agricultural field *i.e.* the source of income is intact, it is quite possible to procure the said income, even as on date, by the Appellants/Claimants by continuing the agriculture. However, it is to be noted that even an able bodied youth of the age of the deceased could have earned something more, as on the date of the accident occurred in the year 2012. We find it appropriate to re-fix the notional monthly income as Rs. 4000/-. By virtue of the ruling rendered by the Apex Court in ***Sarla Verma (Smt.) & Others v. Delhi Transport Corporation & Another****;* {(2009) 6 SCC 121}, to the extent as affirmed by the Constitution Bench of the Apex Court in ***National Insurance Company Ltd. v. Pranay Sethi****;* {(2017) 16 SCC 680}, in respect of the persons below the age of 40 years having no fixed income, 40% of the notional income has to be added towards future prospects. Thus, the income to be reckoned comes to Rs. 5600 i.e. Rs. 4000 + (Rs. 4000 X 40/100). It is to be noted that the deceased was a bachelor and as such, 50% of the income has to be deducted towards personal expenses and the remaining 50% can be reckoned as the contribution to the family. On working out, it comes to Rs.33,600/- {Rs.5600X12X50/100}. The appropriate multiplier, as adopted by the Tribunal

is 18 and as such, the actual compensation in respect of the loss of life comes to Rs.6,04,800/-. Since the Tribunal has awarded only a sum of Rs.3,24,000/-, the Appellant-Claimants are entitled to get the balance amount of **Rs.2,80,800/-**. The Tribunal has awarded only a sum of Rs.10,000/- towards loss of love and affection. The quantum of compensation payable as consortium stands settled by the Apex Court as per ***Pranay Sethi*** (supra) which is Rs. 40,000/-. By virtue of the law declared in ***Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram;*** {(2018) 18 SCC 130}, the parents are entitled to get Rs. 40,000/- towards 'filial consortium' because of death of the son. After giving credit to the amount already paid, the balance payable comes to **Rs. 30,000**/-. It is awarded accordingly. The amounts awarded under the other conventional heads; such as 'funeral expenses' and 'loss of estate' are only Rs. 5000/- each. In view of the decisions cited *(supra),* the amounts payable under the above heads ought to have been Rs. 15,000/- under each of the two heads. As it stands so, we award the deficit sum of **Rs. 10,000/-** towards the funeral expenses and a further sum of **Rs.10,000/-** towards loss of estate. Accordingly, the total balance compensation payable comes to **Rs. 3,80,800/- (Rs. Three Lacs Eighty Thousand and Eight Hundred).**

8. 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, with intimation to the appellant-claimants, as expeditiously as possible, at any rate within 'one month' from the date of receipt of a copy of this judgment.

9. The appeal stands allowed.

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

Amit