NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1316 of 2014

{Arising out of order dated 08.10.2014 passed by the learned 2nd Additional Motor Accident Claim Tribunal, Mahasamund in Claim Case No. 01/2014}

1. Smt. Parvati Dhrilahre, W/o Late Shri Indal Dhritlahre, aged about 38 years.
2. Doman Lal, S/o Late Shri Indal Dhritlahre, aged about 19 years.
3. Ku. Yamuna, D/o Late Shri Indal Dhritlahre, aged about 15 years.
4. Kundan Lal, S/o Late Shri Indal Dhritlahre, aged about 11 years.
5. Kartaal, S/o Late Shri Indal Dhritlahre, aged about 8 years. \

No. 3 to 5 are minor and are represented by the appellant no. 1 (mother) All the above are R/o Village Machewa, P.S. Mahasamund and Tahsil & Civil District and District Mahasamund (C.G.)

---- Appellants

Versus

1. Pardeshi Ram Nishad, S/o Shri Narottam Nishad, aged about 35 years, R/o Village Ratakaat, P.S. Aarang, Tahsil & Civil District and District Raipur (C.G.) {Driver of Truck No. C.G. - 04/JB/2663}
2. Smt. Savita Dubey, W/o Shri Shesh Narayan Dubey, aged about 40 years, R/o Village Paragaon, P.S. Aarang, Tahsil & Civil District and District Raipur (C.G.) {Owner of Truck No. C.G. - 04/JB/2663}
3. The New India Insurance Company Ltd., Through Its Divisional Office at, Madina Building, Jail Road, Raipur, Raipur (C.G.) {Ins. Com. of Truck No. C.G. - 04/JB/2663}

---- Respondents

For Appellants	:	Shri Jameel Akhtar Lohani, Advocate.
For Respondents No. 1 & 2	:	None.
For Respondent No. 3	:	Shri Sudhir Agrawal, 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

25.09.2020

1. Inadequacy of the compensation awarded by the 2nd Additional Motor Accident Claims Tribunal, Mahasamund (for short, 'Tribunal') in connection with the death of the sole bread winner of the family of the

Appellants/Claimants, caused in a road traffic accident, is put to challenge in this appeal.

2. On 23.01.2013, the deceased was travelling as a pillion rider on a two wheeler (Luna). When the vehicle reached the place of occurrence, the offending Truck bearing registration No. C.G. 04/JB/2663, driven by the 1st Respondent, owned by the 2nd Respondent and insured by 3rd Respondent, knocked him down causing fatal injuries leading to his death. This was sought to be compensated by filing claim petition before the Tribunal by the widow and four children; three of whom were minors.

3. Existence of the valid policy was admitted from the part of the 3rd Respondent. The contest was mainly with reference to the quantum and negligence. On conclusion of the trial, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the 1st Respondent/driver of the offending Truck. With regard to the quantum of compensation payable, though the Claimants had a case that the deceased by virtue of his employment in a 'Tile Factory' engaged in tile/stone cutting with a daily wage of Rs. 250/-, only a sum of Rs. 3,000/- was reckoned as the notional monthly income by the Tribunal. Adopting a multiplier of '13', based on the age of the deceased as 45 years and deducting 1/3rd of the income towards the personal expenses, the balance 2/3rd was reckoned as the contribution to the family and the loss of dependency was worked out as Rs. 3,51,000/-. Awarding a sum of Rs.10,000/- towards the funeral expenses and a consolidated sum of Rs.1,00,000/- towards the loss of consortium, love and affection and pain and suffering, the total compensation was fixed as Rs.4,61,000/- which was required to be satisfied with interest @ 6% per annum for the date of filing the claim petition, till satisfaction. Since the existence of valid policy

was brought on record, the liability was mulcted on the shoulders of the 3rd Respondent/Insurer.

4. After hearing the learned counsel for the parties and also on going through the materials on record, we are of the view that even a manual labourer would have earned much more in the year of accident (2013). In the instant case, the Claimants have brought on record that the deceased was engaged in a 'Tile Factory' (stone cutting) and according to them, he was getting Rs.250/- per day. Even though there is no proper proof with regard to the said extent of income, we do not have any doubt that the notional monthly income reckoned by the Tribunal as Rs.3,000/- is on the lower side. Considering the fact that the deceased was an able bodied person of 45 years, who was maintaining his family consisting of his wife and four children and further that the accident had occurred in the year 2013, we find it appropriate to re-fix the notional monthly income as Rs.4,500/-.

5. 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 of the Apex Court in ***National Insurance Company Limited vs Pranay Sethi & Others*** reported in **(2017) 16 SCC 680,** in the case of a person who is aged above 40 years and below 50 years with no fixed income, 40% is to be added towards the future prospects. In the said circumstance, the monthly income figure reckonable for calculating the compensation becomes Rs.4,500 + (4,500 x 40%) = Rs.6,300. Incidentally, it is to be noted that the Tribunal has deducted 1/3rd towards the personal expenses of the deceased. In the light of the law declared by the Apex Court as above, where the number of dependents are 4 to 6, deduction can only be to an extent of 1/4th and

the remaining 3/4th has to be treated as the contribution to the family. There is no dispute with regard to the appropriate multiplier, which is '13' as adopted by the Tribunal, the deceased having crossed the age of 45 years. On re-working the loss of dependency, it comes to Rs.6,300 x 12 x ¾ x 13 = Rs.7,37,100/-. Since the Tribunal has awarded only a sum of Rs.3,51,000/- under this head, the balance payable comes to **Rs.7,37,100 – 3,51,000 = Rs.3,86,100/-**.

6. The concept of 'consortium' has been further 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 spouse because of the death of the partner) and **Filial consortium** (payable to the parents because of the death of children). As held by the Apex Court in the decisions cited (supra), **Rs.40,000/-** is payable to the 1st Claimant/Appellant, who is the widow of the deceased, towards 'Spousal consortium'. Similarly, another sum of **Rs.40,000/-** payable to the children (together) as 'Parental consortium'. A sum of **Rs.15,000/-** is payable towards the 'funeral expenses' and another sum of **Rs.15,000/-** is payable under the head 'loss of estate' as per the ruling of the Apex Court as mentioned above. Thus, the total sum payable under the conventional head is **Rs.1,10,000/-**. Since the Tribunal has awarded Rs.10,000/- towards the 'funeral expenses' and a consolidated amount of Rs.1,00,000/- towards 'loss of consortium', 'loss of love and affection' and 'pain suffering', the total amount awarded under this is Rs.1,10,000/-. As such, no variation is required to made with regard to the conventional heads. Thus, the total balance compensation payable comes to **Rs.3,86,100/- (Rupees Three Lacs Eighty Six Thousand One**

Hundred Only). This shall carry interest @ 7% per annum from the date of filing the claim petition till the satisfaction. Since the policy is admitted, we direct the 3rd Respondent/Insurance Company to deposit the amount due as above before the Tribunal, with intimation to the Appellants/Claimants, as expeditiously as possible, at any rate within 'one month' from the date of receipt of a copy of this judgment.

The appeal stands disposed off.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Brijmohan