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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1264 of 2014

{Arising out of order dated 03.04.2013 passed by the Motor Accidents Claims Tribunal, Korba (C.G.) in Claim Case No. 178 of 2010}

- Shri Ram General Insurance Company Limited Head Quarter E-8 EPIP RIICO, Industrial Area, Sitapura, Jaipur (Rajasthan). Through: Branch Manager, Branch Office, General Insurance Company Ltd., T.P. Nagar, Korba, P.S. Tahsil and District Korba (C.G.)

---- Appellant

Versus

1. Ku. Devendra Singh, S/o Late Rudrabhawan Singh, aged about 24 years.
2. Harisharan Singh, S/o Late Rudrabhawan Singh, aged about 23 years.
3. Ku. Rajni Kanwar, D/o Late Rudrabhawan Singh, aged about 22 years.
4. Ved Prakash Kanwar, S/o Late Rudrabhawan Singh, aged about 21 years.

   All R/o Village – Kothari, Tahsil – Kartala, District Korba (C.G.)
5. Shivkumar Rathore, S/o Shri Dindayal Rathore, aged about 40 years, R/o Purani Basti, Sadakpara, District-Janjgir-Champa (C.G.)
6. Santosh Singh, S/o Shri Bhulau Singh, aged about 45 years, R/o Kasaundi, P.S. Janjgir, District-Janjgir-Champa (C.G.)

---- Respondents

with

MAC No. 1265 of 2014

{Arising out of order dated 03.05.2013 passed by the Motor Accidents Claims Tribunal, Korba (C.G.) in Claim Case No. 179 of 2010}

- Shri Ram General Insurance Company Limited Head Quarter E-8 EPIP RIICO, Industrial Area, Sitapura, Jaipur (Rajasthan). Through: Branch Manager, Branch Office, General Insurance Company Ltd., T.P. Nagar, Korba, P.S., Tah. and Distt. Korba (C.G.)

---- Appellant

Versus

1. Ku. Devendra Singh, S/o Late Rudrabhawan Singh, aged about 24 years.

2. Harisharan Singh, S/o Late Rudrabhawan Singh, aged about 23 years.

3. Ku. Rajni Kanwar, D/o Late Rudrabhawan Singh, aged about 22 years.

4. Ved Prakash Kanwar, S/o Late Rudrabhawan Singh, aged about 21 years.

   All R/o Village - Kothari, Tahsil – Kartala, District Korba (C.G.)

5. Shivkumar Rathore, S/o Shri Dindayal Rathore, aged about 40 years, R/o Purani Basti, Sadakpara, District-Janjgir-Champa (C.G.)

6. Santosh Singh, S/o Shri Bhulau Singh, aged about 45 years, R/o Kasaundi, P.S. Janjgir, District-Janjgir-Champa (C.G.)

---- Respondents

with

<u>MAC No. 1266 of 2014</u>

{Arising out of order dated 03.05.2013 passed by the Motor Accidents Claim Tribunal, Korba (C.G.) in Claim Case No. 180 of 2010}

- Shri Ram General Insurance Company Limited Head Quarter E-8 EPIP RIICO Industrial Area, Sitapura, Jaipur (Rajasthan). Through: Branch Manager, Branch Office, General Insurance Company Ltd., T.P. Nagar, Korba, P.S., Tahsil and District Korba (C.G.)

---- Appellant

Versus

1. Ashok Singh Kanwar, S/o Late Kushal Singh, aged about 36 years.

2. Smt. Pushpa Singh Kanwar, W/o Shri Ashok Singh Kanwar, aged about 30 years.

   Both are R/o Village - Damkhacha, Post- Pathiyapali, Tahsil - Kartala, District Korba (C.G.)

3. Shivkumar Rathore, S/o Shri Dindayal Rathore, aged about 40 years, R/o Purani Basti, Sadakpara, District Janjgir-Champa (C.G.)

4. Santosh Singh, S/o Shri Bhulau Singh, aged about 45 years, R/o Kasaundi, P.S. Janjgir, District – Janjgir-Champa (C.G.)

---- Respondents

For Appellant	:	Shri Sachin Singh Rajput, Advocate.
For Respondents No. 1 to 4	:	Shri Sumit Singh, Advocate.
For Respondent No. 5	:	None.
For Respondent No. 6	:	None.

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

03.09.2020

1. All these appeals are at the instance of the Insurer of the offending Truck. Challenge is against the fixation of quantum. The ground raised is that, the monthly income of the deceased has been reckoned without any regard to the actual facts and figures and without any proof in this regard.

2. The unfortunate accident occurred on 05.09.2010, causing death of three persons, including a child, who were travelling alongwith the others in a Maruti Car bearing No. CG-12R/0282. When the car reached the place of occurrence by about 9.00 pm, allegedly because of the dashing lights of the vehicles coming from the opposite side, the person who was driving the car lost the control of the vehicle and it dashed against the rear side of the offending Truck which was parked on the road without any parking signal/indicator. In the said collision, the car was heavily damaged, causing fatal injuries to one Rudrabhawan Singh, his wife Chandrakanta and a little girl by name Kuhu, aged about 4 months. The three sons and a daughter of the deceased Rudrabhawan Singh filed the claim petition before the Tribunal as Claim Case No. 178 of 2010 in respect of demise of their father. They filed a similar claim petition in respect of demise of their mother Chandrakanta as per Claim Case No. 179 of 2019. The

parents of the deceased child Kuhu filed a Claim Petition No. 180 of 2010 for getting compensation in respect of the demise of the child and all the said cases came to be tied together ultimately leading to a common award dated 03.05.2013.

3. It was stated by the Claimants in Claim Case No. 178 of 2010, that their father was working as a 'Foreman' in the NTPC with a monthly salary of Rs. 50,163/-. In respect of the claim towards the loss of life of mother, *i.e.* Claim Case No. 179 of 2010, it was stated that she was a 'housewife' and was also having a monthly income of Rs. 5,000/- from stitching and embroidery work. Evidence was adduced in support of the pleading to show that the accident was occurred because of the negligence on the part of the driver of the offending Truck which was parked on the road without any parking signal/indicator. Materials were produced, including salary slip of the deceased father to show his avocation/employment and the monthly income by virtue of the working as a 'Foreman' in the NTPC as Ex.P/7.

4. From the part of the Respondents, quantum and negligence were sought to be disputed, attributing negligence on the driver of the car. It was also pleaded that the offending vehicle was however, covered by a valid insurance policy as on the date of accident. Based on the pleadings and evidence available on record, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the driver of the offending Truck, which was parked negligently on the road without any parking signal/indicator.

5. Coming to the fixation of quantum in Claim Case No. 178 of 2010, the Tribunal placed reliance on the oral and documentary evidence, particularly the salary slip (Ex.P/7) to the effect that the deceased

Rudrabhawan Singh, aged about 56 years and working as 'Foreman' in the NTPC was drawing a monthly salary of Rs. 50,163/-. It was accordingly that the compensation for loss of life was worked out. After deducting 1/3rd towards the personal expenses and 20% towards income tax the balance contribution was taken and adopting a multiplier of '9', the compensation for loss of life was fixed as Rs. 28,89,396/-. The Tribunal also awarded a sum of Rs. 10,000/- towards love and affection and thus, the total compensation was fixed as Rs. 28,99,396/-. This was directed to be satisfied with interest as specified and the liability was mulcted upon the Appellant/Insurer in view of the existence of valid policy.

6. With regard to the claim in Claim Case No. 179 of 2010, the Tribunal held that no evidence was adduced with regard to the alleged income of Rs. 5,000/- from 'stitching and embroidery' or such other source and in the said circumstance, only a notional income of Rs. 3,000/- per month was reckoned. It was accordingly that, compensation for loss of life was worked out, adopting a multiplier of '13' and deducting the 1/3rd towards the personal expenses; thus, fixing the same at Rs. 3,12,000/-. Awarding a sum of Rs. 10,000/- towards the loss of love and affection, the total compensation was fixed as Rs. 3,22,000/-. This was directed to be satisfied with interest, as specified, mulcting the liability on the Insurer, on the strength of the policy.

7. In the case of the death of the minor child by name Kuhu, aged about 4 months (Claim Case No. 179 of 2010), the Tribunal reckoned Rs. 15,000/- per annum as the notional income and after deducting 1/3rd towards the personal expenses and reckoning a multiplier of '10', the compensation towards the loss of life was fixed as Rs. 1,00,000/-.

Awarding a sum of Rs. 5,000/- towards the loss of love and affection, the total compensation was fixed as Rs. 1,05,000/-. This was directed to be satisfied with interest as specified and the liability was mulcted upon the Appellant/Insurer in view of the existence of a valid policy.

8. Shri Sachin Singh Rajput, the learned counsel appearing for the Appellant/Insurance Company (in all the three cases) submits that, the Appellant has already deposited the entire awarded amount with interest in MAC No. 1264 of 2014 (Rs. 35,05,098/-) as borne by Annexure A/2 produced alongwith the of appeal and as averred in paragraph No. 3 of the memorandum of appeal. The learned counsel submits that the grievance of the Appellant is only that the employment and monthly income of the deceased Rudrabhawan Singh were not proved by the Claimants properly, as nobody from the employer was examined in this regard.

9. It is to be noted that the specific pleading as to the employment of the deceased as 'Foreman' in the NTPC with the monthly income as of Rs. 50,163/- was sought to be substantiated by filing the salary slip as Ex.P/7. There was no case for the Appellant, that it was a false or fabricated certificate or that the deceased was not employed with NTPC. Since the NTPC is a public sector undertaking belonging to the Government of India, it was also open for the Insurance Company/Appellant to have tested the correctness of the version of the Claimants by way of appropriate steps to ascertain the truth as to the employment and the monthly salary. It is also possible for the Appellant, if they had any genuine doubt as to the occupation or income to file an I.A. to summon the competent authority of the NTPC and to ask about the genuineness or the particulars contained in Ex.P/7.

10. Admittedly, the Appellant had not chosen to take any such steps and as such, the Tribunal was perfectly justified in relying on the oral/documentary evidence adduced from the part of the Claimants to draw an interference that the deceased Rudrabhawan Singh was employed as 'Foreman' in the NTPC with the monthly salary of Rs. 50,163/-. In this context, it is also relevant to note that as per 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 aged as in the instant case, the 'future prospects' were liable to be reckoned and added on to extent of 10%, to work out the compensation. Admittedly, no future prospects have been reckoned by the Tribunal and had it been done so, the quantum of compensation would have been much more.

11. By virtue of the ruling rendered by the Apex Court in ***Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram & Others*** reported in **(2018) 18 SCC 130,** the concept of 'consortium' has been explained. 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). This being the position, the Claimants, who are the children of the deceased, are eligible to have 'Parental consortium' of Rs. 40,000/-, whereas the Tribunal has awarded only a sum of Rs. 10,000/-.

12. Position is almost similar in Claim Case No. 179 of 2010 (forming the subject matter of MAC No. 1265 of 2014) in which case, the notional

monthly income has been reckoned only as Rs. 3,000/- to work out the compensation. 1/3rd of the income has been reduced towards the personal expenses. The Tribunal has not reckoned any 'future prospects', which was to be added on to fix the multiplicand.

13. In the case of the demise of the little child forming the subject matter of MAC No. 1266 of 2014, only a notional income of Rs. 15,000/- has been reckoned and 1/3rd has been deducted towards the probable personal expense. The Tribunal has adopted only '10' as the multiplier to award the compensation for loss of life fixing it as Rs. 1,00,000/-. Awarding a compensation of Rs. 1,00,000/- in the case of a child upto age of 5 years is quite proper in view of the law declared by the Supreme Court in ***Puttamma & Others vs. K.L. Narayana Reddy & Another*** reported in **(2013) 15 SCC 45**. In the present case only a sum of Rs. 5,000/- has been awarded by the Tribunal towards the loss of love and affection; which in view of the law declared by the Apex Court in ***Magma General Insurance (supra)*** could have been Rs. 40,000/- towards the 'Filial consortium' payable to the parents.

14. We find that no cross appeals have been filed by the Claimants in the above cases to get any enhancement of the award amount. In the above circumstance, we hold that the Awards passed by the Tribunal granting compensation to the requisite extent is based on the pleadings and evidence available on record and that it is not liable to be termed as excessive. We find no ground to entertain the appeals.

15. The appeals are dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Brijmohan