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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 354 of 2014

{Arising out of order dated 23.01.2014 passed by the learned Motor Accident Claims Tribunal, Raigarh, District Raigarh (C.G.) in Claim Case No. 34/2009}

- Surendra Singh Thakur S/o Baharta Singh Thakur, aged about 33 years, R/o Railway Station, Bangali Para, Raigarh, Tahsil and District Raigarh (C.G.)

---- Appellant

Versus

1. Mohd. Naseer, S/o Saheb Jaan, aged about 40 years, Occupation-Driver, R/o Deepika, Korba (C.G.)
2. Harendra Kumar Singh, S/o Jagdish Singh, R/o Pali Road, Deepika, Distt. Korba, Chhattisgarh
3. I.C.I.C.I. Lombard, General Insurance Company Limited, Raipur (C.G.)
4. Smt. Saroj Singh, W/o Shripal Singh, aged about 55 years.
5. Shripal Singh, S/o Duryodhan Singh, aged about 58 years.

   No. 4 & 5 are R/o Village Gond, Police Station and Tahsil Janjgir-Champa, District Janjgir-Champa (C.G.)
6. Baharta Singh Thakur, S/o Late Puri Singh Thakur, aged about 65 years.
7. Smt. Radha Devi Thakur, W/o Baharta Singh Thakur, aged about 60 years.

   No. 6 & 7 are R/o Village Railway Station, Bangali Para, Raigarh, Tahsil and District Raigarh (C.G.)

---- Respondents

For Appellant : Shri G.V.K. Rao, Advocate.
For Respondents : 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

22.09.2020

1. The cursory award passed by the Motor Accident Claims Tribunal, Raigarh, District Raigarh (C.G.) granting a paltry sum of Rs.1,24,000/- as compensation in respect of the death of the Appellant's wife, who was a

Graduate Engineer of 24 years, in a road traffic accident, is put to challenge in this appeal.

2. On the ill-fated day *i.e.* on 15.06.2008, the Appellant was returning on his Motorcycle alongwith his wife, after having Darshan in a temple and when they reached the place of occurrence by about 6.40 pm, the offending Truck bearing No. C.G. 04-G-3243, driven by the 1st Respondent, owned by the 2nd Respondent and insured by the 3rd Respondent, knocked them down from behind, causing fatal injuries to the pillion rider/deceased, leading to her death; besides causing injuries to both the hands of the Appellant who was riding the Motorcycle. This was sought to be compensated by filing a claim petition before the Tribunal by the Appellant, joining hands with the parents in-law of the deceased. All the Respondents except the Insurer of the offending Truck remained *ex-parte* before the Tribunal.

3. The claim was resisted by the Insurer mainly contending that the driver of the offending Truck was not having valid and effective driving license. The claim was sought to be resisted on the grounds of quantum and negligence as well. Based on the materials on record, 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. However, with regard to the payment of compensation, in spite of the pleadings and materials produced to show that the deceased was a Graduate Engineer having the qualification of B.E. and was working as a Lecturer on contract basis in the Government Polytechnic College, Raigarh on a monthly salary of Rs.8,000/-, the Tribunal held that the Appellant/husband was having employment and separate income and hence no dependency compensation could be given. Based on the postmortem report, the Tribunal took the age of the deceased as 24 years. Reckoning the notional yearly income as Rs.15,000/- and deducting 1/3rd towards personal expenses, the remaining Rs.10,000/- per annum was

taken as contribution to the family. Adopting a multiplier of '12', the Tribunal fixed the loss due to death as Rs.1,20,000/-. Awarding a further sum of Rs.2,000/- towards the funeral expense and another sum of Rs.2,000/- towards loss of consortium, the total compensation was fixed as Rs.1,24,000/-, which was directed to be satisfied with interest @ 6% from the date of filing of a claim petition till its realization. Since there was a valid policy issued by the 3rd Respondent/Insurer and since no violation of the policy/statutory condition was substantiated, the amount due was directed to be satisfied by the Insurer. There is no challenge from the part of the Insurer with regard to the finding and reasoning, but for the challenge raised from the part of the 1st Claimant/husband of the deceased for enhancement of the quantum.

4. The learned counsel for the Appellant submits that the course pursued by the Tribunal in working out the compensation is *per se* wrong, unsustainable and contrary to the law laid down by the Apex Court. There is absolutely no rhyme or reason for not considering the qualification/employment and future prospects of the deceased. The employment of the Appellant/husband was not a ground to have the compensation reduced; which has virtually extended undue advantage to the Respondents; particularly the Insurer.

5. Notice in the appeal was issued to the Respondents including the 3rd Respondent/Insurer, also by registered post. Despite the expiry of more than one month, 3rd Respondent has not appeared and the notice sent by registered post has not been returned. On 15.11.2018, Shri P. Acharya, Advocate present in the Court, who normally used to appear for the 3rd Respondent was requested to seek instructions from the Insurance Company; for which '15 days' time was sought for and granted. But the fact remains that the 3rd Respondent has not given instructions and no *Vakalatnama* has been filed on behalf of the said Respondent by anybody.

In the said circumstance, we deem the service as complete; more so since there cannot be any dispute as to the liability that already stands fixed upon the 3rd Respondent/Insurer, which is not put to challenge. The dispute in this appeal is only with regard to the actual quantum of compensation payable.

6. On going through the pleadings and evidence on record, it is seen that there is no serious dispute with regard to the qualification or employment of the deceased. The deceased aged 24 years was having a technical qualification-Degree in Engineering (B.E.) and was working in a Government Polytechnic (though on contract basis) allegedly with an income of Rs. 8,000/- per month. Even though the income is not properly proved, the probable notional income for a qualified professional having Engineering Degree in the year of accident (2008) can be reasonably fixed as Rs.6,000/- per month. This is more so, in view of the ruling rendered by the Apex Court in ***Radhakrishna And Another vs. Gokul And Others*** reported in ***(2013) 16 SCC 585*** where the notional monthly income of a student of Engineering (victim aged 19 years) in respect of a road traffic accident occurred in January 2003, was fixed as Rs. 42,000/- per year i.e. Rs.3,500/- per month.

7. 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 extent of ***National Insurance Company Limited v. Pranay Sethi & Another***, reported in **(2017) 16 SCC 680** due regard has to be given to the future prospects. In the case of persons of less than 40 years with no fixed income, enhancement/addition to an extent of 40% is to be made. As such, the reckonable amount towards the monthly income becomes Rs. 8,400/- (6,000 + 40%). The appropriate multiplier in the case of a person aged below 24 years is '18' and hence the Tribunal was not correct in applying the multiplier of '12', which requires to be re-fixed as '18'. It is ordered accordingly. The deduction towards the personal expenses is rightly done

as 1/3rd. On re-working the actual compensation payable for loss of life, it comes to Rs. 12,09,600/- (8,400 x 12 x 2/3 x 18). Since the Tribunal has awarded only Rs. 1,20,000/-, the balance under this head comes to **Rs. 10,89,600/-**.

8. There is a case for the Respondent-Insurance company that the Appellant is having employment and separate income of his own and it is in the said circumstance, that a finding has been rendered by the Tribunal to the effect that there is no loss of dependency, in turn, leading to fixation of the compensation as mentioned above. Scheme of payment of compensation under the Motor Vehicles Act, 1988, as explained by the Apex Court on many an occasion, is not with reference to dependency alone, which otherwise is a factor which could be looked into for fixing the liability by connecting the various links to form a chain. Quite recently, the Apex Court has made it clear in case of ***National Insurance Company Limited v. Birender and Others*** reported in **AIR 2020 SC 434** that, even 'married sons' can file and pursue the claim petition before the Tribunal and get the compensation payable, more so since the compensation payable in respect of the death of the victim will form part of the estate of the deceased, which can be inherited by the persons concerned who are eligible for the same. It is also relevant to note that, as provided under Section 166 (1) (c), the claim petition can be filed by any of the “legal representatives” of the deceased. This being the position, the reason for denying proper compensation by the Tribunal is not correct or sustainable; more so since there is a duty cast upon the Tribunal to pass a “Just Award” in terms of Section 168 of the M.V. Act, 1988.

9. The Tribunal has awarded only Rs. 2,000/- towards funeral expenses and Rs. 2,000/- towards loss of consortium. By virtue of law declared by the

Apex Court in the decisions cited supra, the loss of consortium is payable to an extent of Rs. 40,000/-. The funeral expenses shall be Rs. 15,000/-; while Rs.15,000/- is payable towards the loss of estate, as declared by the Apex Court (supra). In the said circumstance, there is a deficit of **Rs. 38,000/-** under the head loss of consortium and **Rs. 13,000/-** under the head funeral expenses; which are awarded in this appeal. Since no amount has been awarded towards loss of estate, the Claimants are awarded a sum of **Rs. 15,000/-** under this head as well. Thus, the total balance compensation payable comes to **Rs.11,55,600,/-** (Eleven lacs fifty five thousand six hundred only), which shall be satisfied with interest at the rate of 7% from the filing of application till its satisfaction. Since the policy stands admitted, we direct the 3rd Respondent-Insurer to deposit the amount due as above, before the Tribunal with notice of the Appellant and the Respondents No. 6 and 7 as expeditiously as possible, at any rate within 'six weeks' from the date of receipt of a copy of the judgment.

10. Appeal stands allowed to the said extent.

11. Since there is no appearance of the 3rd Respondent/Insurer, we direct the registry to forward a copy of the judgment to the 3rd Respondent for further steps; also marking a copy to the Respondents No. 6 and 7.

Sd/-	Sd/-
(P. R. Ramachandra Menon) **Chief Justice**	**(Parth Prateem Sahu)** **Judge**

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