

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 509 of 2014**

{Arising out of order dated 13.02.2014 passed by the learned 1st Additional Motor Accident Claim Tribunal, Sakti, District Janjgir-Champa (C.G.) in Claim Case No. 19/2013}

- Ramayan Bai, W/o Late Horilal Chandra, aged about 46 years, Caste-Chandra, R/o Village, Post, P.S. & Tehsil-Dabhra, Revenue & Civil District Janjgir-Champa (C.G.)

---- Appellant**Versus**

1. Mohd. Bashir Khan, S/o Sharif Khan, aged about 24 years, Caste-Muslim, R/o Talapara (Wrongly printed as Talabara), Ward No. 13, P.S. Civil Lines, Post & Tehsil-Bilaspur, Revenue & Civil District-Bilaspur (C.G.)
2. Rajjak Khan, S/o Late Hakim Khan, Caste-Muslim, R/o Jarhabhata, P.S. Civil Lines, Post & Tehsil-Bilaspur, Revenue & Civil District-Bilaspur(C.G.)
3. Branch Manager, Shriram General Insurance Company Ltd., Maruti Heights, Niyam Sky Automobiles, G.E. Road, Revenue & Civil District-Raipur (C.G.)
4. Rishi Kumar, aged about 28 years.
5. Punalal, aged about 26 years.

Respondents No. 4 & 5 are S/o Late Horilal Chandra,

6. Jeevan Lal, S/o Agarsai, aged about 70 years,
7. Sumitra Bai Chandra, W/o Jeevan Lal Chandra, aged about 68 years,

Respondents No. 4 to 7, Caste-Chandra, R/o Village & Post-Dabhra, Tehsil & P.S. Dabhra, Revenue & Civil District-Janjgir-Champa (C.G.)

---- Respondents

For Appellant	:	Shri Rishi Sahu, Advocate.
For Respondents No. 1,2,4 to 7	:	None.
For Respondent No. 3	:	Shri Sachin Singh Rajput, 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

21.09.2020

1. Appeal is for enhancement of the compensation awarded by the Tribunal in a road traffic accident occurred on 10.06.2012, leading to death of the husband of the Appellant herein, who was the father of the Respondents No. 4 and 5 herein and the son of the Respondents No. 6 and 7. In fact, the claim petition was preferred by the Appellant and the Respondents No. 4 to 7 jointly against the parties of the offending vehicle, but the appeal has been preferred only by the 1st Claimant/Appellant and hence the other Claimants have been shown as the Respondents No. 4 to 7.
2. The sequence of events shows that on 10.06.2012, the deceased aged about 47 years stated as engaged in trading of vegetables was proceeding to the market in a vehicle and when the said vehicle reached the place of occurrence at about 8.00 am, the offending goods carriage, driven by the 1st Respondent, owned by the 2nd Respondent and insured by the 3rd Respondent dashed against the former vehicle, causing fatal injuries to the deceased who succumbed to the same. This was sought to be compensated by filing the claim petition before the Tribunal.
3. It was contended that the deceased was the sole bread earner of the family and was having an annual income of Rs. 48,000/- from the trade of vegetables. The claim was opposed by the Respondents before the Tribunal mainly with reference to the negligence and quantum. On completion 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 and proceeded to fix the compensation. The Tribunal reckoned a notional monthly income of the deceased as Rs. 3,000/-. Deducting 1/3rd towards the personal expenses and adopting a multiplier of '14', the loss of dependency was worked out as Rs. 3,36,000/-. Awarding a sum of Rs. 10,000/- towards loss of love and affection, Rs.5,000/- each under the three heads such as funereal expenses, loss of estate and loss of consortium, the total compensation was fixed as Rs.3,61,000/-. This was directed to be satisfied with interest @ 6% per annum from the date of filing the claim petition, till satisfaction. In view of the existence of the policy, the liability was mulcted upon the shoulder of the Insurance Company. As mentioned already, inadequacy of quantum of compensation is the subject matter of challenge in this appeal.

4. We heard the learned counsel appearing for the parties at length and perused the materials on record.
5. Admittedly, the accident was in the middle of the year 2012 and the deceased was aged 47 years, maintaining a family consisting of his widow, three children and the parents. This being the position, the monthly income notionally fixed as Rs. 3,000/- is on the lower side and we find appropriate to have it re-fixed as Rs. 4,000/- per month. The Tribunal has not considered the future prospects of the deceased. 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, 25% is to be added under this head. Since the deceased was aged 47 years, the appropriate multiplier is '13' and not '14'. At the same time, it is to be noted that the deduction towards monthly expenses of the

deceased to an extent of $\frac{1}{3}^{\text{rd}}$, as made by the Tribunal, is on the higher side and by virtue of the rulings rendered by the Apex Court as mentioned above, it can only be $\frac{1}{4}^{\text{th}}$. On re-working the compensation towards the loss of dependency as above, it comes to $4000 + (4000 \times 25\%) 1000 = \text{Rs. } 5000 \times 12 \times \frac{3}{4} \times 13 = \text{Rs. } 5,85,000/-$. Since the Tribunal has awarded only a sum of Rs. 3,36,000/- the balance payable amount under this head comes to **Rs. 5,85,000 – 3,36,000 = Rs. 2,49,000/-**.

6. As per the law declared by the Supreme Court in the decisions cited (supra), the compensation payable towards the funeral expenses shall be Rs.15,000/- and similar amount is payable towards the loss of estate as well. Since the Tribunal has awarded only Rs. 5,000/- under each of these two heads, there shall be an increase by **Rs. 10,000/-** towards funeral expenses and another **Rs. 10,000/-** towards loss of estate. It is ordered accordingly.
7. By virtue of the settled position of law as declared by the Apex Court in the above judgments, the loss of consortium is payable to an extent of Rs.40,000/-. 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). Applying the law to the given sets of facts and circumstances, since the Tribunal has awarded only a sum of Rs. 5,000/- as loss of consortium, the Appellant/widow of the deceased is entitled to get the balance amount of **Rs.35,000/-** under this head, it is awarded accordingly. Similarly, since only a sum of Rs. 10,000/- has been awarded towards the loss of love

and affection, we earmark the said amount as the consortium payable to the children (Parental consortium), which has to be enhanced by granting **Rs.30,000/-** more and it is also hereby awarded. Similarly, the parents are entitled to get 'Filial consortium' to an extent of **Rs.40,000/-**, which also stands awarded in view of the law declared by the Supreme Court as above. Thus, the total balance compensation payable comes to **Rs. 2,49,000 + 10,000 + 10,000 + 35,000 + 30,000 + 40,000 = Rs.3,74,000/- (Three lacs seventy four thousand only)**. This shall carry interest @ 7% per annum from the date of filing the claim petition till the satisfaction. Since the policy is admitted, the 3rd Respondent/Insurance Company is directed to deposit the amount due as above before the Tribunal, with intimation to the Appellant/Claimant and also to Respondents No. 4 to 7, as expeditiously as possible, at any rate within 'one month' from the date of receipt of a copy of this judgment.

8. It is open for the Claimant as well as the Respondents No. 4 to 7 (the original Claimants) to approach the Tribunal and get disbursement of the said amount.

The appeal stands disposed off.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge