NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc Appeal (C) No. 1147 of 2013

(Arising out of Award dated 06.05.2013 passed by the learned Chief Motor Accident Claims Tribunal, Raipur in Claim Case No.18/2012)

1. Smt.Basantidevi Das W/o Late Dhaneshwar Das Aged About 34 Years R/o Village And P.O. Gudio, P.S. Barhi, Distt. Hazaribagh Jharkhand
2. Diwaker Das S/o Late Dhaneshwar Das Aged About 18 Years R/o Village And P.O. Gudio, P.S. Barhi, District : Hazaribag, Jharkhand
3. Sudhaker Das S/o Late Dhaneshwar Das Aged About 13 Years Minor, Thru- Mother Smt. Basanti Devi Das, R/o Village And P.O. Gudio, P.S. Barhi, District : Hazaribag, Jharkhand
4. Sudhir Das S/o Late Dhaneshwar Das Aged About 9 Years Minor, Thru- Mother Smt. Basanti Devi Das, R/o Village And P.O. Gudio, P.S. Barhi, District : Hazaribag, Jharkhand
5. Shanichar Singh S/o Rijho Singh Ghatwar Aged About 60 Years R/o Village And P.O. Gudio, P.S. Barhi, District : Hazaribag, Jharkhand

---- Appellants

Versus

1. Nandkumar Yadav @ Nandu, S/o Sukalu Ram Yadav, aged about 45 Years R/o Nisda, P.S. and P.O. Arang, Distt. Raipur Chhattisgarh
2. Smt. Saroj Devi Pandey W/o Hiralal Pandey R/o Laxmi Nagar, P.O. Raipur, P.S. New Rajendra Nagar, Raipur, District : Raipur, Chhattisgarh
3. The Branch Manager W/o The ICICI Lombard General Insurance Company Limited, Thru- Branch Manager, Branch Office, Commercial Bhawan, Devendra Nagar, Tiraha Road, P.S. Devendra Nagar, P.O. Raipur, District : Raipur, Chhattisgarh

---- Respondents

For Appellants	:	Shri Shivendu Pandaya, Advocate
For Respondent No.1	:	None
For Respondent No.2	:	Shri J.K. Gupta, Advocate
For Respondent No.3	:	Shri K. Rohan, 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

10.07.2020

1. Inadequacy of compensation awarded by the Motor Accident Claims Tribunal, Raipur (for short, 'the Tribunal') in respect of the demise of the sole bread-earner of the Appellants is highlighted in this appeal filed by the Claimants, seeking for enhancement.

2. The sequence of events reveals that the deceased, aged more than 35 years, was proceeding on his vehicle on 12.04.2012 from Kolkata to Mumbai. When he reached the place of occurrence, the offending vehicle bearing registration No.CG04/JB/1530 driven by the 1st Respondent, owned by the 2nd Respondent and insured by the 3rd Respondent dashed against the vehicle driven by the deceased from the rear side, causing fatal injuries leading to his death. This led to the claim petition preferred by the widow and children, joining hands with the father of the deceased. It was contended that the deceased was working as a driver and was having a monthly income of Rs.15,000/-, which was sole income for maintenance of the family. The claim was sought to be resisted from the part of the Respondents on different

grounds. After hearing both the sides, the Tribunal arrived at a finding that the accident was only because of the negligence on the part of the 1st Respondent / driver of the offending vehicle. With regard to the fixation of the quantum of compensation, the Tribunal reckoned only Rs.3,000/- as the notional monthly income of the deceased and adopting a multiplier of '17', the loss of dependency was accessed as Rs.4,08,000/-. Further amounts were awarded under different heads, such as funeral expenses (Rs.2000/-), loss of consortium (Rs.5,000/-) and loss of love and affection (Rs.20,000/-); thus granting a total compensation of Rs.4,35,000/-, which was directed to be satisfied with interest @ 6% per annum. In view of the finding that the vehicle was covered by a valid insurance policy, the Insurer was directed to satisfy the awarded amount. Quantum of compensation awarded by the Tribunal is sought to be enhanced in this appeal.

3. Heard Shri Shivendu Pandya, the learned counsel appearing for the Appellants as well as Shri K. Rohan, the learned counsel appearing for the 3rd Respondent / Insurer at length.

4. The learned counsel for the Appellants points out that, specific pleadings were raised and evidence was adduced to show that the deceased was working as a driver; despite which, only a meagre sum of Rs.3,000/- was reckoned as the notional monthly income. It is also pointed out by the learned counsel that, the factual aspects as to the avocation of deceased as a driver was virtually accepted by the Tribunal as discernible from the Award itself and as such, fixation of the

multiplicand is wrong and unsustainable. It is contended that the Tribunal has omitted to consider future prospects. It is further pointed out that the amounts awarded by the Tribunal under different heads are much on the lower side and that some heads have been omitted to be considered as well.

5. The learned counsel for the Respondent / Insurance Company submits that the multiplier adopted by the Tribunal as '17' is wrong as the deceased was aged about 35 years. In the given circumstance, by virtue of the law declared by the Apex Court in ***Sarla Verma Vs. Delhi Transportation Corporation*** reported in **(2009) 6 SCC 121**, it should have been only '16'. The learned counsel also submits that the income of the deceased was not proved and hence the Tribunal was justified in reckoning only Rs.3,000/- as the notional monthly income.

6. There is no dispute with regard to factual sequence or as to the existence of a valid policy on the date of the accident. It also revealed from the pleadings and materials on record that the agreement of the deceased as a driver was sought to be proved by adducing evidence and the same was accepted by the Tribunal. This being the position, the notional income fixed as Rs.3,000/- per month; that too when the accident had occurred in the year 2012, is much on the lower side. Even a migrant labourer could have expected something more. In the instant case, the deceased being a driver, he was a 'skilled worker' and as such, it requires to be enhanced and fixed at an appropriate level.

7. Considering the various facts and circumstances, we find it fit and proper to reckon the notional monthly income of the deceased as Rs.5,000/-. Going by the law declared by the Apex Court in ***Sarla Verma's case*** (supra), to the extent as affirmed by the subsequent 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 persons below the age of 40 years and who are not having a fixed income, '40%' of the notional income is to be added towards the future prospects. In the said circumstance, the monthly income has to be reckoned as Rs.5,000 + 2,000 (5,000 x 40%) = Rs.7,000/-. There cannot be any dispute to the fact that the appropriate multiplier in case of persons aged above 35 years as declared by the Apex Court in ***Sarla Verma's*** case (supra) can only be '16' as rightly contended by the Insurance Company. Similarly, since the Claimants are more than '03' in number, the deduction towards personal expenses can only be $1/4^{th}$ and not $1/3^{rd}$. On reworking of the loss of dependency, it comes to Rs.7,000x12x ¾ x16 = Rs.10,08,000/-. Since the Tribunal has awarded only a sum of Rs. 4,08,000/- under this head, the Appellants /Claimants are entitled to get a balance sum of Rs. 10,08,000 – 4,08,000 = **Rs. 6,00,000/-**.

8. It is to be noted that the Tribunal has awarded only a sum of Rs.20,000/- towards the loss of love and affection. As per the law declared by the Apex Court in ***Magma General Insurance Company Limited vs Nanu Ram Alias Chuhru Ram & Others*** reported in

(2018) 18 SCC 130, 'consortium' is of 'three' different 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). Since the Tribunal has awarded only a sum of Rs.20,000/- towards loss of love and affection, it can be assigned in respect of loss of 'Parental consortium' payable to the children and the balance payable under this head comes to be **Rs.20,000/-** and it is awarded accordingly. The Tribunal has awarded a sum of Rs.5,000/- towards the consortium (Spousal consortium). Since, the 1st Appellant is entitled to have a sum of Rs.40,000/- under this head as per the ***Magma General Insurance Company Limited*** (supra), she is entitled to get a sum of Rs.40,000 – 5000 = **Rs.35,000/-.** Similarly, the 5th Appellant, who is the father of the deceased, is entitled to get 'Filial consortium' to a similar extent of **Rs. 40,000/-** and is awarded accordingly. It is to be noted that only a sum of Rs. 2,000/- has been awarded towards funeral expenses, whereas the amount payable under this head as per the ***Pranay Sethi's case*** (supra) is Rs.15,000/-, thus, resulting in a deficit of **Rs.13,000/-** which stands awarded in this appeal. No amount has been awarded towards the loss of estate. Going by the decision rendered by the Apex Court in ***Pranay Sethi's case*** (supra), the Appellants are entitled to get a sum of **Rs.15,000/-** under this head as well. Even in cases where death is instantaneous, the victim would have undergone much pain and suffering. We find it appropriate to award a sum of **Rs.10,000/-** under this head. Thus, the total differential/balance payable comes to **Rs.6,00,000 + 1,33,000 (20,000 + 35,000 + 40,000 + 13,000 + 15,000 + 10,000) = Rs. 7,33,000/- (Rupees seven lakhs thirty three thousand only)**.

9. Since the policy is admitted, the Insurer is directed to satisfy the said amount with interest @ 7% per annum from the date of the application, till satisfaction. The Insurer of the offending vehicle is directed to deposit the said amount with notice to the claimants before the Tribunal as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment. The appeal stands allowed to the said extent.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Chandra