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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 118 of 2013

{Arising out of award dated 03.10.2012 passed by learned 1st Additional Motor Accident Claims Tribunal, Ambikapur, Surguja in Claim Case No. 233 of 2011}

- United Indian Insurance Company Limited, Divisional Office, Rajhans Masion-2nd Floor, Bank mode, Jhariya Road Dhanbad, District Dhanbad (Jharkhand). Through its Divisional Manager, Divisional-Office- 2nd Floor Guru Kripa Towers, Vyapar Vihar Road, Bilaspur, P.S. - Tarbhar, P.O.-Bilaspur, Pin Code No. 495001, District Bilaspur (C.G.)

----Appellant

Versus

1. Smt. Ragini Soni, W/o Late Ranjeet Soni, aged about 24 years,
2. Anukalp Soni, S/o Late Ranjeet Soni, aged about 6 month, minor through his mother Smt. Ragini Soni
3. Baijulal Soni, S/o Late Gangaram Soni, aged about 55 years, Occupation – Driver.
4. Smt. Meena Soni, W/o Baijulal Soni, aged about 50 years,

   Respondents No. 1 to 4 all are R/o Mayapur (near panchdev Mandir) Ambikapur, District Surguja (C.G.)
5. Vijay Yadav, S/o Jagdish Prasad Yadav, aged about 35 years, R/o Aaramode, Vashipur, Dhanbad, Distt. Dhanbad (Jharkhand)
6. Rajiv Yadav, S/o Jagdish Prasad Yadav, aged about 28 years, R/o Maharoofganj, Vashipur, Dhanbad, Distt. Dhanbad (Jharkhand)

---- Respondents

MAC No. 712 of 2013

1. Smt. Ragini Soni, W/o Late Ranjeet Soni, aged about 24 years,
2. Anukalp Soni, S/o Late Ranjeet Soni, aged about 6 months, minor through his mother Smt. Ragini Soni
3. Baiju Lal Soni, S/o Late Gangaram Soni, aged about 55 years,

4. Smt. Meena Soni, W/o Baiju Lal Soni, aged about 50 years,

No. 1 to 4 all are R/o Mayapur (near Panchdev Mandir) Ambikapur, District Surguja (C.G.)

---- Appellants

Versus

1. Vijay Yadav, S/o Jagdish Prasad Yadav, aged about 35 years, R/o Aramode, Vashipur, Dhanbad, Distt. Dhanbad, Jharkhand
2. Rajeev Yadav, S/o Jagdish Prasad Yadav, aged about 28 years, R/o Maharoofganj, Vashipur, Dhanbad, Distt. Dhanbad, Jharkhand
3. United India Insurance Company Limited, Divisional Office, Rajhans Masion- 2nd Floor, Bank mode, Jhariya Road Dhanbad, District Dhanbad (Jharkhand), through its Divisional Manager, Divisional – Office 2nd Floor Guru Kripa Towers, Vyapar Vihar Road, Bilaspur, P.S. Tarbahar, P.O. Bilaspur, Pin Code No. 495001, District Bilaspur (C.G.)

---- Respondents

For Appellant/Insurance Company: Shri Dashrath Gupta, Advocate.
For Respondents/Claimants : 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

10.06.2020

1. Quantum of compensation awarded by the 1st Additional Motor Accident Claims Tribunal, Ambikapur, District Surguja (for short, 'Tribunal') in respect of the deceased is the subject matter of dispute in these appeals.

2. In MAC No. 118 of 2013 filed by the Insurer of the offending vehicle, it is contended that it is much on the higher side. There is no proper proof of income and that the Tribunal has arbitrarily added 20% of the income towards the future prospects without any basis.

3. In MAC No. 712 of 2013 filed by the claimants, the grievance is that the amounts awarded by the Tribunal under different heads are much on the lower side and hence requires interference by this Court.

4. Heard Shri Dashrath Gupta, the learned counsel appearing for the Appellant at length.

5. The accident happened on 23.06.2011. The deceased, aged about 35 years, while proceeding on his Motor Cycle, was knocked down at a place of occurrence by the offending vehicle owned and driven by the Respondents concerned and insured by the Appellant in MAC No. 118 of 2013. Coverage under the policy is admitted. Evidence was adduced-both oral and documentary, based on which the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the driver of the Truck insured by the Appellant in MAC No. 118 of 2013.

6. With regard to the quantum of compensation payable, according to the claimants who are the widow, minor son and parents respectively, the deceased was running a jewellery shop and as per the Income Tax return filed for the year 2010-11, there was an income of Rs. 1,56,914/-, whereas the income for the next year *i.e.* 2011-12 was Rs. 3,94,156/-. The Tribunal did not accept the income for the year 2011-12, as the accident had occurred just 2 months after commencement of the financial year 2011-12 (on 23.06.2011) and safely relied on the income for the previous year 2010-11 at Rs. 1,56,914/- and added 20% towards the future prospects to fix the multiplicand. Considering the age of the deceased as more than 30 years, multiplier of '17' was adopted and loss of dependency was worked out as Rs. 21,34,027/-. The Tribunal awarded a sum of Rs. 5,000/- towards funeral expenses, Rs. 5,000/- towards loss of consortium and Rs. 5,000/- towards loss of estate and thus the total compensation was fixed as Rs. 21,49,027/-. This was directed to be satisfied with interest @ 6%

per annum and the liability was fastened on the Insurer of the offending vehicle. This led to the appeals preferred by the Insurer and also by the claimants; the former seeking to reduce the quantum, while the latter seeking to enhance the compensation.

7. After hearing both the sides and after going through the materials on record, it is clear that the claimants had virtually substantiated the occupation/income form the business of running the jewellery, with reference to the tax returns filed before the authorities. Since the accident was occurred on 23.06.2011, the income tax return for the 2011-12 was rightly not accepted. The Tribunal is justified in relying on the declared income of the previous year *i.e.* 2010-11 at Rs. 1,56,914/-; but the question is whether the increase of 20% towards the future prospects is correct or not ?

8. By virtue of the law declared by the Apex Court in ***Sarla Verma Vs. Delhi Transportation Corporation*** reported in **(2009) 6 SCC 121**, 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,** when the deceased is below the age of 40 years, future prospects require to be reckoned to an extent of 50% in the case of persons with fixed income and 40% in the case of others. Here, admittedly since the deceased was doing business, he cannot be said as having a fixed income, as the income may vary from month to month. As such, enhancement towards the future prospects could only be '40%', which unfortunately has not been awarded by the Tribunal; but for granting only 20%.

9. The Tribunal has adopted the multiplier of 17. Based on the materials produced, it has been noted by the Tribunal that the deceased was aged more than 30 years. In the case of persons of the age group between 30 and 35 years, the appropriate multiplier, as given in Column No. 4 in the Schedule given ***Sarla***

Verma's (supra), is '16'. Similarly, as per the decisions cited ***(supra)***, deduction towards the personal expenses in the case of dependent 1 to 3 is 1/3rd and where the dependent are 4 to 6, it shall only be '1/4th'; by virtue of which, the remaining 3/4th shall be treated as contribution to the family. Accordingly, the loss of dependency needs to be reworked, which comes to: Rs. 1,50,914 + 60,366 (1,50,914 x 40%) = Rs. 2,11,280 x ¾ = Rs. 1,58,460 x 16 = **Rs. 25,35,360/-**. The Tribunal has awarded a sum of Rs. 21,34,027/- under this head and hence, after giving credit to the said amount, the balance payable comes to 25,35,360 – 21,34,027 = **Rs. 4,01,333/-**.

10. The claimants are also entitled to get higher amounts under the conventional heads *i.e.* loss of consortium, funeral expenses and loss of estate @ Rs. 40,000/-, Rs. 15,000/- and Rs. 15,000/- respectively as per the decision of the Apex Court cited above. Since the Tribunal has awarded only Rs. 5,000/- each, the claimants are entitled to get a further sum of **Rs. 35,000/-** towards loss of consortium to the widow, **Rs. 10,000/-** towards the funeral expenses and **Rs. 10,000/-** towards the loss of estate.

11. 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). The dependent child is entitled to get the 'Parental consortium' to an extent of **Rs. 40,000/-** and is awarded accordingly. Similarly, the parents are entitled to get 'Filial consortium' to a similar extent of **Rs. 40,000/-**. We are also of the view that a sum of **Rs. 10,000/-** is payable towards the pain and suffering even if the death was instantaneous and hence it is awarded accordingly. Thus,

the total differential/balance payable comes to **Rs. 4,01,333 + 1,45,000 = Rs. 5,46,333/- (Five lakhs forty six thousand three hundred and thirty three rupees only)**.

12. 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.

13. MAC No. 118 of 2013 preferred by the Insurer of the offending vehicle stands dismissed, whereas MAC No. 712 of 2013 preferred by the claimants stands allowed to the said extent.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Brijmohan