NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 136 of 2013

{Arising out of award dated 02.01.2013 passed by Chief Motor Accident Claims Tribunal, Raigarh, District Raigarh (C.G.) in Claim Case No. 07 of 2011}

1. Smt. Champa Bai, Wd/o Late Radhe Shyam Rathiya, aged about 30 years, Occupation Nothing

2. Puniram Rathiya, S/o Late Khem Singh Rathiya, aged about 59 years, Occupation Nothing

3. Smt. Phoolkunwar, W/o Puniram Rathiya, aged about 55 years, Occupation Nothing

4. Suman Kumari Rathiya, D/o Late Ratheshyam Rathiya, aged about 02 months, though legal guardian mother Appellant No.1 Champa Bai, R/o Village Khadgaon, District Raigarh (C.G.)

All are resident of Village Khadgaon Police Station & Tahsil Dharamjaigarh, District Raigarh (C.G.)

----Appellants

Versus

1. Mo. Nurul Haque, S/o Bholiya Ali, aged about 45 years, Occupation Vehicle Driver, R/o Village Ghatmunda, Tahsil Kunkuri, District Jashpur (C.G.)

2. Vajir Singh Sharma, S/o Late J.R. Sharma, Occupation Vehicle Owner, R/o Madanpur, Tahsil Kharsia, District Raigarh (C.G.)

3. The Oriental Insurance Company Limited, Branch Manager Oriental Insurance Company Limited,R/o Sattigudi Chowk, Raigarh (C.G.)

---- Respondents

For Appellants	:	Shri Amit Singh, Advocate.
For Respondent No.3	:	Ms. Richa Dwivedi, 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

12.06.2020

1. The appeal arises from the award passed by the Chief Motor Accident Claims Tribunal, Raigarh, District Raigarh (C.G.) (for short, 'Tribunal') in Claim Case No. 07 of 2011. The appeal is at the instance of the claimants. Inadequacy of compensation is the subject matter of challenge in this appeal.

2. The factual matrix reveals that the deceased was proceeding on the Motor Cycle bearing No. CG 12-ZD/0806 on 16.02.2011. When he reached the place of occurrence, he was knocked down by the Bus bearing No. CG 13D/7077 driven by the 1st Respondent, owned by the 2nd Respondent and insured by the 3rd Respondent, causing fatal injuries, ultimately leading to his death. This led to the claim petition preferred by the widow, daughter and the parents of the deceased.

3. The claim was contested mainly on quantum and negligence. Existence of valid insurance policy was admitted. Based on the pleadings and evidence, 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 Bus.

4. It was contented by the claimants that the deceased was 36 years and was working as a 'driver' and that he was having income from agricultural work as well. The Tribunal reckoned the monthly income as Rs. 3,000/- and adopting

the multiplier of 12, the dependency compensation was fixed as Rs. 2,88,000/-. A sum of Rs. 2,000/- was awarded towards funeral expenses and another sum of Rs. 2,000/- towards loss of consortium. Thus, the total compensation was fixed as Rs. 2,92,000/-, which was directed to be satisfied with interest by the Insurer. It is stated as much on the lower side and hence the appeal.

5. Heard Shri Amit Singh, the learned counsel appearing for the Appellants and Ms. Richa Dwivedi, the learned counsel representing the Respondent No. 3/Insurance Company.

6. Obviously, the deceased was maintaining a family of 4 persons. Considering the fact that he was an able bodied youth and that the accident was in the year 2011, we are of the view that the monthly income reckoned by the Tribunal is on the lower side and it requires to be re-fixed as Rs. 4,000/-. It is also relevant to note that the Tribunal has not considered the future prospects. Going by the verdict passed by the Apex Court in ***Sarla Verma Vs. Delhi Transportation Corporation*** reported in **(2009) 6 SCC 121**, to the extent 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 persons below the age of 40 years with no fixed income, 40% has to be added towards future prospects. Thus, the reckonable monthly income has to be re-fixed as Rs. 4,000 + (4,000 x 40%) 1,600 = Rs. 5,600/-.

7. It is to be noted that the Tribunal has deducted 1/3rd of income towards the personal expenses. But by virtue of the law declared by the Apex Court in the decisions cited above, in the case of family having 4 to 6 dependents, the deduction shall only be 1/4th. Similarly, it is settled law, that the multiplier has to be fixed with reference to the 'age of the deceased'. In the instant case, since the deceased was of the age between 35 and 40 years, the appropriate multiplier will be '15'. Thus, the compensation towards the loss of dependency

comes to Rs. 5,600 x 12 x ¾ x 15 = Rs. 7,56,000/-. Since the Tribunal has awarded only a sum of Rs. 2,88,000/- the balance payable under this head comes to Rs.7,56,000 – 2,88,000 = **Rs. 4,68,000/-**. It is awarded accordingly. Only a sum of Rs. 2,000/- has been awarded toward funeral expenses, which requires to be enhanced to Rs. 15,000/- in the light of the law declared by the Apex Court as cited above. The differential balance comes to Rs. 15,000 – 2,000 = **Rs. 13,000/-**. Similarly, the claimants are entitled to get a sum of **Rs. 15,000/-** towards the loss of estate, whereas the Tribunal has not awarded any amount under this head. Towards the loss of consortium (spousal consortium) the 1st Appellant is entitled to get Rs. 40,000/- and hence the differential portion payable comes to Rs. 40,000 – 2,000 = **Rs. 38,000/-**.

8. 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). By virtue of the said position, the parents are entitled to get the 'Filial consortium' to an extent of **Rs. 40,000/-** and the daughter is entitled to get **Rs. 40,000/-** towards 'Parental consortium' by virtue of the death of the deceased father. Even in cases were the death is instantaneous, the deceased could have suffered much pain and suffering and hence we find it appropriate to award a sum of **Rs. 10,000/-** under this head as well. Thus, the total balance compensation payable comes to Rs. 4,68,000 + 1,56,000 = **Rs. 6,24,000/- (Six lakhs twenty four thousand)**.

9. The said amount requires to be satisfied with interest @ 7% per annum from the date of the application, till satisfaction. Since the policy is admitted, we direct

the 3rd Respondent/Insurance Company 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. Appeal is allowed to the said extent.

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

Brijmohan