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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 813 of 2013**

{Arising out of order dated 22.08.2013 passed by learned 6th Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No. 118 of 2013}

1. Anurag Singh Thakur, aged about 11 years, son of Late Ramayan Singh Thakur, Minor, through natural guardian mother Smt. Annu Devi Thakur
2. Annu Devi Thakur, aged about 30 years, widow of Late Ramayan Singh Thakur.
Both are resident of – Village Bhadaura, Tahsil – Masturi, District Bilaspur (C.G.)

---- Appellants**Versus**

1. Ramnaresh Bais, aged about 52 years, son of Shri Harihar Singh, resident of – Holly Nursery School, Rajkishore Nagar, Bilaspur, Tahsil and District Bilaspur (C.G.)
2. Shiv Prasad, aged about 50 years, son of Shri Chandrakumar Bajpai, resident of – Permanent Near Katora Talaab, Raipur, C.G.
3. The Divisional Manager, the Oriental Insurance Company Limited, Bilaspur, Tahsil and District Bilaspur (C.G.)
4. Gend Singh Thakur (Died-Deleted)
5. Smt. Dukhni Bai, aged about 60 years, wife of Shri Gend Singh Thakur, resident of village – Bhadaura, Tahsil Masturi, District Bilaspur (C.G.)

---- Respondents

For Appellants : None.
For Respondent No. 3 : Shri Sandeep Shrivastava, 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

09.06.2020

1. Inadequacy of the compensation awarded by the Tribunal in respect of the demise of the father of the 1st Appellant and husband of the 2nd Appellant occurred in a road traffic accident, is the grievance projected in this appeal.
2. The sequence of events shows that the deceased by name Ramayan Singh Thakur, stated as employed as an Electrician in the Bhilai Steel Plant, while proceeding on his Motor Cycle on 14.07.2008 was knocked down by the offending Jeep 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 filed before the Tribunal by the minor son and the widow as mentioned above.
3. The claim was mainly contested by the 3rd Respondent/Insurance Company with reference to the negligence and quantum. After appreciating the evidence put on record, the Tribunal arrived at a finding that the accident was because of the contributory negligence on the part of the deceased rider and also the driver of the Jeep to the extent of 30% and 70% respectively.
4. The Tribunal proceeded to fix the compensation taking note on the total monthly income as Rs. 11,897/- as on the date of accident and reckoning a multiplier of 15, based on the age of the deceased as between 35 and 40 years. It was accordingly, that a sum of Rs. 9,99,348/- was awarded. The Tribunal also

awarded a sum of Rs. 5,000/- towards loss of consortium, Rs. 5,000/- towards loss of estate, Rs. 5,000/- towards funeral expenses and Rs. 5,000/- towards the loss of love and affection to each of the claimants (Rs. 10,000/-). A total sum of Rs. 10,25,000/- (rounded figure) was awarded as above and it was directed to be satisfied with an interest @ 7.5% per annum from 15.05.2009.

5. The insurance policy is admitted and there is no appeal preferred by the insurer. The question is whether the award passed by the Tribunal is in conformity with the law declared by the Apex Court and is there any deficiency under some or other heads, to be compensated by this Court by awarding the differential compensation, if any.
6. The law stands declared by the Apex Court in ***Sarla Verma Vs. Delhi Transportation Corporation*** reported in **(2009) 6 SCC 121**, whereby the necessity to consider the future prospects was asserted. It was held that, in the case of persons below the age of 40 years and in respect of those who are having a fixed monthly income, 50% of the income had to be added on, to work out the multiplicand. The declaration made as above stands affirmed by the Constitution Bench of the Apex Court in ***National Insurance Company Limited vs Pranay Sethi & Others*** reported in **(2017) 16 SCC 680**. Even though the question of future prospects was brought to the notice of Tribunal, the claim put forth in this regard was not accepted, for the reason that compassionate appointment had already been granted. Granting of compassionate appointment is under a particular scheme, which not a substitute for the compensation payable for the wrong committed against the victim. That apart, insofar as no such decision rendered by the Apex Court is brought to our notice that future prospects could be ignored, if compassionate appointment is given, we are of the view that the law declared by the Apex Court in ***Sarla Verma's (supra)*** and ***Pranay Sethi's (supra)*** requires to be

applied. On re-working the loss of dependency, it comes to Rs. 11,897 + 5949 (50% of monthly income) x 12 x 2/3rd x 15 = Rs. 21,41,520/-. After deducting the sum of Rs. 9,99,348/- already awarded by the Tribunal, the balance payable under this head comes to **Rs. 11,42,172/-**.

7. In view of the law declared by the Apex Court in the decisions cited above, amounts payable under the conventional heads towards loss of consortium, loss of estate and funeral expenses also require to be enhanced, as the Tribunal has granted only Rs. 5,000/- each. A balance sum of **Rs. 35,000/-** is awarded towards loss of consortium to the 2nd Appellant, balance of **Rs. 10,000/-** towards the loss of estate and balance of **Rs. 10,000/-** towards the funeral expenses.
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). This being the position, a sum of Rs. 40,000/- is payable towards the 'Parental consortium' to the 1st Appellant. Since the Tribunal has granted a sum of Rs. 10,000/- (@ Rs. 5,000/- each) under the head 'loss of love and affection', the Appellants can claim only the balance *i.e.* **Rs. 30,000/-** under this head. It is ordered accordingly. Though the death had occurred on 14.07.2008, a sum of **Rs. 10,000/-** can be awarded towards pain and suffering and is awarded accordingly. Thus, the total differential compensation comes to **Rs. 12,37,172/-**.
9. We satisfied from the findings based on the evidence that there was contributory negligence to an extent of 30% on the part of the deceased rider, while fixing the rest of 70% upon the driver of the Jeep as the Appellants are entitled to get

only 70% of the said amount which comes to **Rs. 8,66,020/-**. Since the policy is admitted, the said amount is liable to be satisfied by the 3rd Respondent/Insurance Company with interest as awarded by the Tribunal, from the date of the claim petition, till satisfaction.

10. The 3rd Respondent/Insurance Company shall work out the total amount as above and deposit the same before the Tribunal as with notice to the Appellants/claimants, 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