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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A(C) No.797 of 2015

Reserved on 17.09.2020
Pronounced on 30.09.2020

1. Smt. Rekha Sinh Wd/o Late Vipul Sinh Aged About 32 Years R/o Sect. 1, B/25, Ekta Nagar, Gudhiyari, Raipur, P.S. Gudhiyari, Distt. Raipur Chhattisgarh
2. Shubhanshu Sinh S/o Late Vipul Sinh Aged About 11 Years Minor Through Mother Smt. Rekha Sinh Wd/o Late Vipul Sinh, Age 32 R/o Sect. 1, B/25, Ekta Nagar, Gudhiyari, Raipur, P.S. Gudhiyari, Distt. Raipur Chhattisgarh
3. Ku. Divya D/o Late Vipul Sinh Aged About 8 Years Minor Through Mother Smt. Rekha Sinh Wd/o Late Vipul Sinh, Age 32 R/o Sect. 1, B/25, Ekta Nagar, Gudhiyari, Raipur, P.S. Gudhiyari, Distt. Raipur Chhattisgarh
4. Pravin Kumar S/o Late Ramdayal Sinh Aged About 56 Years R/o Sect. 1, B/25, Ekta Nagar, Gudhiyari, Raipur, P.S. Gudhiyari, Distt. Raipur Chhattisgarh
5. Smt. Urmila W/o Pravin Sinh Aged About 53 Years R/o Sect. 1, B/25, Ekta Nagar, Gudhiyari, Raipur, P.S. Gudhiyari, Distt. Raipur Chhattisgarh

---- Appellants

Versus

1. Shivmurti @ Shivmukh Sinh S/o Sukhdev Rajput Kohali, Through Ajay Kumar D/o Sikandar Chaudhary, Shitla Transport, Chhawani-Chowk, Power House, Bhilai, P.S. Jamul, Distt. Durg Chhattisgarh
2. Ajay Kumar S/o Sikandar Chaudhary Shitla Transport, Chhawani- Chowk, Power House, Bhilai, P.S. Jamul, Distt. Durg Chhattisgarh
3. Shri Ram General Insurance Co. Ltd. Through In Charge Officer, Sandhy Prakash Press Road, Plot No. 8, Malviya Nagar Bhopal M.P., District : Bhopal, Madhya Pradesh

---- Respondents

For Appellants:	Shri Amiyakant Tiwari, Advocate.
For Respondents No.1 & 2:	None, though served.
For Respondent No.3:	Shri Sachin Singh Rajput, Advocate

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J

C A V Award

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988) questioning the legality and propriety of the award dated 27.01.2015 passed

by the 2nd Additional Motor Accidents Claims Tribunal, Raipur (CG) (for short 'the Tribunal') in Claim Case No.58/2012 whereby, the Tribunal, while allowing the claim in part, has awarded a total amount of compensation to the tune of Rs.5,80,000/- with interest @ 6% per annum from the date of filing of the claim Petition till the date of actual payment. The parties to this Appeal shall be referred hereinafter as per their description in the Tribunal.

2. Briefly stated, the facts of the case are that on 08.01.2011 at about 03.15 p.m, the deceased Vipul Sinh was returning home by his motorcycle. At the relevant time, he was hit vehemently by the offending vehicle “truck” bearing Registration No.CG 07 ZC 0512, owned by Non-applicant No.2- Ajay Kumar and insured with Non-Applicant No.3-Shri Ram General Insurance Company Limited, which was being driven in a rash and negligent manner by its driver, Non-Applicant No.1-Shivmurti. Owing to the alleged accident, the deceased fell down and sustained serious injuries and died on the spot. A criminal case was registered against the driver of the alleged offending vehicle under Section 304-A IPC in connection with Crime No.12/11 and a charge sheet was thereafter submitted before the Judicial Magistrate First Class, Raipur.

3. On account of the aforesaid accident, the Claimants being the legal representatives of the deceased, filed a Claim Petition under Section 166 of the Act of 1988 wherein, it has been alleged that the deceased, a 32 year old, was a grocery shop keeper apart from running the STD/PCO and used to earn Rs.10,000/- per month and therefore, they have claimed total amount of compensation to the tune of Rs.17,88,000/- under various heads.

4. The Non-applicants have contested the aforesaid claim and the Tribunal, after considering the evidence led by the parties, arrived at a

conclusion that the alleged accident occurred due to rash and negligent driving of the driver of the alleged offending vehicle resulting into the sad demise of Vipul Sinh. It held further that the vehicle in question was not being used in violation of the policy, as it was being driven with a valid permit and fitness certificate by the driver, who was holding the valid and effective driving license. In consequence, while fastening the liability upon the Insurance Company that by assessing the monthly income of the deceased to the tune of Rs.3,000/- and by applying the multiplier of 15, awarded the aforesaid amount of compensation along with the interest.

5. According to Shri Amiyakant Tiwari, learned Counsel appearing for the Appellants, while referring to the income tax returns of the deceased, marked as Ex.A-14 and Ex.A-15, the finding of the Tribunal holding the monthly income of the deceased only to the tune of Rs.3,000/- despite of filing of the said returns is apparently contrary to the materials placed on record and thereby erred further in awarding a meager amount of compensation even without considering the future prospects of his income and without deducting 1/4th of his income towards his personal and living expenses. In support, he placed his reliance upon the decision rendered by the Supreme Court in the matters of "*National Insurance Company Limited. vs. Pranay Sethi & Others* and *Sarla Verma (Smt) And Others vs. Delhi Transport Corporation And Another*" reported in (**2017) 16 SCC 680** and **(2009) 6 SCC 121,** respectively**.**

6. On the other hand, Shri Sachin Singh Rajput, learned Counsel for Respondent No.3 has supported the award impugned as passed by the Tribunal.

7. I have heard learned Counsel for the parties and perused the entire

record carefully.

8. From perusal of the record, it appears that the amount of compensation as determined by the Tribunal while assessing the monthly income of the deceased only to the extent of Rs.3,000/- even without considering the future prospects of his income is wholly unjustified and deserves to be modified.

9. According to the averments made in the claim Petition and in view of the unrebutted statement of the deceased's wife namely Smt Rekha Sinh, it is evident that the deceased was a grocery shop keeper and was also engaged in running the fancy store as well as the STD/PCO. The said fact is duly corroborated by the income tax returns (Ex.A-14 and Ex.A-15) of the deceased. It thus appears from those returns (Ex.A-14 & Ex.A-15) as submitted respectively for the Assessment Year 2007-08 and for the Year 2008-09 that the deceased has yielded for those periods after the tax deduction respectively a sum of Rs.99,740/- and Rs.1,35,760/- annually. The aggregate income of the deceased as depicted from the said Assessment Year 2007-08 was Rs.99,740/- which was increased to the tune of Rs.1,35,760/- as visualized from the next Assessment Year of 2008-09. He, thus, earned in those periods a sum of Rs.9,812.5 (Rs.99,740/- + Rs.1,35,760/- = 2,35,500/- x 1/2 x 1/12) rounded off to Rs.10,000/- monthly in average. It is true as evidenced by a letter dated 14.02.2014 (Ex.A-16) that no income tax return was submitted by the deceased thereafter for the period of 2009-10 and for the year 2010-11. But, looking to the income of the deceased as shown in those Assessment Years (Ex.A-14 & Ex.A-15), the monthly income of the deceased as assessed by the Tribunal only to the tune of Rs.3,000/- per month cannot be held to be sustainable from any stretch of imagination. It can, however, safely be presumed to be Rs.10,000/- per month as observed

hereinabove and, I accordingly hold the monthly income of the deceased as such.

10. Considering the income of the deceased to the tune of Rs.10,000/- per month, yearly Rs.1,20,000/- and that by determining the actual income of the deceased, who was found to be 38 years old as per the postmortem report (Ex.P-6), an addition of 40% of it i.e. Rs.48,000/- towards future prospects of his income is to be made in the light of the principles laid down by the Supreme Court in the matter of National Insurance Company Limited. vs. Pranay Sethi & Others (supra) and the actual income of the deceased would thus come to Rs.1,68,000/- (Rs.1,20,000/- + 48,000/-). Since the number of dependents upon the deceased was 5, deduction of 1/4th of it, i.e. Rs.42,000/- towards his personal and living expenses would be appropriate and the yearly dependency would thus come to Rs.1,26,000/- (Rs.1,68,000/- - Rs.42,000/-). As the age of the deceased at the time of accident was 38, the multiplier applicable would be 15 in the light of the principles laid down by the Supreme Court in the matter Sarla Verma (Smt) And Others vs. Delhi Transport Corporation And Another (supra). The total dependency would, therefore, come to at Rs.18,90,000/- (Rs.1,26,000/- x 15).

11. Besides, the minors of the deceased namely Shubhanshu and Ku. Divya, who lost their father upon his prematured death are entitled to parental consortium as per the principles laid down by the Supreme Court in the matter of *Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram and others* reported in **(2018) 18 SCC 130,** wherein it has been observed in this regard at paragraphs 21, 21.2 and 24 as under:-

> **21.** A constitution Bench of this Court in *Pranay Sethi* dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of

> consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.
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> **21.2.** Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".
>
> **24.** The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in *Pranay Sethi*.............."

12. In the present case, the deceased died in a road accident at the age of 38 years, leaving behind him wife, two minors and the parents. Therefore, in the light of the principles laid down in the aforesaid judgment, the wife and minors are entitled to be awarded loss of consortium under the head of spousal and parental consortium at the rate as held in the said matter of Pranay Sethi (supra). Consequently, in addition, the Claimants are entitled to the following amounts towards conventional heads:-

	Mode of Compensation	Amount (in Rs.)
i.	For loss of consortium to wife	40,000/-
ii.	For loss of parental consortium to two minors @ Rs.40,000/- each	80,000/-
iii.	For funeral expenses	15,000/-
iv.	For loss of estate	15,000/-
	Total	1,50,000/-

13. The Claimants are, thus, entitled to a total sum of Rs.20,40,000/- (Rs.18,90,000/- + Rs.1,50,000/-), instead of Rs.5,80,000/- as awarded by the Tribunal, with interest @ 6 % per annum from the date of filing the claim Petition till the date of actual payment.

13(1) Out of the aforesaid awarded amount, a sum of Rs.7,40,000/- shall be given to wife Smt. Rekha Sinh, out of which, a sum of Rs.2,00,000/- shall be given to her through account payee cheque, while rest, i.e., Rs.5,40,000/- shall be deposited in her name in any of the nationalized Banks for a period of three years, which shall be disbursed to her after its maturity as per the direction of the Executing Court.

13(2) Likewise, Rs.5,00,000/- shall be deposited in the joint name of parents namely Pravin Kumar (Claimant No.4) and Smt Urmila (Claimant No.5) in any of the nationalized Banks for a period of three years, which shall be disbursed to them after its maturity as per the direction of the executing Court.

13(3) Rest of the amount of Rs.8,00,000/- shall be deposited in equal parts i.e. Rs.4,00,000/- each in the name of minors namely Subhanshu (Claimant No.2) and Ku. Divya (Claimant No.3) respectively in any of the nationalized Banks through their guardian/mother Smt Rekha Sinh for a period of three years, renewable from time to time, till the date of attaining their majorities and shall be disbursed through cheque as per the direction of the executing Court.

13(4) In so far as the interest part is concerned, the same shall be calculated at the said rate of 6% p.a from the date of filing of the claim Petition till the date of actual payment and be disbursed through cheque as per the direction of the Executing Court to the Claimants.

13(5) It is observed further that if the widow Smt Rekha Sinh and parents (Pravin Kumar and Smt Urmila) want to withdraw a part of it or the entire deposited amount of their share during the said period of three years, then they are at liberty to move an application for the said purpose before the concerned Executing Court, which may be considered by it and an appropriate order may be passed in this regard.

14. In view of above, the Appeal is accordingly allowed in part to the extent indicated hereinabove with the aforesaid observation. Rest of the observations as made by the Tribunal shall remain in tact. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge

Priya