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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 86 of 2015

Reserved on 03.11.2020
Pronounced on 06.11.2020

1. Smt.Mithila Bai Dhruve, W/o Late Shivbhagat Dhruve, Aged About 35 Years, R/o Village Kukdur, Thana Kukdur, Tahsil Pandariya, District Kabeerdham C.G., At Present R/o Torwa Police Colony, Block No. 1, Q.No. 05, Thana Torva, Civil & Revenue District Bilaspur, Chhattisgarh (Claimant).
2. Jeevendra Kumar, S/o Late Shivbhagat Dhruve, Aged About 2 Years, Minor, Through his guardian Mother Smt. Mithila Dhruve, W/o Late Shivbhagat, R/o Village Kukdur, Thana Kukdur, Tahsil Pandariya, District Kabeerdham C.G., At Present R/o Torwa Police Colony, Block No. 1, Q.No. 05, Thana Torva, Civil & Revenue District Bilaspur, Chhattisgarh (Claimant).
3. Smt. Janki Bai, W/o Azab Singh Dhruve, Aged About 57 Years, R/o Village Kukdur, Thana Kukdur, Tahsil Pandariya, District Kabeerdham C.G., At Present R/o Torwa Police Colony, Block No. 1, Q.No. 05, Thana Torva, Civil & Revenue District Bilaspur, Chhattisgarh (Claimant).
4. Azab Singh Dhruve, S/o Late Ujiyar Dhruve, Aged About 60 Years, R/o Village Kukdur, Thana Kukdur, Tahsil Pandariya, District Kabeerdham C.G., At Present R/o Torwa Police Colony, Block No. 1, Q.No. 05, Thana Torva, Civil & Revenue District Bilaspur, Chhattisgarh (Claimant).

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Versus

1. Panchuram Gond, S/o Jhamlal Gond, Aged About 25 Years, R/o Village Amera, Thana Kukdur, District Kabeerdham, Chhattisgarh (Driver).
2. Prakash Tandia, S/o Sukludas Tandia, Aged About 35 Years, R/o Bhelki, Thana Kukdur, Tahsil Pandariya, District Kabeerdham, Chhattisgarh (Owner).
3. Branch Manager, Royal Sundaram Alliance Insu. Co. Ltd., Branch Office Rama Trade Center, 1st Floor, Office Plaza, Near Bus Stand, District Bilaspur, Chhattisgarh (Insurance Company).

---- Respondents

For Appellants: : Shri Samir Singh, Advocate
For Respondents No.1 and 2 : None, though served.
For Respondent No.3: : Shri Abhishek Sinha along with Shri D. L. Dewangan, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal
CAV Award/Order

1. The Claimants have preferred this appeal seeking enhancement of the award impugned dated 17.06.2014 passed in Claim Case No.7/2013, whereby the learned Tribunal has awarded total amount of compensation to the tune of Rs.13,12,800/- with 6% interest per annum from the date of filing of the claim petition till its realisation, while directing further that if the interest has not been paid within a period of 1 month, then it shall carry interest at the rate of 9% per annum. 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 19.01.2013, the deceased Shivbhagat Dhruve was returning home along with his wife and at the relevant time, he was dashed vehemently by the offending vehicle 'Bolero' bearing registration No.CG 09/0436 due to rash and negligent driving by its driver namely, Panchuram/Non-Applicant No.1, which was owned by Non-Applicant No.2/Prakash Tandia and was insured with Non-Applicant No.3/Royal Sundaram Alliance Insurance Company Limited. Owing to the alleged accident, the deceased was injured badly and was admitted into the hospital but succumbed to the injuries on 06.02.2013. A complaint was lodged against the driver of the alleged offending vehicle namely, Panchuram Gond, in connection with Crime No.11/2013 before the police station Kukdur and charge sheet was accordingly submitted before the Judicial Magistrate First Class, Pandariya, District Kabirdham.

3. On account of the aforesaid accident, the claimants, who are widow, minor child and parents of the deceased, have instituted a claim petition under Section 166 of the Act of 1988, by submitting *inter alia* that the

deceased was working as Assistant Teacher in Government Primary School, Lalpur, Tahsil Pandariya, District Kabirdham and used to earn Rs.9,330/- per month and, thus, the total amount of compensation of Rs.19,59,550/- has been claimed under various heads.

4. Non-Applicants have contested the aforesaid claim and the Tribunal after considering the evidence led by the claimants arrived at a conclusion that the alleged accident occurred on 19.01.2013 due to rash and negligent driving by the driver of the alleged offending vehicle, namely, Panchuram Gond, resulting into the sad demise of Shivbhagat Dhruve, who was 38 years and 7 months old. It held further that the vehicle in question was not being used in violation of the policy, as alleged by the insurer, and that by considering the monthly income of the deceased at Rs.9,539/-, by placing its reliance upon the particulars (Ex.A-49) regarding his income, awarded total amount of compensation along with its interest as mentioned herein above.

5. According to Shri Samir Singh, learned counsel appearing for the Appellants/Claimants, the Tribunal, while assessing the amount of compensation, has erred in not considering the future prospects of the income of the deceased and erred further in awarding a meagre amount of compensation under the conventional heads. It is contended further while inviting attention to the medical bills marked as Ex.A-11 to Ex.A-47 that the claimants have incurred a sum of Rs.78,294.93/- towards the treatment of deceased, however, the same have not been taken into consideration by the Tribunal. Further contention of him is that the deceased was a government employee and was below the age of 40 years, therefore, 50% of his income ought to have been added in

order to consider his actual income for determining the amount of compensation. It is contended further that the widow and minor child were entitled to be awarded the amount of consortium under the heads of spousal and parental consortium. The Tribunal has, thus, failed to award just and proper amount of compensation payable to them. In support, he placed his reliance upon the decisions rendered by the Supreme Court in the matters of ***National Insurance Company Limited*** vs. ***Pranay Sethi*** and ***Magma General Insurance Company Limited*** vs. ***Nanu Ram Alias Chuhru Ram And Others*** reported in **(2017) 16 SCC 680** and **(2018) 18 SCC 130,** respectively.

6. On the other hand, Shri Abhishek Sinha, learned counsel appearing for Respondent No.3, has supported the award under appeal, 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 deceased was working as Assistant Teacher in Government Primary School, Lalpur, Tahsil Pandariya, District Kabirdham. It appears further from the particulars showing the income of the deceased vide Ex.A-49, which was duly supported by one Lal Ji Dewangan, Assistant Grade-III of the said department, that the monthly income of the deceased was Rs.9,539/-. The Tribunal has, therefore, not committed any illegality in holding the monthly income of the deceased as such. It, however, appears that while determining the amount of compensation, the Tribunal has failed to consider not only the future prospects of his income but has failed further to provide the proper amount of compensation under the

conventional heads. That apart, it appears that the claimants have incurred a sum of Rs.78,294.93/- towards the treatment of deceased Shivbhagat as evidenced by the medical bills (Ex.A-11 to Ex.A-47) which, however, were ignored by the Tribunal while awarding the amount of compensation payable to them. The award impugned, therefore, deserves to be modified accordingly in the light of the principles as referred by the learned counsel for the appellants.

9. Considering the monthly income of the deceased at Rs.9,539/-, yearly Rs.1,14,468/-, and while determining his actual income, an addition of 50% of it, i.e., Rs.57,234/-, towards future prospects of his income is to be made, as he was the government employee and was below the age of 40 years old, in the light of the principles laid down in the said matter of Pranay Sethi (supra). It would, thus, come to Rs.1,71,702/- (Rs.1,14,468/- + Rs.57,234/-) and that by looking to the number of dependents upon him, who are 4, deduction of 1/4th of it, i.e., Rs.42,925.5/-, rounded off to Rs.42,925/-, towards his personal and living expenses, would be appropriate and yearly dependency would, thus, come to Rs.1,28,777(Rs.1,71,702/- – Rs.42,925/-).

10. As the deceased was 38 years and 7 months old at the time of the accident, therefore, the multiplier applicable would be 15, in the light of the principles laid down by the Supreme Court in the matter of ***Sarla Verma (Smt) And Others vs. Delhi Transport Corporation And Another*** reported in **(2009) 6 SCC 121.** The total dependency would, therefore, come to Rs.19,31,655/- (Rs.1,28,777/- x 15).

11. That apart, the deceased who was admitted into the hospital owing to the injuries sustained by him on account of the accident occurred on

19.01.2013 and since the claimants have incurred a sum of Rs.78,294.93, rounded off to Rs.78,300/-, towards the treatment of deceased Shivbhagat, as evidenced by the medical bills (Ex.A-11 to Ex.A-47), duly corroborated by his wife Smt Mithila Dhruve (A.W-1) and which could not be rebutted by the Non-Applicants, therefore, the claimants would be entitled to a further sum of Rs.78,300/- in this regard.

12. Besides, the wife and minor son of the deceased are entitled to be awarded the consortium compensation under the heads of spousal and 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** (supra) at the rate, as prescribed in the said matter of **Pranay Sethi** (supra).

13. The claimants are, thus, entitled to the following amount towards conventional heads:-

S.No.	**Mode of Compensation**	**Amount (in Rs.)**
(i)	For loss of spousal consortium to widow	40,000/-
(ii)	For loss of parental consortium to minor son	40,000/-
(iii)	For funeral expenses	15,000/-
(iv)	For loss of estate	15,000/-
	Total	Rs.1,10,000/-

and, it is to be increased by 10% in the light of the dictum of the Constitution Bench of the Supreme Court as laid down in para 59.8 of the said matter of **Pranay Sethi** (supra). Consequently, the claimants would be entitled to a sum of Rs.1,21,000/- (Rs.1,10,000/- + 10% of it) under the conventional heads.

14. The claimants would, thus, be entitled to a total amount of compensation to the tune of Rs.21,30,955/- (Rs.19,31,655/- + Rs.78,300/- + Rs.1,21,000/-) with 6% interest per annum from the date of filing of claim petition till the date of actual payment.

14 (i). Out of the said awarded sum, a sum of Rs.8,52,655/- shall be given to wife Smt. Mithila Bai Dhruve, out of it, a sum of Rs.4,52,655/- shall be given to her through account payee cheque, while rest, i.e., Rs.4,00,000/- are deposited in her name, in any of the Nationalized Bank for a period of 3 years, which shall be disbursed to her after its maturity as per the direction of the Executing Court.

14(ii). Likewise, Rs.5,00,000/- shall be deposited in the joint name of deceased's parents namely, Smt. Janki Bai (Claimant No.3) and Azab Singh Dhruve (Claimant No.4) in any of the Nationalized Bank for the period of 3 years, which shall be disbursed to them, after its maturity, as per the direction of the Executing Court.

14(iii). Rest of the amount of Rs.7,78,300/- shall be deposited in the name of minor child namely, Jeevendra Kumar (Claimant No.2) through his guardian/mother Smt. Mithila Bai Dhruve, in any of the Nationalized Bank for a period of 3 years, renewable from time to time, till the date of attaining his majority and shall be disbursed to him through cheque, as per the direction of the Executing Court.

14(iv). In so far as the interest part is concerned, the same shall be calculated at the rate of 6% per annum 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.

14(v). It is observed further that if the widow (Smt. Mithila Bai Dhruve) and parents of the deceased namely Smt. Janki Bai (Claimant No.3) and Azab Singh (Claimant No.4) want to withdraw a portion of it or the entire deposited amount of their respective share/interest, during the said period of 3 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.

15. In view of the above, the appeal is allowed in part to the extent indicated herein above with the aforesaid observation. Rest of the observations as made by the Tribunal shall remain intact. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE

Vivek