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HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 38 of 2015**

John Mathai son of late Joseph Yohanan, aged about 53 Years, R/o House's Name Mayukulathu Modiyali, Post Kidanganura, District Pathanamthita (Keral), PIN- 589514.

---- Appellant**Versus**

1. Naveen Singh Rajput, son of Late Devnarayan Singh, aged about 28 Years, R/o R.No. 1657, Police Line, Durg (C.G.), Permanent Address Kuwa Chowk, Pachari Para, Durg, District Durg (C.G.).
2. Director General of Police Raipur, District Raipur, C.G.

---- Respondents

For Appellant : Shri Vinod Kumar Sharma, Advocate
 For Respondent No.1 : Dr. Saurabh Kumar Pande, Advocate
 For Respondent No.2 : Shri Siddharth Dubey, Dy. Govt. Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per Parth Prateem Sahu, Judge****07.01.2021**

1. Appellant/claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated 28.11.2014 passed by the 6th Additional Motor Accident Claims Tribunal District Durg, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.09 of 2014 whereby learned Claims Tribunal

allowed the application in part and awarded Rs.1,35,000/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal, are that, on 31.12.2013, Anish John was travelling on two-wheeler along with his mother. While so, when he reached near Sector-9, M.D. Square, one P.C.R. Vehicle of Police Department bearing No.CG-03/3898 (hereafter referred to as 'offending vehicle') driven by non-applicant No.1/driver of offending vehicle rashly and negligently dashed two-wheeler and caused accident. In the aforesaid accident, Anish John suffered grievous injury over his person and died. Accident was reported to concerned Police Station, based upon which, crime No.673 of 2013 was registered against non-applicant No.1/driver of offending vehicle.
3. Appellant filed an application under Sections 166 and 140 of the M.V. Act pleading therein that deceased Anish John was aged about 18 years, giving tuition to children studying in Class 3 to 5, earning Rs.10,000/- per month and claimed Rs.17,45,000/- as total compensation on different heads.
4. Non-applicant No.1 who is driver of offending vehicle submitted reply to claim application pleading therein that non-applicant No.1 was appointed on the post of Constable and working as driver.
5. Non-applicant No.2 is employer of non-applicant No.1

submitted reply to claim application pleading therein that non-applicant No.1 was driving the offending vehicle cautiously and with full responsibility. On account of mechanical fault of offending vehicle and negligence on the part of deceased Anish John, accident took place, hence, claimant is not entitled for any amount of compensation.

6. On appreciation of pleadings, evidence and material placed on record by the respective parties, Tribunal arrived at a finding that Anish John died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1 and awarded Rs.1,35,000/- as total compensation on different heads.
7. Shri Vinod Kumar Sharma, learned counsel for the appellant submits that learned Claims Tribunal erred in arriving at a finding that appellant/claimant being father of deceased residing at Kerala is not dependent upon the deceased, hence, he is not entitled for any amount of compensation towards loss of dependency. He further submits that claimant being father of deceased is entitled for the amount of compensation as estate of the deceased. He being class one heir of deceased is entitled for the amount of compensation on all heads. It is contended that learned Claims Tribunal has awarded meager amount of compensation on the head of loss of estate, not awarding any amount towards loss of consortium as declared by

Hon'ble Supreme Court in case of **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**.

8. Controverting the submissions made by learned counsel for the appellant, Dr. Saurabh Kumar Pande, learned counsel for respondent No.1 as well as Shri Siddharth Dubey, learned Deputy Government Advocate representing the State/respondent No.2 submit that father who is having separate income from the agricultural field as appearing from the record of the case cannot be termed to be dependent upon the deceased. Learned Claims Tribunal has rightly held that appellant is not dependent upon the deceased and is justified in not awarding any amount of compensation on the head of loss of dependency. Amount of compensation awarded to the appellant in the facts and circumstances of the case is just and proper, which does not call for any interference.
9. We have heard learned counsel for the respective parties and perused the record carefully.
10. Challenge in this appeal is only with regard to quantum of compensation awarded by learned Claims Tribunal. Relationship between the appellant and deceased is not in dispute. Learned Claims Tribunal while arriving at a finding that appellant is not entitled for amount of compensation on

the head of loss of dependency has only taken into consideration that appellant while residing separately doing his own work and deceased was dependent upon his late mother. Learned Claims Tribunal has not taken into any other consideration like the claimant is father of the deceased son. True, it is that looking to the age of the appellant to be 53 years and his evidence that while residing in Kerala, he was maintaining his agricultural field, but than the appellant cannot be deprived of estate of deceased. The amount of compensation to be awarded on the motor accidental death of son of appellant can very well be said to be loss of estate for him, hence, appellant is entitled for entire amount of compensation to be calculated on all heads.

11. The entitlement of compensation by married sons on the sad demise of father has been considered by Hon'ble Supreme Court in case of **National Insurance Company Limited v. Birender and Others** reported in **AIR 2020 SC 434** wherein while considering the provisions of the M.V. Act and its earlier judgments including the judgment of **Manjuri Bera (Smt.) v. Oriental Insurance Company Ltd. and another** reported in **(2007) 10 SCC 643** held thus :

“15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation.

Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/- and Rs.1,50,000/- per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.”

12. In view of aforementioned law laid down by Hon'ble Supreme Court holding that appellant being the legal representative of deceased has a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the appellant was fully dependant on the deceased and not to limit the claim towards conventional heads only. It is a duty of a son to take care of his parents by all means, deceased might be residing at Bhilai for some other reason

and not as a separated family. There is no evidence brought on record by the respondent to think it otherwise.

13. In view of above, we are of the considered view that appellant is entitled for amount of compensation to be calculated keeping in mind the law laid down by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** and **Nanu Ram Alias Chuhru Ram** (supra).
14. Now, we will consider the amount of compensation to be awarded to the appellant. Tribunal in paragraph-13 of the impugned award has held that income of deceased as pleaded in claim application could not be proved, except the pleading and oral statement made by the appellant, no other admissible piece of evidence is brought on record to prove the income of deceased. In such circumstance, income of deceased is to be assessed on notional basis taking into consideration his age, occupation, price index, wage structure and cost of living. On the date of accident i.e. on 31.12.2013, age of deceased has been shown to be 18 years, hence, we find it appropriate to assess the income of deceased as Rs.4,000/- per month on notional basis in the facts and circumstances of the case.

15. As per law laid down by Hon'ble Supreme Court in case of **Pranay Sethi** (supra), there will be an addition of 40% of the established income towards future prospects to ascertain total income of deceased. Deceased being unmarried, hence, there shall be deduction of 50% of his income towards personal and living expenses in view of the law declared by Hon'ble Supreme Court in case of **Sarla Verma (Smt.)** (supra).
16. For the foregoing reasons, we deem it fit and proper to recalculate the amount of compensation as under :

The monthly income of deceased is taken as Rs.4,000/- per month and Rs.48,000/- per annum. By adding 40% of the income towards future prospects, the total annual income of deceased will come to Rs.67,200/- ($48,000 \times 40\% = 19,200$ and $48,000 + 19,200$). After deducting 50% ($1/2$) towards personal and living expenses of deceased, yearly loss of dependency of claimant will come to Rs.33,600/- ($67,200 / 2$ and $67,200 - 33,600$). Upon applying multiplier of 18, amount of compensation towards loss of dependency will come to Rs.6,04,800/- ($33,600 \times 18$). Apart from above, appellant will be further entitled for a sum of Rs.40,000/- towards filial consortium to the parents, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

17. Now, the appellant is entitled for total compensation of Rs.6,74,800/- (6,04,800 + 40,000 + 15,000 + 15,000) instead of Rs.1,35,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.
18. In the result, appeal is allowed in part and impugned award is modified to the extent as indicated herein-above.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh