

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 233 of 2015

1. Vinay Kumar Sahu S/o Ramvilash Sahu Aged About 28 Years,
2. Smt. Nirmala Bai @ Nirasha Bai W/o Vijay Kumar Sahu Aged About 24 Years Through Husband Vijay Kumar Sahu
All R/o Village Maharajpur, Police Station and Tehsil Dondilohara, District Balod C.G.

---- Appellants

Versus

1. Harpal Singh @ Haripal Singh S/o Karan Singh, Aged About 38 Years R/o Shyampur, P.S. Faizganj, District Badayu U.P.
2. Kusum Jaiswal D/o Rajendra Jaiswal
3. Sachin Jaiswal S/o Rajendra Jaiswal, Aged About 28 Years
Both resident of Dayakunj Shubhash Road Chandaushi Tehsil and District Muradabad (New District Bheem Nagar) U.P.
4. Iffco Tokiyo General Insurance Company Limited Corporate Office 4th and 5th Floor Iffco Tower Plot No. 3 Sector 29, Gudgaon Haryana Branch Lucknow Haryana 122001. Through Branch Manager Branch Office Third Manjil Shop No. 345-347 Lalganga Shopping Mall GE Road Raipur, District Raipur C.G.

---- Respondents

For Appellants	: Shri Goutam Khetrapal with Shri Avinash Chand Sahu, Advocate
For Respondents 1 to 3	: None
For Respondent No.4	: Shri Tessy Abraham, Advocate

(Proceedings through Video Conferencing)
Hon'ble Shri Parth Prateem Sahu, Judge
Judgment on Board

06.08.2021

1. Challenge in this appeal filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') is to the impugned award dated 08.07.2014 passed by the First Additional Motor Accident Claims Tribunal, Balod, District Balod, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.56 of 2014 whereby learned

Claims Tribunal allowed the application filed under Section 166 of the M.V. Act in part, awarded total sum of Rs.85,000/- as compensation with interest at the rate of 6% from the date of filing of claim application till its realization and fastened liability upon non-applicant No.4 to satisfy the amount of compensation.

2. Brief facts relevant for disposal of this appeal are that, on 14.01.2014, at about 5.30 P.M., appellant No.1 along with his family was travelling on motorcycle bearing No.CG-07/ZS/7135 from Maharajpur to Bhilai, while so, when he reached near village Khuteri turn, one Car bearing No.UP-21/X/7700 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed the motorcycle and caused accident. In the accident, appellant along with his family members suffered grievous injuries. Appellants' child Ku. Neha @ Nisha, aged about 5 years succumbed to injuries on the way to hospital. Accident was reported to the concerned Police Station, upon which, Crime No. 28/12 was registered against respondent No.1/non-applicant No.1.
3. Appellants filed an application under Section 166 of the M.V. Act seeking compensation of Rs.16,50,000/- pleading therein that deceased was meritorious students.
4. Non-applicants No.1 to 3 did not appear before the Claims Tribunal and were proceeded *ex parte*.

5. Non-applicant No.4/Insurance Company submitted its reply denying the pleadings made in claim application. They have further denied the existence of insurance of the offending vehicle. There was contributory negligence on the part of appellant No.1/driver of motorcycle. The accident was not informed by insured to the Insurance Company and amount claimed is highly exaggerated.
6. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by respective parties held that Ku. Neha @ Nisha died on account of motor accidental injuries suffered by her due to rash and negligent driving of offending vehicle by non-applicant No.1, assessing the age of deceased as 5 years, calculated the amount of compensation to Rs.75,000/- towards loss of life due to death of minor child and further awarded Rs.10,000/- on other conventional heads; making total amount of compensation as Rs.85,000/-.
7. Shri Goutam Khetrapal and Avinash Chand Sahu, learned counsel for the appellants would submit that learned Claims Tribunal erred in awarding meagre amount of compensation. It is submitted that learned Claims Tribunal ought to have awarded compensation as held by Hon'ble Supreme Court in case of **Kishan Gopal and Another v. Lala and Others** reported in **(2014) 1 SCC 244**. Learned Claims Tribunal erred in applying the multiplier of 10 instead of 18 and further awarding lesser amount of compensation on the head of loss

of estate, funeral expenses and not awarding any amount towards loss of consortium as held by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**.

8. Per contra, Shri Tessy Abraham, learned counsel for respondent No.4/Insurance Company while opposing the submissions made by learned counsel for the appellants would submit that age of the minor girl (deceased) was less than 5 years. Learned Claims Tribunal was Justified in awarding total sum of Rs.85,000/- as compensation in the facts and circumstances of the case, which does not call for any interference.
9. I have heard learned counsel for the respective parties and perused the record carefully.
10. So far as the age of deceased child is concerned, appellants in their claim application pleaded the age of deceased as 5 years. Appellant No.1 in his evidence prior to registration of claim case has stated that age of the deceased was 5 years and age of his son Hem Kumar to be 6 years. Similarly, in the affidavit under Order XVIII Rule 4 of CPC, appellant No.1 stated the age of deceased on the date of accident to be 5 years. Appellants in support of their claim application placed on record merged intimation (Ex.P/3) wherein age of deceased has

been shown as 4 years. In postmortem report (Ex.P/9), age of deceased has been mentioned as 4 years.

11. In view of the aforementioned evidence with respect to age of the deceased available on record, age of deceased cannot be presumed to be more than 5 years. Appellants have not placed on record birth certificate of child, hence, in the opinion of this Court, age of deceased can be reckoned in between 1-5 years.
12. With regard to submission of learned counsel for the appellants that amount of compensation awarded by Claims Tribunal is meagre, perusal of the award would show that learned Claims Tribunal by assessing income on notional basis as Rs.15,000/-, applying the multiplier of 10, relying upon the judgment passed by Hon'ble Supreme Court in **Municipal Corporation of Greater Bombay v. Laxman Iyer and Another** reported in **(2003) 8 SCC 731** calculated total amount of compensation against the death as Rs.1,50,000/-. The Claims Tribunal further deducted 50% of amount from the calculated amount of compensation and awarded Rs.75,000/- as compensation against death of minor child. When the age of deceased minor child was between 1-5 years, she cannot be treated as earning member, but was a non-earning member, therefore, the amount of compensation is to be awarded against loss of life of child of appellants, calculating the amount of compensation on lump-sum basis.

13. Hon'ble Supreme Court in case of **Lata Wadhwa and Others v. State of Bihar and Others** reported in **(2001) 8 SCC 197** has considered the award of compensation in case of death of children in the age group of 5-10 and 10-15 years and held thus :

“11.....Loss of a child to the parents is irrecoupable, and no amount of money could compensate the parents. Having regard to the environment from which these children were brought, their parents being reasonably well-placed officials of the Tata Iron and Steel Company, and on considering the submission of Mr. Nariman, we would direct that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs, to which the conventional figure of Rs.50,000/- should be added and thus the total amount in each case would be Rs. 2.00 lakhs. So far as the children between the age group of 10 to 15 years, they are all students of Class VI to Class X and are children of employees of TISCO. TISCO itself has a tradition that every employee can get one of his child employed in the company. Having regard to these facts, in their case, the contribution of Rs.12,000/- per annum appears to us to be on the lower side and in our considered opinion, the contribution should be Rs.24,000/- and instead of 11 multiplier, the appropriate multiplier would be 15.....”

14. The aforesaid judgment was passed by Bench of Hon'ble three Judges. Hon'ble Supreme Court again considered the award of compensation for death of a minor child in case of **Puttamma and others v. K.L. Narayana Reddy and Another** reported in **(2013) 15 SCC 45** and while considering the Motor Vehicles (Amendment Bill), 2012 has held thus :

“58. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific directions to the Central Government through the Secretary, Ministry of Road Transport and Highways to make proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of the Second Schedule as proposed or may be made by Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163-A of the 1988 Act or amendment is made by Parliament, we hold and direct that for children up to the age of 5 years shall be entitled for a fixed compensation of Rs.1,00,000/- (Rupees one lakh) and persons more than 5 years of age shall be entitled for a fixed compensation of Rs.1,50,000 (Rupees one lakh and fifty

thousand) or the amount may be determined in terms of the Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the 1988 Act.”

15. Taking into consideration the facts and circumstances of the case wherein age of deceased was in between 1-5 years and aforementioned ruling of the Hon'ble Supreme Court, I find it appropriate to award Rs.1,00,000/- towards loss of life of a child to the parents/appellants instead of Rs.75,000/- awarded by Claims Tribunal.
16. Learned Claims Tribunal has awarded Rs.5,000/- each towards loss of estate and funeral expenses. Award of compensation on other conventional heads has been considered by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and held that award of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate Rs.15,000/- and Rs.15,000/- towards funeral expenses. Type of consortium has further been explained 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** and held the consortium to be of three types; parental consortium (payable to children because of death of parents); spousal consortium (payable to surviving spouse because of death of partner) and filial consortium (payable to parents because of death of children).

17. In view of above, appellants/claimants will further be entitled for a sum of Rs.40,000/- towards filial consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.
18. Now, appellants/claimants are entitled for total compensation of Rs.1,70,000/- (1,00,000 + 40,000 + 15,000 + 15,000) instead of Rs.85,000/- 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. The other conditions of award passed by learned Claims Tribunal shall remain intact.
19. In the result, appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh