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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A (C) No. 634 of 2014

{Arising out of Award dated 21.02.2014 passed in Claim Case No. 34 of 2012 by the 4th Additional Motor Accident Claims Tribunal, Raipur}

1. Smt. Rukhmani Bai Wd/o Late Lalji, aged about 30 years;
2. Ku. Girija Sahu D/o Late Lalji, aged about 11 years;
3. Ku. Gayatri Sahu D/o Late Lalji, aged about 08 years;
4. Ku. Lukeshwari Sahu D/o Late Lalji, aged about 06 years;
5. Nohar Lal Sahu S/o Late Bhagtu Ram Sahu, aged about 52 years;
6. Smt. Shanti Bai Sahu W/o Nohar Lal Sahu, aged about 47 years;

   Appellants No. 2 to 4 are minor, hence impleaded through their natural guardian mother i.e. Appellant No. 1 Smt. Rukhmani Bai Wd/o Late Lalji, aged about 30 years.

   All R/o village Kotani, Tahsil Arang, PS Mandir Hasaud, District Raipur, Chhattisgarh.

---- Appellants

Versus

1. Hora Transport Corp. Pvt. Ltd. Raipur, Address: Fafadih Bilaspur Road, Raipur.

   Owner of Vehicle No. CG-04-J-0161
2. The United India Insurance Co. Ltd. Through: Divisional Manager; Krishna Complex, Jail Road, Kachery Chowk, Raipur.

   Insurer of Vehicle No. CG-04-J-0161

---- Respondents

For Appellant/Claimants	:	Shri Amiyakant Tiwari, Advocate
For Respondents No. 1/Owner	:	None.
For Respondent No. 2/Insurer	:	Shri Dashrath Gupta, Advocate.

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

Judgment on Board

Per P.R. Ramachandra Menon, Chief Justice

15.01.2021

1. Appeal is at the instance of the Claimants. Grievance is with regard to the inadequacy of compensation awarded by the Tribunal in connection with the death of the person concerned in a road traffic accident.

2. On 15.04.2011, the deceased Lalji Sahu was travelling in the capacity as an employee in the vehicle *i.e*. Truck bearing registration No. CG-04-J-0161 owned by the 1st Respondent and insured by the 2nd

Respondent. The Driver of the vehicle, who was originally arrayed in the party array as the 1st Respondent, passed away during pendency of the appeal; under which circumstance, his name has been sought to be deleted by filing IA No. 3 of 2021, which stands allowed.

3. The sequence of events reveals that when the vehicle reached the place of occurrence, because of the rash and negligent driving, the Truck turned turtle, causing fatal injuries to Lalji Sahu leading to his death which was sought to be compensated by filing claim petition by the widow, three minor children and the parents.

4. The claim was resisted on different grounds, particularly by the Insurer of the vehicle asserting that the policy was cancelled for want of receipt of premium. Various other contentions were also raised as to the status of the deceased and such other things. On conclusion of the trial, the Tribunal arrived at a finding that the accident was solely because of the rash and negligent driving of vehicle involved. Compensation was awarded under different heads coming to a total of Rs.5,01,600/- which was directed to be satisfied with interest at the rate of 6% per annum from the date of claim petition. Turning down the contentions of the Insurer that it was not liable to satisfy the same, the liability came to be mulcted on the shoulders of the Insurance Company.

5. It is brought to the notice of this Court by the learned counsel appearing for the parties that the award passed by the Tribunal was challenged by the Insurer by filing a separate appeal as MA(C) No. 513 of 2014. The said case was heard and finally disposed of on10.08.2020. A copy of the said verdict is placed for perusal of this Court. It is seen from the judgment that the main contention put forth by the Insurer was that Exhibit D/4 Policy issued in respect of the offending vehicle to cover the period from '26.02.2011 to 25.02.2012' on the strength of Exhibit D/1 cheque dated

18.02.2011 which came to be dishonoured by the Bankers on 04.03.2011, was cancelled on 24.05.2011 and the position was informed to the Owner and also to the RTO on that date itself. But since the accident had occurred on 15.04.2011 *i.e.* prior to the date of cancellation effected on 24.05.2011, it was held that the policy was valid and in existence as on the date of accident. In view of the fact that there was no case for the Owner that even after getting intimation as to the dishonor of the cheque, the premium was paid either by way of cash or otherwise and that the policy was got revived, this Court observed that the proper course to be followed was only to satisfy the liability by the Insurance Company and to get it recovered from the Owner, simultaneously observing that no such course was possible in respect of the Driver of the vehicle who was no more and that his legal heirs were not impleaded in the party array. Thus, the liability part stands settled and it is to be satisfied by the 2nd Respondent/Insurer who has been given the liberty to get it recovered from the 1st Respondent/Owner.

6. Coming to the quantum of compensation payable, the Tribunal has reckoned only a sum of Rs. 3000/- as the notional monthly income. Admittedly, the accident was in the year 2011. No much exploration is necessary to hold that an able-bodied youth as the deceased would have earned much more than the amount fixed by the Tribunal as notional income even if he was engaged as *Hammal* in the offending vehicle. In the said circumstances, we find it appropriate to re-fix the notional monthly income as Rs. 4000/- instead of Rs. 3000/- fixed by the Tribunal. As per the law declared by the Apex Court in ***Sarla Verma & Others v. Delhi Transport Corporation & Another***; {(2009) 6 SCC 121}, which stands affirmed by the Constitution Bench in ***National Insurance Company Ltd. v. Pranay Sethi***; {(2017) 16 SCC 680}, in the case of a person aged less than 40 years with no fixed income, future prospects have to be reckoned by adding 40% of the income reckoned for the purpose. In the said circumstance, the monthly

income comes to Rs. 5600/- {Rs. 4000+(4000X40/100). The deceased was aged about 34 years. This being the position, the appropriate multiplier, going by the above rulings, is '16' and not '17' (adopted by the Tribunal). The Tribunal has deducted only 1/5 of the income towards the personal expenses and the remaining part has been taken as the contribution to the family. In the instant case, there are '6' members in the family who are the Claimants and as such, the deduction that was possible in terms of the rulings referred to above, was "¼" and only the balance can be taken as the contribution towards family. On re-working the loss of dependency, it comes to Rs.8,06,400/- {Rs.5,600X12X16X3/4}. Since the Tribunal has awarded only a sum of Rs. 4,89,600/- towards the 'loss of dependency', the balance amount payable under this head comes to **Rs. 3,16,800/-**.

7. The Tribunal has awarded a sum of Rs.2,500/- towards the 'funeral expenses', another Rs. 2500/- towards the 'loss of estate', a sum of Rs.2000/- towards the 'loss of love and affection and mental agony' and a further sum of Rs. 5000/- towards the 'loss of consortium' which are on the lower side in the light of the rulings referred to above and also in view of the subsequent ruling rendered in ***Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram;*** {(2018) 18 SCC 130}. In the above context, there is a deficiency of **Rs. 12,500/-** under the head 'funeral expenses' and a similar extent of **Rs. 12,500/-** towards the 'loss of estate'. They are awarded accordingly.

8. It is relevant to note that the term 'consortium' has been explained by the Apex Court in a subsequent decision rendered after ***Pranay Sethi's*** case i.e. ***Magma General Insurance Co. Ltd*** (supra) whereby it has been made clear that '**parental consortium**' is a compensation given to the children in respect of demise of the parents, '**spousal consortium**' to the living spouse because of the demise of the partner and the '**filial consortium**' payable to the parents on the demise of the children.

9. 'Spousal consortium' payable to the 1st Appellant-widow is Rs.40,000/- and since the Tribunal has awarded only a sum of Rs. 5000/-, the balance payable comes to **Rs.35,000/-**. The Appellants No. 2 to 4 (the minor children) are entitled to get 'parental consortium' of **Rs.40,000/-** and similarly, the Appellants No. 5 and 6/Parents are entitled to get 'filial consortium' of **Rs.40,000/-**. The said amounts are also awarded accordingly. Thus, the additional compensation payable comes to **Rs.4,56,800/- (Rupees Four Lacs Fifty Six Thousand Eight Hundred Only)** which shall be satisfied with interest at the rate of 7% per annum from the date of claim petition till satisfaction, by the Insurer, as expeditiously as possible at any rate within 'one month' from the date of receipt of a copy of this judgment.

10. In view of the declaration made by this Court in MA(C) No. 513 of 2014 (preferred by the Insurer against the very same award), we declare that the 2nd Respondent/Insurer will be at liberty to recover the amount after satisfying the same to the Appellants/Claimants, from the 1st Respondent/ Owner of the vehicle in accordance with law.

11. The appeal stands allowed to the said extent.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE

Amit