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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 869 of 2013

{Arising out of order dated 05.07.2013 passed by Additional Motor Accident Claims Tribunal, Mungeli, District Bilaspur, Chhattisgarh in Claim Case No.101 of 2011}

1. Smt. Laxmi Bai W/o Late Vijay Kumar Kesharwani Aged About 40 Years R/o Shardha, Thana And Tah. Lormi, Distt. Bilaspur C.G.
2. Ku. Heena D/o Late Vijay Kumar Kesharwani Aged About 18 Years R/o Shardha, Thana And Tah. Lormi, Distt. Bilaspur C.G.
3. Ku. Anju D/o Late Vijay Kumar Kesharwani Aged About 15 Years Minor, Thru- Mother Smt. Laxmi Devi Kesharwani, R/o Shardha, Thana And Tah. Lormi, Distt. Bilaspur C.G.
4. Ku. Nisha D/o Late Vijay Kumar Kesharwani Aged About 13 Years Minor, Thru- Mother Smt. Laxmi Devi Kesharwani, R/o Shardha, Thana And Tah. Lormi, Distt. Bilaspur C.G.
5. Ku. Deepali D/o Late Vijay Kumar Kesharwani Aged About 11 Years Minor, Thru- Mother Smt. Laxmi Devi Kesharwani, R/o Shardha, Thana And Tah. Lormi, Distt. Bilaspur C.G.
6. Anand S/o Late Vijay Kumar Kesharwani Aged About 8 Years Minor, Thru- Mother Smt. Laxmi Devi Kesharwani, R/o Shardha, Thana And Tah. Lormi, Distt. Bilaspur C.G.
7. Ramadhar S/o Late Rambharosh Kesharwani Aged About 70 Years R/o Shardha, Thana And Tah. Lormi, Distt. Bilaspur C.G.

---- Appellants

Versus

1. Bhushan Singh @ Tinku S/o Rajendra Singh Thakur Aged About 21 Years R/o Rani Gaon, Thana And Tah. Lormi, Distt. Bilaspur C.G.
2. Ravi Singh Thakur S/o Rajendra Singh Thakur Aged About 28 Years R/o Rani Gaon, Thana And Tah. Lormi, Distt. Bilaspur C.G.
3. Iffco Tokieo General Insu.Co.Ltd. S/o Branch Office, Third Tal, Shop No. 345, 347, Lal Ganga Shopping Complex, G.E. Road, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellants	:	Shri Arjun Lal Singroul, Advocate
For Respondent No.1 and 2	:	Shri Sukhdev Prasad Sahu, Advocate
For Respondent No.3	:	Shri P.R. Patankar, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Smt. Vimla Singh Kapoor, Judge

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

06.05.2021

1. Inadequacy of the compensation awarded by the Tribunal in respect of the demise of the breadwinner of the family of the Claimants is the subject matter of challenge in this appeal.

2. On the ill-fated day i.e. on 15.10.2010, the deceased was proceeding on his motorcycle when he was knocked down at about 8.20 AM by another motorcycle ridden by the 1st Respondent, owned by the 2nd Respondent and insured by the 3rd Respondent. The loss was sought to be compensated by filing claim petition by the widow, children and father of the deceased before the Tribunal. It was contended that the deceased was having a monthly income of Rs.5,000/- by virtue of the employment in a private shop. The claim was mainly resisted on quantum and negligence. Existence of valid insurance policy was admitted from the part of the insurer. On conclusion of the trial, the Tribunal, based on the materials on record, held that the accident was solely because of the negligence on the part of the 1st Respondent/rider of the offending motorcycle.

3. Evidence was adduced from the part of the Claimants as to the monthly income of the deceased, which was accepted by the Tribunal. Based on

the entries in the postmortem report, the age of the deceased was reckoned as 45 years and in the said circumstance, appropriate multiplier was fixed as 13. After deducting 1/3rd towards the personal expenses, the loss of dependency was calculated and fixed as Rs.5,20,000/-. Awarding a sum of Rs.5,000/- towards funeral expenses, Rs.5,000/- towards loss of estate and a further sum of Rs.5,000/- towards loss of consortium, a total sum of Rs.5,35,000/- was fixed as the compensation, which was directed to be satisfied with interest at the rate of 6% per annum from the date of filing of claim application. The liability was mulcted upon the 3rd Respondent/Insurance Company on the strength of the valid insurance policy issued in this regard.

4. We heard Shri Arjun Lal Singroul, the learned counsel appearing for the Appellants and Shri P.R. Patankar, the learned counsel representing the Respondent-Insurance Company.

5. The learned counsel for the Appellants submits that the Tribunal went wrong in not considering the 'future prospects', in terms of the law laid down by the Apex Court in **Sarla Verma v. Delhi Transportation Corporation** reported in **(2009) 6 SCC 121 and National Insurance Company Limited v. Pranay Sethi & Others** reported in **(2017) 16 SCC 680**. Similarly, the amount awarded under the conventional heads are also much on the lower side in view of the dictum in the above decisions, read with **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram & Others** reported in **(2018) 18 SCC 130**. The learned counsel submitted that the multiplier ought to have been 14 since the deceased was only 44 years of age and further, there is mistake in respect of deduction towards personal expenses, in view of the number of dependents.

6. The learned counsel for the Respondent-Insurance Company concedes that the Tribunal has accepted the monthly income of deceased as Rs.5,000/- (as pleaded by the Claimants) for fixing the compensation, which is not under challenge. However, since the future prospects have not been considered by virtue of the settled position of law and further since the deceased was having only employment in a private shop, only 25% could be added towards future prospects. We find considerable force in the said submission.

7. When the Appellants contend that the deceased was only 44 years of age, no material has been produced to show the actual date of birth of the deceased. We sought for clarification from the part of the learned counsel in this regard with reference to the 'driving licence' of the deceased, who met with an accident while riding his own motorcycle, which could not be specifically explained from the part of the Appellant. This being the position, fixing of the age of the deceased, based on the entries made in the postmortem report, does not require any change and we accept the multiplier as 13.

8. It is to be noted that the Tribunal has deducted 1/3rd towards personal expenses. The Appellants have specifically mentioned in the paragraph/ground No.7.5 that there were altogether 'five' dependents. The fact that the deceased had left behind the widow, four daughters, one son apart from the father, is discernible from the materials on record. Even though, the father is not a dependent and since the Appellants contend and concede that there were only 'five' dependents, appropriate extent of deduction could only be 1/4th (where the dependents are 4 to 6) in view of the law declared by the Apex Court on the point and we re-fix the same accordingly.

9. Going by the rulings rendered by the Apex Court as cited above, 25% of the income has to be added for fixing the multiplicand. On computing the compensation payable towards loss of life as above, it comes to **Rs.7,31,250/-** (5,000 x 25% = 1,250; 5,000 + 1,250 = 6,250 x 12 x 3/4 x 13). Since the Tribunal has awarded only Rs.5,20,000/- towards loss of dependency, the balance payable comes to **Rs.2,11,250/-**.

10. The scope of 'consortium' has been subsequently explained by the Apex Court in **Magma General Insurance Company's** case (supra). It can be of three types; **Parental consortium** (payable to children because of the death of parents); **Spousal consortium** (payable to the surviving spouse because of the death of the partner) and **Filial consortium** (payable to the parents because of the death of children). This being the position, the widow of the deceased was entitled to get a sum of Rs.40,000/- towards 'Spousal Consortium'. Since the Tribunal has awarded only Rs.5,000/-, the balance payable comes to **Rs.35,000/-**. Similarly, the Appellants No.2 to 6 are entitled to get a sum of **Rs.40,000/-** towards 'Parental Consortium' and the Appellant No.7 is entitled to get a sum of **Rs.40,000/-** towards 'Filial Consortium'. Further, a sum of Rs.15,000/- is payable towards funeral expenses in view of the law declared in **Pranay Sethi** (supra). Since the Tribunal has awarded only Rs.5,000/-, a balance amount of **Rs.10,000/-** is ordered towards 'Funeral Expenses'. As per the decision rendered in **Pranay Sethi** (supra), the Appellants/Claimants are also entitled to get a sum of Rs.15,000/- towards loss of estate. Since the Tribunal has awarded only Rs.5,000/-, a balance amount of **Rs.10,000/-** is ordered under this head as well. In the said circumstance, the total balance compensation payable comes to **Rs.3,46,250/- (Three Lac Forty-Six thousand Two hundred Fifty rupees only)**.

11. Since the policy is admitted, the 3rd Respondent-Insurer is directed to satisfy the said amount before the Tribunal with intimation to the Appellants with interest @ 6% per annum from the date of the application, till satisfaction. In view of COVID-19 pandemic situation, we find it appropriate to grant 'two months' time to the Respondent-Insurance Company to effect the deposit as above. The appeal stands allowed to the said extent.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Vimla Singh Kapoor)
Judge

Anu