**NAFR**

## HIGH COURT OF CHHATTISGARH, BILASPUR

### MAC No. 142 of 2015

*{Arising out of order dated 12.11.2014 passed by learned Motor Accident Claims Tribunal, Surajpur in M.A.C. No. 93/2012}*

1. Ramprasad S/o Late Chetan Rajwade Aged About 55 Years R/o Village- Girwarganj, P.S. And Post- Surajpur, Distt. Surajpur C.G.
2. Babi W/o Ram Prasad Aged About 50 Years R/o Village- Girwarganj, P.S. And Post- Surajpur, Distt. Surajpur C.G.

**---- Appellants**

**Versus**

1. Sarvesh Kumar Chaube S/o Vikramaditya Chaube Aged About 38 Years R/o Village- Pal Danauli, P.S. And Post- Orgi, Distt. Surajpur C.G.
2. Rampal Kushwaha S/o Ramavtar Kushwaha Aged About 40 Years R/o Rampur, P.S. And Post- Orgi, Distt. Surajpur C.G.
3. United India Insu.Co.Ltd. S/o Thru- Branch Manager, Branch Ambikapur, P.S. And Post- Ambikapur, Distt. Surguja C.G.
4. Munni Devi W/o Late Revti Ram Aged About 28 Years R/o Village- Girwarganj, P.S. And Post- Surajpur, Distt. Surajpur C.G.
5. Minor Madhu D/o Late Revti Ram Aged About 11 Years Thru- Mother Smt. Munni Devi, R/o Village- Girwarganj, P.S. And Post- Surajpur, Distt. Surajpur C.G.
6. Minor Mala D/o Late Revti Ram Aged About 9 Years Thru- Mother Smt. Munni Devi, R/o Village- Girwarganj, P.S. And Post- Surajpur, Distt. Surajpur C.G.
7. Minor Aayush Kumar S/o Late Revti Ram Aged About 7 Years Thru- Mother Smt. Munni Devi, R/o Village- Girwarganj, P.S. And Post- Surajpur, Distt. Surajpur C.G.

**---- Respondents**

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| For Appellants | : | Ms. Priyanka Mehta, Advocate. |
| For Respondents No. 1&2 | : | Shri Rahul Mishra, Advocate |
| For Respondent No. 3 | : | Shri H.B. Agrawal, Sr. Advocate with Ms. Richa Dwivedi, Advocate |
| For Respondents No. 4 to 7: | | None. |

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**Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**
**Hon'ble Shri Narendra Kumar Vyas, Judge**

**Judgment on Board**

**Per P. R. Ramachandra Menon, Chief Justice**

**22.03.2021**

1. Inadequacy of the compensation awarded by the Tribunal in respect of the death of the sole bread winner of the Appellants, is the subject matter of challenge in this appeal.

2. We have heard Ms. Priyanka Mehta, learned Counsel for the Appellants as well as Shri H.B. Agrawal, learned Senior Counsel for the Respondent-Insurance Company.

3. The deceased was the son of the Appellants. He was the husband of the fourth Respondent and father of the Respondents No. 5 to 7. While proceeding along the road on his C.T. 100, Bajaj motor-cycle on 05.03.2012, the offending Tractor bearing Registration No. C.G. 16-A/1231 and Trolley No. C.G. 16-A/1232 driven by the 1st Respondent, owned by the 2nd Respondent and insured by the 3rd Respondent, knocked him down causing serious injuries. Few days thereafter i.e. on 12.03.2012, the deceased breathed his last. This led to the claim petition filed before the Tribunal by the widow and children of the deceased claiming a sum of Rs. 13,50,000/- wherein the appellants came to be added on as non-applicants No. 4 and 5; being the parents of the deceased.

4. The matter was virtually contested only on quantum and negligence. Considering the pleadings and evidence brought on record by the Respondent – Insurance Company, the Tribunal, on conclusion of the

trial, arrived at a finding that the accident was solely because of the negligence on part of the driver of the offending vehicle.

5. With regard to the fixation of the compensation, considering the fact that the deceased had crossed the age of 30 years, multiplier of 16 was adopted. Since, no document was produced to show the monthly income, it was fixed on notional basis at Rs. 3000/-. Considering the number of dependents in the family, deduction was made to an extent of 1/4th and the remaining extent was taken as contribution to the family. It was accordingly that the loss of dependency was worked out as Rs. 4,32,000/-.The Tribunal awarded Rs. 60,000/- towards conventional heads, loss of consortium, love and affection, loss of estate and funeral expenses. The total compensation was fixed as Rs. 4,92,000/-, which was directed to be satisfied with interest @ 8% per annum from the date of filing of the claim petition till satisfaction by the insurer of the offending vehicle.

6. At the very outset it is to be noted that the Claimants have not filed any appeal and the present appeal is at the instance of the parents of the deceased – who were arrayed as the non-applicants No. 4 and 5 before the Tribunal (who had preferred no claim petition). As such, strictly speaking, it is possible to non-suit the appellants, having filed no claim petition before the Tribunal. However, they have got a case that the 1st respondent/ 1st claimant/widow of the deceased had left the deceased husband about 4 years ago and was residing with her parents, alongwith the children. They contend that the deceased was living with the appellants who were solely depending upon him. However, in so far as the appellants are the parents of the deceased and can be considered as beneficiaries to the Award (to the extent they are entitled), and further

since there was a duty for the Tribunal to have passed a 'JUST' Award under Section 168 of the M.V. Act, 1988; the present appeal can be treated as filed also in view of the interest of the Minor Children of the deceased; by the Grandparents of the Children.

7. It is contended that the deceased was an agricultural labourer and an electrician as well. However, admittedly, no licence or document has been produced to prove the work as an electrician. At the same time, it cannot be lost sight of, that the accident had occurred in 2012. Even a manual labourer could have earned much more than the notional income of Rs. 3000/- reckoned by the Tribunal; as on the date of accident. Considering the facts and circumstances of the case including the fact that deceased was able to afford/to own a motorcycle and that the accident had occurred when he was riding the motorcycle, we find it appropriate to refix the notional monthly income as Rs.4500/-.

8. It is to be noted that no 'future prospects' have been considered by the Tribunal. It is settled law, as per the verdict of the Apex Court in ***Sarla Verma Vs. Delhi Transportation Corporation*** reported in **(2009) 6 SCC 121**, as affirmed in ***National Insurance Company Limited vs Pranay Sethi & Others*** reported in **(2017) 16 SCC 680** that in the case of a person below 40 years with no fixed income, 40% has to be added on towards the future prospects. As such, the reckonable figure comes to Rs. 6300/- p.m. In view of the age factor, it cannot be disputed that the multiplier is to be 16 and the deduction towards personal expenses shall be to an extent of 1/4th; treating the remaining 3/4$^{th}$ as contribution to the family. On reworking the loss of dependency, it would come to **[6300 x 12 x 3/4 x 16] Rs. 9,07,200/-** The Tribunal has awarded a sum of Rs. **4,32,000/-**, and hence the balance payable under

this Head comes to Rs. **4,75,200/-.**

9. With regard to the amount payable under conventional heads the amounts payable towards the 'Funeral expenses' and 'Loss of estate' are to be awarded at the rate of **15000/-** each.

10. The word 'consortium' has been explained in detail by the Apex Court in ***Magma General Insurance Company Limited vs Nanu Ram Alias Chuhru Ram & Others*** reported in **(2018) 18 SCC 130** whereby it has been declared that it is of three types; **Parental consortium** (payable to children because of the death of parents); **Spousal consortium** (payable to the spouse because of the death of the partner) and **Filial consortium** (payable to the parents because of the death of children). In the instant case, the widow is entitled to get 'Spousal consortium' of Rs. **40,000/-.** Similarly, the Children (Respondents No. 5 to 7) are entitled to get 'Parental consortium' of **Rs. 40,000/-**. The Appellants/parents of the deceased are entitled to get 'Filial consortium' of **Rs. 40,000/-**. The total amount payable under these conventional heads comes to **Rs. 15,000 + 15,000 + 40,000 + 40,000 + 40,000/- = Rs. 1,50,000/- (Rupees One lakh fifty thousand only)**. Since the Tribunal has awarded only a sum of Rs. **60000**/- the balance amount payable is Rs. **90,000/-.**

11. The learned Counsel for the Appellants submits that the deceased who met with the accident on 05.03.2012 was undergoing treatment at hospital till 12.03.2012. Even though, the medical bills were produced before the Tribunal carrying a total amount of Rs. 6296/-, no amount has been awarded under this head. We find that no amount has been awarded by the Tribunal towards Transportation expenses, Bye stander's expenses etc. as well. Considering the facts and circumstances, we find it appropriate to fix a total sum of Rs. **10,000**/- towards the medical

expenses, transportation expenses, attendant expenses etc. It is awarded accordingly. The total balance compensation comes to Rs. **5,75,200**/- **(Rupees five lakh seventy five thousand and two hundred only).**

12. Since the insurance cover is accepted, the said amount shall be satisfied by the Respondent- Insurance Company with interest of @ 8% per annum as fixed by the Tribunal from the date of filing the claim petition till satisfaction. We direct the 3rd Respondent/Insurance Company to deposit the compensation with interest, before the Tribunal, within one month, from the date of receipt of a copy of this judgment, with intimation to the Appellants and also the Claimants/Respondents No. 4 to 7 herein.

13. On effecting the deposit as above, the Tribunal shall disburse a sum of Rs. **3,00,000/- (Rupees three lakhs only)** to the Appellants and the balance amount shall be deposited in Fixed Deposit Accounts of a Nationalised Bank in the name of the 3 Children in equal proportion, till they attain majority or till other such appropriate time, serving intimation to the Claimants in this regard.

The appeal stands allowed to the said extent.

Sd/-

**(P. R. Ramachandra Menon)**
**Chief Justice**

Sd/-

**(Narendra Kumar Vyas)**
**Judge**

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