NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 416 of 2015

{Arising out of order dated 18.03.2015 passed by the learned Additional Motor Accident Claim Tribunal (F.T.C.), Jashpur in Claim Case No. 19/2014}

1. Naveen Minj, S/o Late Dular Minj, aged about 29 years.
2. Smt. Galoriya Minj, Wd/o Late Dular Minj, aged about 50 years.
3. Smt. Sultana, Wd/o Naveen Minj, aged about 25 years.
4. Minor Mansi, D/o Naveen Minj, aged about 05 years.
5. Minor Manish, S/o Naveen Minj, aged about 03 years.

   For Appellant No. 4 & 5 through their next friend father Naveen Minj, S/o Late Dular Minj (Appellant No. 1)

   All R/o – Village – Rengola, Post – Sitonga, P.S. - Jashpur, Tahsil & District – Jashpur, Civil & Revenue District – Jashpur (C.G.)

---- Appellants

Versus

1. Siman Sai Paikara, S/o Dayal Say Paikara, R/o Purani Toli, Jashpur Nagar, Tahsil & District – Jashpur (C.G.)
2. Ganpat Ram Nagesiya, S/o Salik Ram Nagesiya, Occupation – Driver, aged about 33 years, R/o – Village – Bhelwandih, Tahsil & District – Jashpur (C.G.)
3. The New India Insurance Company Limited, Local Branch Office Jodev Complex, Gumhariya Road, Jashpur, District – Jashpur (C.G.)

---- Respondents

For Appellants	:	Shri Rishikant Mahobia, Advocate.
For Respondents No. 1 & 2	:	None.
For Respondent No. 3	:	Shri Anil Gulati, Advocate.

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

Per P. R. Ramachandra Menon, Chief Justice

27.01.2021

1. Inadequacy of the compensation awarded by the Additional Motor Accident Claims Tribunal (F.T.C.), Jashpur (for short, 'Tribunal') in connection with the loss of life of the sole bread earner of the family is projected in this appeal filed by the Appellants/Claimants.

2. On the ill fated day *i.e.* on 12.01.2014, the deceased by name Dular Minj was returning to his village on a bicycle. When he reached the place of occurrence, he was knocked down to death by Tata Sumo bearing registration No. CG-14-MB-5816, which is owned by the 1st Respondent, driven by the 2nd Respondent and insured by the 3rd Respondent. This led to the claim petition preferred before the Tribunal.

3. It is contended by the Appellants/Claimants that the deceased was 55 years of age and was having substantial income by virtue of his avocation as a 'Mason'. The accident was because of the negligence on the part of the driver of the Tata Sumo, which in turn was sought to be compensated from the Respondents. The claim was resisted mainly on the quantum and negligence. Existence of a valid policy was admitted from the part of the 3rd Respondent. On conclusion of the trial, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the 2nd Respondent/driver.

4. With regard to the fixation of the compensation, the Tribunal reckoned only a sum of Rs. 3,000/- as the notional monthly income and deducted 1/4th towards personal expenses while taking the remaining ¾ as contribution to the family depending upon the number of the Claimants.

Adopting a multiplier of '11', the loss of dependency was worked out as Rs.2,97,000/-. A further sum of Rs.5,000/- was awarded towards the funeral expenses and another sum of Rs.5,000/- was awarded towards the loss of consortium and love and affection, thus, fixing the total compensation payable as Rs.3,07,000/- which was required to be satisfied with interest @ 9% per annum from the date of filing the claim petition, till satisfaction. Since the existence of valid policy was brought on record, the liability was mulcted on the shoulders of the 3rd Respondent/Insurer.

5. The learned counsel for the Appellant/Claimants submits that the Tribunal has not fixed the income correctly and no future prospects have been reckoned. Similarly, the amounts awarded under the conventional heads are also much on the lower side.

6. The learned counsel for the 3rd Respondent/Insurance Company submits that the Tribunal was not justified in deducting only 1/4th towards the personal expenses and the deduction should have been 1/3rd. It is pointed out by the learned counsel that the 1st Appellant/1st Claimant is a grown up son of the deceased having separate family consisting of his wife (3rd Appellant) and children (4th and 5th Appellants) who were not the legal heirs or dependents of the deceased. We find considerable force in the said submission. However, the fact remains that the monthly income fixed as Rs.3,000/- is much on the lower side. The accident was in the year 2014 and the deceased was stated as 'Mason'. Even a manual labourer as on the date of accident (in 2014) would have earned a sum of Rs.4,500/- and hence we reckon the same as the notional monthly income. Since the deceased was aged 55 years, the future prospects can only be to an extent of 10%. Thus, the multiplicand to be reckoned

comes to Rs.4,950/- (Rs.4,500 + (4,500 x 10%)). There is no dispute with regard to the multiplier taken as '11'. The deduction, as mentioned by us, had to be 1/3rd and only the remaining 2/3rd can be reckoned as the contribution to the family. On re-working the loss of dependency in the above lines, it comes to Rs.4,950 x 12 x 2/3 x 11 = **Rs.4,35,600/-**. The Tribunal has awarded only a sum of Rs.2,97,000/-. After giving credit to the said amount, the balance payable under this head comes to **Rs.4,35,600 – 2,97,000 = Rs.1,38,600/-**.

7. By virtue of the law declared by the Apex Court in ***Sarla Verma Vs. Delhi Transportation Corporation*** reported in **(2009) 6 SCC 121**, as affirmed by the Constitution Bench of the Apex Court in ***National Insurance Company Limited vs Pranay Sethi & Others*** reported in **(2017) 16 SCC 680,** amounts payable under the conventional heads such as, funeral expenses, loss of consortium and loss of estate stand settled. In the light of the said decisions the Claimants are entitled to get a sum of Rs.15,000/- towards the funeral expenses. Since the Tribunal only awarded only Rs.5,000/- there is a deficit of **Rs.10,000/-** under this head which is allowed accordingly. No amount has been award by the Tribunal towards the loss of estate. Going by the decisions cited (supra), the Appellants are entitled to get a sum of **Rs.15,000/-** towards the loss of estate and we award the same as well.

8. The concept of 'consortium' has been further explained by the Apex Court in ***Magma General Insurance Company Limited vs Nanu Ram Alias Chuhru Ram & Others*** reported in **(2018) 18 SCC 130**. It can be 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). As held by the Apex Court in

the decisions cited (supra), **Rs.40,000/-** is payable to the 2nd Claimant/Appellant, who is the widow of the deceased, towards 'Spousal consortium'. Similarly, another sum of **Rs.40,000/-** payable to the 1st Appellant/son as 'Parental consortium'. Thus, the total balance compensation payable comes to **Rs.1,38,600 + 40,000 + 40,000 + 10,000 + 15,000 = Rs.2,43,600/- (Rupees Two Lacs Forty Three Thousand & Six Hundred Only)**. This shall carry interest @ 7% per annum from the date of filing the claim petition till the satisfaction. Since the policy is admitted, we direct the 3rd Respondent/Insurance Company to deposit the amount due as above before the Tribunal, with intimation to the Appellants/Claimants, as expeditiously as possible, at any rate within 'one month' from the date of receipt of a copy of this judgment.

The appeal stands allowed to the said extent.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Brijmohan