NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1748 of 2016

Foska Sodhi S/o Late Budhu Sodhi, Aged About 24 Years R/o Village Mitakupara Kodenar District Bastar, Chhattisgarh.

---- Appellant

Versus

1. Ramadhar Yadav S/o Sonsingh Yadav, R/o Railway Colony Ward Kirandul No.18 District Dantewada, Chhattisgarh.
2. Khoukan Saha S/o Late Gopinath Saha, R/o Bangali Camp Kirandul District Dantewada, Chhattisgarh.
3. Shri Ram General Insurance Company Limited, Fourth Floor Maruti Heights G.E.Raod New Maruti Dealer Raipur District Raipur, Chhattisgarh.

---- Respondents

For Appellant : Shri Praveen Kumar Tulsyan, Advocate
For Respondents 1 & 2 : Shri Bharat Sharma, Advocate on behalf of Shri Manoj Paranjpe, Advocate
For Respondent No. 3 : Shri Pankaj Agrawal, Advocate

(Proceedings through Video Conferencing)

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

27.08.2021

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 08.09.2015 passed by the Second Additional Motor Accident Claims Tribunal, Jagdalpur, District Bastar, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.42 of 2015 whereby learned Claims Tribunal allowed an application filed under Section 166 of the M.V. Act in part, awarded Rs.50,000/- as total compensation in a fatal accident case

with interest at the rate of 9% per annum from the date of filing of claim application till its realization.

2. Brief facts relevant for disposal of this appeal, are that, on 21.10.2014, Smt. Kosi when going to weekly market, reached in front of shop of Joginder at village Kilepal, one Truck bearing No.CG-18/H/2528 (hereinafter referred to as 'offending vehicle') dashed her and caused accident. In the said accident, Smt. Kosi suffered grievous injuries over her person and succumbed to those injuries on spot.

3. Appellant/claimant, who is major son of Late Smt. Kosi filed an application under Section 166 of M.V. Act seeking compensation of Rs.8,98,000/- pleading therein that on the date of accident, deceased was working as Labourer and earning Rs.4,500/- per month.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle submitted reply to claim application, denying the facts pleaded therein. It was further pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3, non-applicant No.1 was possessed with valid and effective driving licence, hence, liability, if any, to satisfy the compensation would be upon non-applicant No.3/Insurance Company.

5. Non-applicant No.3/Insurance Company submitted reply to claim application, resisting the claim. It was further pleaded

that on the date of accident, non-applicant No.1 was not possessed with valid and effective licence, there was breach of policy conditions, hence, Insurance Company be exonerated from its liability.

6. On appreciation of pleadings and evidence brought on record by the respective parties, Tribunal held that Smt. Kosi died on account of motor accidental injures due to rash and negligent driving of offending vehicle by non-applicant No.1, breach of policy conditions was not found to be proved, while assessing age of the deceased as 40 years and income as Rs.3,000/- per month on notional basis, awarded total compensation of Rs.50,000/- towards loss of estate, funeral expenses and loss of love and affection by recording a finding that appellant/claimant is aged about 24 years, he was having agricultural land, doing the work of Labourer and earning Rs.150/- per day.

7. Shri Praveen Kumar Tulsyan learned counsel for the appellant/claimant would submit that learned Claims Tribunal has not considered the fact that there was no dispute that on the date of accident, deceased was residing with the appellant/claimant, who was her son. Even if, appellant/claimant is a major son, then also, he is entitled for amount of compensation for loss of dependency to be calculated by applying multiplier system as the amount earned by deceased would be an estate for

appellant/claimant. It is contended that identical issue has been considered by Hon'ble Supreme Court in case of **National Insurance Company Limited v. Birender and Others** reported in **AIR 2020 SC 434** wherein Hon'ble Supreme Court has held that even major sons of deceased parent would be entitled for compensation towards loss of dependency. Learned Claims Tribunal erred in assessing income of deceased as Rs.3,000/- per month only overlooking the date of accident, cost of living, price index and wage structure. Appellant/claimant in claim application very specifically pleaded that deceased was doing the work of Labourer, hence, income ought to have been assessed as Rs.4,500/- per month as pleaded in claim application. It is further argued that amount of compensation to be calculated in the light of ruling of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121, National Insurance Company Limited v. Pranay Sethi and Others** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**.

8. Per contra, Shri Pankaj Agrawal, learned counsel for respondent No.3/Insurance Company supporting the award passed by learned Claims Tribunal, would submit that as the appellant/claimant is major son of deceased, he is having

own separate income, hence, learned Claims Tribunal awarded just amount of compensation of Rs.50,000/- towards loss of estate, funeral expenses and loss of love and affection, which does not call for any interference. He further submits that rate of interest 9% awarded by Tribunal to be on higher side, which is to be reduced suitably.

9. I have heard learned counsel appearing for the respective parties and perused the record carefully.

10. Undisputedly, appellant/claimant is a major son of deceased. The relationship between deceased and appellant/claimant is not disputed. In claim application, appellant/claimant has pleaded that deceased from her income was handing over Rs.3,000/- per month to appellant/ claimant, which was being used by appellant/claimant for maintaining household expenses. This pleading was not refuted by the respondents by placing any cogent material on record.

11. Appellant/claimant Foska Sodhi was examined as AW-1 to prove his pleadings. In evidence, he stated that due to death of his mother, he was deprived of income of his mother. In cross-examination, though he admitted that he was earning Rs.150/- per day, but also stated that it is his mother who was also helping in maintaining his household expenses. Learned Claims Tribunal has taken into consideration ruling of Hon'ble Supreme Court in case of **Manjuri Bera (Smt.) v. Oriental Insurance Company Ltd. and another** reported in

(2007) 10 SCC 643 and awarded the amount of compensation towards loss of estate. Case of **Manjuri Bera** (supra) is on different facts. In that case, claimant was a married daughter, residing separately from the deceased with her husband. In those facts of the case, Hon'ble Supreme Court held that claimant was not entitled for amount of compensation towards loss of dependency and on other conventional heads, but for loss of estate only.

12. Hon'ble Supreme Court recently in case of **Birender** (supra) has considered the issue with regard to award of compensation to major and earning sons against death of their mother and held thus :

> "14. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166(1). The major married son who is also earning and not fully dependant on the deceased, would be still covered by the expression "legal representative" of the deceased. This Court in **Manjuri Bera** (*AIR 2007 SC 1474*) (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. Notably, the expression "legal representative" has not been defined in the Act. In **Manjuri Bera** (supra), the Court observed thus :

9. In terms of clause (c) of sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of Section 166 of the Act.

10..... The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.

11. According to Section 2(11) CPC, “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves

on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(g).

12. As observed by this Court in *Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique [1989 Supp (2) SCC 275]* the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". As observed in *Gujarat SRTC v. Ramanbhai Prabhatbhai [(1987) 3 SCC 234 : (AIR 1987 SC 1690)]* a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child."

In paragraph 15 of the said decision, while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as His Lordship then was, it is observed that there is distinction between “right to apply for compensation” and “entitlement to compensation”. The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos.1 and 2 (claimants) even though they are major sons of the deceased and also earning.

15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was

> fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/- and Rs.1,50,000/- per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years."

13. Coming back to the facts of the case in hand, in this case also deceased was an agricultural labourer and appellant is also engaged in agricultural work. He was also largely dependant upon income of his mother. Taking support of the ruling of Hon'ble Supreme Court in case of **Birender** (supra), I am of the considered view that learned Claims Tribunal erred in not awarding compensation towards loss of dependency by applying multiplier system, which is not sustainable and it is hereby set aside. In view of above, I find it proper to recompute the amount of compensation.

14. On the date of accident i.e. 21.10.2014, deceased was stated to be working as Labourer, hence, considering the nature of occupation, cost of living, date of accident, wage structure and price index, I am of the view that income of deceased can be taken as Rs.4,500/- per month. It is ordered accordingly.

15. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has specified the head on which compensation under other conventional heads to be awarded, such as, loss of consortium, funeral expenses and loss of estate, further quantified the compensation for each head as Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively. Types of 'consortium' has been subsequently explained by the Apex Court in **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**, to be of three types; (i) spousal consortium (payable to the surviving spouse because of the death of the partner); (ii) parental consortium (payable to children because of the death of parents) and (iii) filial consortium (payable to the parents because of the death of children). Hence, appellant will be entitled for the compensation on other conventional heads as held by Hon'ble Supreme Court in aforementioned rulings. Age of the deceased in claim application is pleaded as 42 years and in postmortem report, it is mentioned as 40 years. In view of above, I find it appropriate to reckon age of deceased as 42 years.

16. Income of deceased is taken as Rs.4,500/- per month i.e. Rs.54,000/- per annum. By adding 25% of established income towards future prospects as held by Hon'ble Supreme Court in case of **Pranay Sethi** (supra), total annual

income of deceased will come to Rs.67,500/- (54,000 x 25% = 13,500 and 54,000 + 13,500). After deducting 1/3rd towards personal and living expenses, annual loss of dependency will be Rs.45,000/- (67,500 / 3 = 22,500 and 67,500 – 22,500). Upon applying the multiplier of 14, total loss of dependency will come to Rs.6,30,000/- (45,000 x 14).

Apart from above amount of compensation towards loss of dependency, appellant/claimant is further entitled for a sum of Rs.40,000/- towards loss of parental consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of funeral expenses.

17. Now, appellant/claimant is entitled for total compensation of Rs.7,00,000/- (6,30,000 + 40,000 + 15,000 + 15,000) instead of Rs.50,000/- as awarded by learned Claims Tribunal. The enhanced amount of compensation shall carry interest at the rate of 7% per annum from the date of fling of claim application till its realization. Other conditions imposed by the learned Claims Tribunal shall remain intact.

18. In the result, appeal is allowed in part. The impugned award is modified to the extent as indicated herein above.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh