NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 403 of 2015

{Arising out of order dated 13.04.2014 passed by the Third Additional Motor Accident Claims Tribunal, Ambikapur, District Surguja, C.G in Claim Case No. 68/2012}

1. Rajendra Prasad Shukla S/o Late Tirak Prasad Shukla Aged About 54 Years R/o Police Line Road, Ambikapur, P.S. And Tahsil - Ambikapur, District Surguja Chhattisgarh

2. Smt. Sunita Shukla W/o Rajendra Prasad Shukla Aged About 47 Years R/o Police Line Road, Ambikapur, P.S. And Tahsil - Ambikapur, District Surguja Chhattisgarh.

3. Sourab Shukla S/o Rajendra Prasad Shukla Aged About 20 Years R/o Police Line Road, Ambikapur, P.S. And Tahsil - Ambikapur, District Surguja Chhattisgarh.

---- Appellants

Versus

1. Amit Kumar Tiwari S/o Prakashnath Tiwari R/o Village Passal, Bhaiyyanath, Post And Tahsil- Ambikapur, District Surguja Chhattisgarh.

2. Manoj Kumar Gupta S/o O.P. Gupta R/o Construction Colony, G.E. Road, Bhilai, Tahsil And Post - Bhilai Nagar, District Durg Chhattisgarh.

3. Iffco Tokyo General Insurance Company Ltd. S/o Through- Mahamaya Auto Car Limited, M.G. Road, Ambikapur, Post And Tahsil Ambikapur, District Surguja.

---- Respondents

For Appellants	:	Shri Abhishek Sharma, Advocate.
Respondents No. 1 & 2	:	None.
For Respondent No. 3	:	Shri Tessy Abraham, 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

22.01.2021

1. This appeal is for enhancement of the compensation awarded by the IIIrd Additional Motor Accident Claims Tribunal, Ambikapur, District Surguja, in Claim Case No. 68/2012, in connection with the death of the deceased aged about 17 years.

2. The deceased by name Kumari Sonam Shukla was proceeding for picnic in the vehicle i.e. Bus bearing registration No. CG-07LW-9909, driven by 1st Respondent, owned by 2nd Respondent and insured by 3rd Respondent. When the vehicle reached the place of accident on 23.12.2011, because of the rash and negligent driving, it hit a mango tree causing fatal injuries to the deceased leading to her death which was sought to be compensated by filing claim petition before the Tribunal by the Parents and sibling.

3. The claim was resisted mainly on the quantum and negligence. Existence of a valid policy was admitted by the Insurer. 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 1st Respondent–Driver and proceeded to fix compensation accordingly. In view of the fact that the deceased was a student, notional monthly income was fixed as Rs.3,000/-. Deducting 1/3 towards the personal expenses and reckoning the remaining 2/3 as the probable contribution to the family and adopting a multiplier of '18', the loss of dependency was fixed as Rs.1,80,000/-. The Tribunal awarded a sum of Rs.7,000/- towards the 'funeral expenses' and Rs.10,000/- towards the 'loss of love and affection' and the total compensation payable was fixed as Rs.2,07,000/- which was directed to be satisfied with interest at the rate of 6% from the date of filing of the claim petition. Since the policy was

admitted, the liability came to be mulcted upon the 3rd Respondent / Insurance Company.

4. The learned counsel for the Appellant submits that the deceased was a brilliant student and was having independent income of her own by teaching other students and also from stitching. The Tribunal has not reckoned the proper income and has also omitted to consider the future prospects. The learned counsel submits that the amounts awarded under the conventional heads are also much on the lower side.

5. The learned counsel for the 3rd Respondent / Insurance Company, however sought to justify the award with reference to the quantum pointing out that the deceased was admittedly a student and no proof of any income was produced before the Tribunal.

6. After hearing both the sides and considering the materials on record, this Court is of the view that the notional monthly income fixed by the Tribunal in respect of the accident occurred in the year 2011 is quite on the lower side. An able bodied youth of the age group engaged even in manual labour could have earned much more. In the said circumstance, we fix the monthly notional income as Rs.4,000/- to work out the compensation.

7. It is settled by virtue of the law declared by the Apex Court in ***Sarla Verma & Ors v. Delhi Transport Corp. & Anr.*** reported in **(2009) 6 SCC 12** and to the extent as affirmed by the Constitution Bench in ***National Insurance Company Limited v. Pranay Sethi & Another***, reported in **(2017) 16 SCC 680,** that in the case of persons below 40 years with no fixed income, addition of 40% by virtue of future prospects has to be made. As such, the reckonable monthly income comes to Rs.5,600/- (4,000/- + 4000X40/100). The multiplier of 18 is to be adopted on the basis of age of the deceased, as rightly done by the Tribunal. Since the deceased was only an unmarried girl,

50% of the monthly income has to be reckoned towards personal expenses and only the remaining 50% could be reckoned as contribution to the family. Thus, the loss of dependency comes to Rs.5,600 x 12 x 50/100 x 18 = 6,04,800/-. After giving credit to the sum of Rs.1,80,000/- awarded by the Tribunal, the balance compensation payable under the head 'loss of dependency' comes to **Rs.4,24,800/-**. It is ordered accordingly.

8. As per the law declared by the Apex Court in ***Sarla Verma*** (supra) and ***Pranay Sethi*** (supra), the compensation for funeral expenses shall be Rs.15,000/- and another sum of Rs.15,000/- is payable towards the 'loss of estate'. Since the Tribunal has awarded only a sum of Rs.7,000/- towards 'funeral expenses', the balance payable comes to **Rs.8,000/-** under this head. It is ordered accordingly. Since no amount has been awarded towards 'loss of estate', we award a sum of **Rs.15,000/-** in terms of the verdict passed by the Supreme Court as above.

9. 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)

10. In the instance case, the claim petition was preferred by the parents and the sibling of the deceased. By virtue of the law declared by the Apex Court in ***Magma General Insurance*** (supra), the parents of the deceased are entitled to get a sum of Rs.40,000/- towards 'Filial consortium'. Since the Tribunal has awarded only a sum of Rs. 20,000/-, the balance payable under this head comes to **Rs.20,000/-** which also stands awarded accordingly. In the above circumstance, the total additional compensation payable comes to

Rs.4,67,800/- (Rs.4,24,800/-+8,000/-+15,000/-+20,000/-) (**Rupees Four Lacs Sixty Seven Thousand Eight Hundred Only**). The said amount is required to be satisfied with interest at the rate of 7% per annum from the date of the claim petition.

11. In view of existence of valid policy, we direct the 3rd Respondent / Insurance Company to deposit the amount due to the Appellants as above before the Tribunal, with notice to the Appellants, as expeditiously as possible, at any rate within 'one month' from the date receipt of a copy of the judgment.

The appeal stands allowed to the said extent.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Hem