NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 683 of 2015

Order Reserved On : 18/10/2021
Order Passed On : 01/11/2021

1. Smt. Ganga Wd/o Dhanraj Rajput Aged About 35 Years

2. Ku. Prachi D/o Late Dhanraj Rajput Aged About 12 Years

3. Ku. Sakshi D/o Dhanraj Rajput Aged About 4 Years

4. Dharam Singh S/o Late Raqbar Singh Rajput Aged About 65 Years

5. Smt. Kalindri W/o Dharam Singh Rajput Aged About 63 Years

   Appellants No.2 & 3 are minor hence impleaded through their natural guardian mother i.e. appellant No.1 Smt. Ganga Wd/o Dhanraj Rajput, aged about 35 years,

   All R/o Village Sasaholi, P.S. Nevra, District- Raipur, Chhattisgarh

---- Appellant

Versus

1. Rajkumar S/o Satyanarayan Kosale Permanent Add Village Semariya, P.S. Nandghat, District- Mungeli, Chhattisgarh, Presently R/o Behind Trimurti Mandir, near Sanat Kirana Stores, Mathpuraina, P.S. Tikarapara, District Raipur (CG), Driver of vehicle No.CG-04/J/1532

2. Charanjit Singh S/o Dharam Pal Singh Chhabara R/o Sect. 2, Devendra Nagar, P.S./ Devendra Nagar, Raipur, Chhattisgarh, Owner of Vehicle No.CG-04/J/1532

3. The Oriental Insurance Company Limited, Through Divisional Manager, Division No-1, Jail Road, Raipur, Insurer of Vehicle No.CG-04/J/1532

---- Respondent

For Appellants : Shri Amiyakant Tiwari, Advocate.
For Respondent No.3 : Shri Pankaj Agrawal with Smt. Preeti Yadav, Adv.

Hon'ble Shri Deepak Kumar Tiwari, J

C A V Order

1. The present Appeal is directed against the award dated 20.11.2014 passed by the 3rd Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.28/2013 whereby claimants have been awarded compensation of Rs.7,27,000/- jointly or separately by the Tribunal. Compensation has been directed to be paid within 2 months along with interest @ 6% per annum. It was made clear that if the interim compensation has already been paid, then the same may be adjusted in the amount of compensation.
2. The appellants had filed an application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.19,61,000/- before the Claims Tribunal. Facts of the case are that on 15.3.2013 at about 5.30 pm the deceased was dashed by the respondent No.1 by the offending truck bearing registration No. CG-04/J-1532 near Mova Over Bridge, Raipur, which was being driven in a rash and negligent manner. As a result thereof, deceased Dhanraj suffered grievous injuries and died. It was averred that on account of rash and negligent act on the part of respondent No.1, the deceased suffered the injuries and died. The learned Tribunal while considering the claim of the claimants did not accept the plea that the deceased used to earn Rs.7500/- per month. The fact that the deceased was working as Mason is not in dispute. Therefore, the Tribunal assessed the notional income and held that the deceased was earning Rs.3500/- per month in the absence of any documentary proof; deducted 1/4th share towards the personal expenses and applied multiplier of 15 and finally awarded Rs.7,27,000/-.
3. Learned counsel for the appellants would argue that the Tribunal has erred in taking the notional income at Rs.3500/- whereas it should have

taken the judicial notice of factum of rise in price index, enhancement of labour charges, cost of living and number of dependents. The Tribunal should have assessed the compensation by holding that the deceased was earning Rs.7500/- per month in view of the semi skilled nature of job. The reasons assigned by the Tribunal in this regard are bad and the award deserves to be modified and the compensation may be enhanced.

4. Heard learned counsel for the parties at length and perused the records.

5. The Tribunal has taken the notional income of deceased at Rs.3,500/- per month. Smt. Ganga Rajput (A.W.1) has stated that her husband was working as a 'Mason'(Rajmistri) and used to earn Rs. 7,500/-per month. She has also filed a certificate issued by the Proprietor of Civil Engineering Services, Raipur in support of her contention, but she has failed to prove the said certificate by examining the employer of her deceased husband . In view of such circumstances, the learned Tribunal for want of documentary evidence of earning, as the incident took place on 15.03.2013 and considering the scale of the Government, assessed the notional income at Rs. 3,500/- per month. Therefore, this Court does not find any illegality on such finding.

<u>Addition of Future Prospectus</u>

6. The learned Tribunal has not compensated on this head. In the impugned award at para 20, date of birth of the deceased was mentioned as 08.04.1975 in his school certificate, therefore, on the date of incident his age was determined as 37 years.

7. In the matter of **Kirti v. Oriental Insurance Co. Ltd**., {(2021) 2 SCC 166} : (2021) 1 SCC (Civ) 704 : 2021 SCC OnLine SC 3 at page 177},

the following was observed for determination of future prospectus in case of notional income :-

> “**12.** *Third* and most importantly, it is unfair on part of the respondent insurer to contest grant of future prospects considering their submission before the High Court that such compensation ought not to be paid pending outcome of *Pranay Sethi* [*National Insurance Co. Ltd.* v. *Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] reference. Nevertheless, the law on this point is no longer res integra, and stands crystallised, as is clear from the following extract of the aforecited Constitutional Bench judgment [*National Insurance Co. Ltd.* v. *Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] : (SCC p. 714, para 59)
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> “59. 4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.″
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> **13.** Given how both deceased were below 40 years and how they have not been established to be permanent employees, future prospects to the tune of 40% must be paid. The argument that no such future prospects ought to be allowed for those with notional income, is both incorrect in law [*Sunita Tokas* v. *New India Insurance Co. Ltd.*, (2019) 20 SCC 688 : (2020) 4 SCC (Cri) 436] and without merit considering the constant inflation-induced increase in wages. It would be sufficient to quote the observations of this Court in *Hem Raj* v. *Oriental Insurance Co. Ltd.* [*Hem Raj* v. *Oriental Insurance Co. Ltd.*, (2018) 15 SCC 654 : (2019) 1 SCC (Civ) 293 : (2019) 2 SCC (Cri) 864], as it puts at rest any argument concerning non-payment of future prospects to the deceased in the present case: (*Hem Raj case* [*Hem Raj* v. *Oriental Insurance Co. Ltd.*, (2018) 15 SCC 654 : (2019) 1 SCC (Civ) 293 : (2019) 2 SCC (Cri) 864] , SCC p. 656, para 7)
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> “7. We are of the view that there cannot be distinction where there is positive evidence of income and where minimum income is determined on guesswork in the facts and circumstances of a case. Both the situations

> stand at the same footing. Accordingly, in the present case, addition of 40% to the income assessed by the Tribunal is required to be made.”

8. Accordingly, addition of 40% to the notional income of deceased is allowed in the head of future prospectus.

<u>I N T E R E S T</u>

9. It was also contended by counsel for the Appellants that the rate of interest should be 9% instead the tribunal has awarded @ 6% per annum. In this regard the Supreme Court held in the matter of **National Insurance Co. Ltd. –Vs- Keshav Bahadur**, {(2004) 2 SCC 370} that the provisions of payment of interest is discretionary and is not and cannot be bound by rules. No rate of interest is fixed u/s 171 of the Act and the duty has been bestowed upon the Tribunal to determine such rate of interest. The Supreme Court held that in order to determine such rate, the prevailing rate of bank interest at the relevant time has to be considered. Therefore, the learned Tribunal in para 24 after considering the rate of interest enforced by R.B.I. fixed the interest which is found to be appropriate.

<u>Loss of love and affection & “loss of consortium”</u>

10. Learned counsel for the appellants has also raised the issue that no award has been made in the head of love and affection and loss of parentage. The learned Tribunal has awarded Rs. 50,000/- each to widow, two children and father and mother of deceased on this score.

11. In the matter of **New India Assurance Co. Ltd. v. Somwati**, {(2020) 9 SCC 644 : 2020 SCC OnLine SC 720} it has been clarified that loss of love and affection” is comprehended in “loss of consortium”, therefore,

no separate award on this head could be made.

12. In the said judgment, amount of consortium to be awarded to children, parents and spouse has also been referred. The relevant para-36 is as under:-

> "**36.** In *Magma General Insurance Co. Ltd.* [*Magma General Insurance Co. Ltd.* v. *Nanu Ram*, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] as well as *United India Insurance Co. Ltd.* [*United India Insurance Co. Ltd.* v. *Satinder Kaur*, (2021) 11 SCC 780 : 2020 SCC OnLine SC 410] , the three-Judge Bench laid down that the consortium is not limited to spousal consortium and it also includes parental consortium as well as filial consortium. In para 87 of *United India Insurance Co. Ltd.* [*United India Insurance Co. Ltd.* v. *Satinder Kaur*, (2021) 11 SCC 780 : 2020 SCC OnLine SC 410] , "consortium" to all the three claimants was thus awarded. Para 87 is quoted below:
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> "*87*. Insofar as the conventional heads are concerned, the deceased Satpal Singh left behind a widow and three children as his dependants. On the basis of the judgments in *Pranay Sethi* [*National Insurance Co. Ltd.* v. *Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] and *Magma General* [*Magma General Insurance Co. Ltd.* v. *Nanu Ram*, (2018) 18 SCC 130 : (2019) 3 SCC (Civ) 146 : (2019) 3 SCC (Cri) 153] , the following amounts are awarded under the conventional heads:
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> (*i*) Loss of estate : Rs 15,000
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> (*ii*) Loss of consortium:
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> (*a*) Spousal consortium : Rs 40,000
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> (*b*) Parental consortium : 40,000 × 3 = Rs 1,20,000
>
> (*iii*) Funeral expenses : Rs 15,000"

13. So, in view of above the amount awarded in this head is found excess and it is reduced to Rs. 40,000/- each of the claimants. However under conventional heads, funeral expenses: Rs. 2,000/- and loss of estate Rs. 2,500 has been awarded, so it is required to be increased and modified

as Rs. 15,000/- on both the heads.

14. In light of the aforesaid discussion and modification , the claimants are awarded compensation as follows :

Sl. No.	HEADS	CALCULATION
1	Monthly Income	Rs. 3,500/- per month notional income
2	Yearly Income	Rs. 42000/-
3	Future Prospectus add 40%	Rs. 16,800/-
	TOTAL	Rs. 58,800/-
4	Deduction : @ 1/4 for Personal Expenses	Rs. 14,700/-
5	Compensation after Multiplier 15 is applied	Rs. 44,100 X 15 = **Rs. 6,61,500/-**
6	Loss of consortium :	40,000 X 5 = **Rs. 2,00000/-**
7	Loss of estate	**15000**
8	Funeral Expenses	**15000**
	TOTAL COMPENSATION	**Rs. 8,91,500**
	Enhance Amount	Rs. 8,91,500 - Rs. 7,27,000= Rs. **1,64,500/-**

15. Respondent No.3 Insurance Company is directed to pay the enhanced amount of compensation with interest @ 6% per annum from the date of filing of the petition i.e. 16.04.2013, within a period 60 days. The said enhanced amount with interest be paid to Appellant No.1 widow of the deceased.

16. The Appeal is accordingly allowed to the extent indicated hereinabove.

Rest of the observations as made by the Claims Tribunal shall remain intact.

17. No order as to costs.

Sd/-
(Deepak Kumar Tiwari)
Judge

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