(2023) 12 CHH CK 0018

In the Chhattisgarh High Court

Case No : MAC No. 140 Of 2020

Budhyarin Bai APPELLANT

Vs

Sanjeev Kumar Chaturvedi RESPONDENT

Date of Decision : 05-12-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2023) 12 CHH CK 0018

Hon'ble Judges : Radhakishan Agrawal, J

Bench : Single Bench

Advocate : Ajay Chandra, Swati Agrawal, Pankaj Agrawal

Final Decision : Partly Allowed

Judgement

1. Heard on I.A. No.1 of 2020.

2. This is an application for condonation of delay of 464 days in filing the MAC.

3. For the reasons mentioned in the application, which is duly supported by an affidavit, the same is allowed and delay of 464 days in filing the MAC is condoned.

4. Also heard on admission.

5. The appeal is admitted for hearing.

6. With the consent of the parties, the matter is heard finally.

7. The appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (in short "the Act") seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, District Balodabazar, C.G. in Motor Accident Claim Case No.129/2017 vide award dated 03.07.2018, thereby granting compensation of Rs.9,00,904/- with interest @ 9% per annum from the date of application till realization in favour of the claimants, fastening the liability upon respondent No.3/Insurance Company. For the sake of convenience, the parties shall hereinafter be referred to as per their description before the Tribunal.

8. As per averments made in the claim petition, on 19.11.2017 at about 5:15 pm, deceased Babudas Ratre, aged about 50 years, earning Rs.12,000/-per month by working as watchman and also doing agricultural and labour work, was going to attend his duties on cycle. However, on the way, when he reached in-front of the house of Manaram Dhritlahre situated at main road village Binori, non-applicant No.1/driver of the vehicle Trailor bearing registration No.CG04-HT-9515 (hereinafter referred as 'offending vehicle) by driving the same in a rash and negligent manner, dashed the cycle of deceased, as a result of which, deceased- Babudas Ratre sustained grievous injuries over his body and died on the spot. At the time of accident, offending vehicle was owned by non-applicant No.2 and insured with non-applicant no.3/Insurance Company.

9. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act seeking compensation to the tune of Rs.18,27,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

10. Learned counsel for the appellants/claimants submits that the income of the deceased has wrongly been assessed by the Tribunal at Rs.6,000/- per month, whereas it should be Rs.12,000/- per month, looking to the nature of work of the deceased. He further submits that the amount awarded by the Tribunal to the claimants under loss of consortium is also on lower side, which deserves to be enhanced suitably in the light of decision of Hon'ble Supreme Court in the matter of Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others reported in (2018) 18 SCC 130.

11. On the other hand, learned counsel for the respondent No.3/insurance company, while admitting that no separate appeal has been filed by the Insurance Company against the impugned award, submits that Tribunal has already awarded compensation on the higher side and also submits that the Tribunal has erred in granting 40% towards loss of future prospects, whereas it should be 25%, looking to the age of the deceased as 50 years, therefore, the compensation needs to be reassessed suitably. Reliance has been placed on the decision of Hon'ble Supreme Court in the matter of National Insurance Co. Ltd vs. Pranay Sethi, (2017) 16 SCC 68.

12. Heard learned counsel for the parties and perused the material available on record.

13. As regards the income of the deceased, though the claimants have pleaded in the claim petition that deceased was earning Rs.12,000/- per month by working as watchman and also doing agricultural and labour work, but as per the statement of AW-1 Tomal Lal, deceased was earning Rs.6,000/- per month by working as watchman. However, the Tribunal, looking to the nature of job of deceased and rate of inflation, on its own, assessed the monthly income of the deceased at Rs.5,500/-, which in the considered opinion of this Court is on lower side. From perusal of record, it is evident that deceased was also engaged in the

work of agricultural and labour work apart from the job of watchman. Therefore, considering the nature of job of the deceased as watchman and also looking to the fact that he used to earn money by doing agricultural and labour work, I propose to recompute the compensation by taking the monthly income of the deceased at Rs.6,500/- per month i.e. Rs.78,000/- per annum on notional basis.

14. In so far as future prospects is concerned, the Tribunal considering the pleadings, evidence, oral and documentary, available on record, determined the age of the deceased as 50 years, however, erred in granting 40% towards future prospects, which needs to be reduced suitably. The Hon'ble Supreme Court in the matter of Pranay Sethi (supra) has considered 25% towards loss of future prospects for the self-employed persons who are aged between 40-50 years. Therefore, in the present case, the applicable future prospects would be 25% in place of 40% as has been done by the Tribunal. Further, the Tribunal was justified in applying multiplier 13 as per the law laid down in Pranay Sethi (supra), which in my considered opinion, is correct.

15. So far as consortium part is concerned, the Supreme Court in Magma General Insurance Company Limited (supra) has observed in paras 21, 21.1, 21.2, 21.3, 22 and 23 as under:-

"21. A Constitution Bench of this Court in Pranay Sethi dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse:

21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".

21.3 Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, championship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the

compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium."

16. In view of dictum rendered in the case of Magma General Insurance Company Limited (supra), the amount of Rs.55,000/- awarded by the learned Tribunal under loss of consortium is on lower side. I, therefore, propose to re-compute the compensation by taking into account the number of dependents i.e. 2. As the appellant No.1 is the wife of the deceased, therefore, she is entitled to be awarded Rs.40,000/- towards spousal consortium. Likewise, appellant No.2, who is the son of the deceased, is also entitled to be awarded Rs.40,000/- towards parental consortium. Thus, the claimants are entitled to be awarded an additional compensation of Rs.80,000/- under the heads as mentioned above. Further, the claimants are entitled for Rs.15,000/- towards loss of estate in place of Rs.30,000/- in view of the law laid down in Pranay Sethi (supra).

17. In view of above, the claimants are held entitled for compensation in the following manner:

S.

No.

Head

Awarded by the Tribunal (Rs.)

Awarded by this Court (Rs.)

1.

Income of the deceased

Rs.5,500/- per month

Rs.6,500/- per month

Rs.6,500/- x 12 = Rs.78,000/- per annum

2.

Future Prospects

Rs.2,200/- (40% of Rs.5,500/-)

Rs.2,200 + Rs.5,500/- = Rs.7,700/-

Rs.19,500/- (25% of Rs.78,000/-)

Rs.78,000/- + Rs.19,500/- = Rs.97,500/-

3.

Deduction towards personal and living expenses of the deceased

Rs.2,566/-

(1/3 of Rs.7,700/-)

Rs.32,500/-

(1/3 of Rs.97,500/-)

4.

Annual loss of dependency

Rs.7,700/- – Rs.2,566/- = Rs.5,134/-

Rs.97,500/- – Rs.32,500/- = Rs.65,000/-

5.

Multiplier of 13 for assessing total loss of dependency

Rs.5,134/- x 13 x 12 = Rs.8,00,904/-

Rs.65,000 x 13 = Rs.8,45,000/-

6.

Towards conventional heads

Rs.15,000/- (for funeral expenses)

Rs.30,000/- (towards loss of estate)

Rs.55,000/- (towards loss of consortium)

Rs.15,000/- {for funeral expenses (as awarded by the Tribunal}

Rs.15,000/- {towards loss of estate}

Rs.40,000/- each to appellants towards loss of consortium i.e. Rs.80,000/-

Rs.9,00,904/-

Rs.9,55,000/-

Since the Tribunal has already awarded Rs.9,00,904/-, therefore, after deducting the same from the above amount i.e. Rs.9,55,000/-, the claimants are held entitled for an additional compensation of Rs.54,096/- with interest as awarded by the Tribunal.

18. In the result, the appeal is allowed in part with modification in the impugned award to the above extent. Rest of the conditions of the award shall remain intact.

