
(2023) 12 CHH CK 0014
In the Chhattisgarh High Court
Case No : MAC No. 405 Of 2020

Geeta Singh

APPELLANT

Vs

Nandkumar Verma,

RESPONDENT

Date of Decision : 07-12-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2023) 12 CHH CK 0014

Hon'ble Judges : Radhakishan Agrawal, J

Bench : Single Bench

Advocate : Abhishek Sharma, Harshmander Rastogi, N.K. Thakur

Final Decision : Partly Allowed

Judgement

1. With the consent of the parties, the matter is heard finally.
2. This appeal is by the claimants against the award dated 03.12.2019 passed by Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon, C.G. in Claim Case No.65/2018, awarding total compensation of Rs.3,22,000/- with interest @ 6% per annum from the date of application till its realization, fastening liability on the Insurance Company. For the sake of convenience, the parties shall hereinafter be referred to as per their description before the Tribunal.
3. As per averments made in the claim petition, on 24.06.2018 at about 10:00 pm, after having meal, deceased Nand Dev Singh along with his friend was walking on road, however, when he reached near Amlighaad road, he was dashed from back side by vehicle Maruti Suzuki Ignis bearing registration No.CG08-AF-6476 (hereinafter called as 'offending vehicle') being driven by its driver/non-applicant No.1 in a rash and negligent manner, as a result of which, deceased Nand Dev Singh sustained grievous injuries over his body. Thereafter, he was taken to Community Health Centre, Khairagarh where he was declared brought dead by Doctor. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.2 / Insurance Company.

4. On account of sudden demise of deceased- Nand Dev Singh, a claim petition was filed by his wife and children seeking compensation to the tune of Rs.45,20,000/- on various heads, interalia, stating that at the time of accident, deceased was 62 years old and was earning Rs.1,000/- per day by running grocery shop and was also earning from agricultural work. The Tribunal considering the evidence led by both the parties passed an award as mentioned in opening paragraph of his judgment.

5. Learned counsel for the appellants/claimants submits that the Tribunal has erred in assessing the monthly income of the deceased at Rs.4,500/-, considering him as skilled labour whereas the deceased was engaged in running grocery shop and was also involved in doing agricultural work and prior to the date of incident, deceased has filed income tax returns for Assessment Years 2015-2016 (Ex.P-6C), 2016-2017 (Ex.P-7C) and 2017-2018 (Ex.P-8C), i.e. three years consecutively, but the Tribunal did not consider the same and on its own, assessed the monthly income of the deceased. However, the Tribunal ought to have assessed the monthly income of the deceased by taking into consideration the amounts shown in the said income tax returns filed by the deceased prior to his accident. Therefore, the income of the deceased needs to be reassessed suitably. He further submits that the amount awarded by the Tribunal to the claimants towards loss of consortium is also on lower side, which deserves to be enhanced suitably. Reliance has been placed on the decisions of Hon'ble Supreme Court in the matters of Smt. Anjali and Ors vs. Lokendra Rathod and Ors, 2022 LiveLaw (SC) 1012 and Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, (2018) 18 SCC 130.

6. On the other hand, learned counsel for the respondent No.3 / Insurance Company supported the impugned award and submits that the claimants have utterly failed to prove the income of the deceased. Though some documents relating to income tax returns have been filed by the claimants to show the income, but the same were not properly proved by them. He further submits that Tribunal, on proper appreciation evidence and material brought on record, has rightly awarded compensation to the claimants, which needs no interference by this Court, while admitting that no appeal has been filed by the Insurer against the impugned award.

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

8. As regards the income of the deceased, though it was pleaded by the claimants that deceased was earning Rs.1,000/- per day by running grocery shop and in addition to that he was also involved in doing agricultural work. A perusal of the record would reveal that deceased, prior to his accident, has filed three income tax returns for the Assessment Year 2015-2016 (Ex.P-6C) showing the gross total income as Rs.2,54,380/-which includes the amount of Rs.1,45,890/- earned from business or profession and Rs.1,08,490/- from other sources, for Assessment Year 2016-2017 (Ex.P-7C), the gross total income of the deceased

was shown to be Rs.2,67,070/- which includes the amount of Rs.1,78,590/- earned from business or profession and Rs.88,480/- from other sources and lastly for Assessment Year 2017-2018 (Ex.P-8C), the gross total income was shown to be Rs.2,84,050/- which includes the amount of Rs.1,98,580/-earned from business or profession and Rs.85,470/- from other sources. Further, a perusal of evidence of AW-1 Rudrapratap Singh, son of the deceased, also shows that the deceased has filed income tax returns for three assessment years consecutively i.e. for the years 2015-2016 & 2016-2017 filed on 19.01.2017 and for the year 2017-2018 filed on 05.08.2017, thus proved the said documents. It also appears from his evidence that he has brought the original copies of said income tax returns filed by the deceased along with him while deposing the evidence. Therefore, it is clear from his evidence that deceased, prior to his accident, has filed those documents which were not rebutted by the non-applicants during cross-examination. However, the Tribunal did not consider the above documents and on its own, assessed the monthly income of the deceased at Rs.4,500/-, which, in the considered opinion of this Court, is not just and proper and needs to be reassessed suitably.

9. In the matter of Smt. Anjali & Ors (supra), the Hon'ble Supreme Court has observed in paras 9 & 10 and held as under:-

"9. The Tribunal and the High Court both committed grave error while estimating the deceased's income by disregarding the Income Tax Return of the Deceased. The appellants had filed the Income Tax Return (2009- 2010) of the deceased, which reflects the deceased's annual income to be Rs.1,18,261/-, approx. Rs.9,855/- per month. This Court in Malarvizhi & Ors., (2020) 4 SCC 228 has reaffirmed that the Income Tax Return is a statutory document on which reliance be placed, where available, for computation of annual income. In Malarvizhi (Supra), this Court has laid as under:

"10. ...We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased."

Hence, this Court is of the opinion that the deceased's annual income be fixed at Rs.1,18,261/-, approx. Rs.9,855/- per month keeping in mind the deceased's Income Tax Return for the year 2009-2010.

10. The provisions of the Motor Vehicles Act, 1988 (for short, "MV Act") gives paramount importance to the concept of 'just and fair' compensation. It is a beneficial legislation which has been framed with the object of providing relief to the victims or their families. Section 168 of the MV Act deals with the concept of 'just compensation' which ought to be determined on the foundation of fairness, reasonableness and equitability. Although such determination can never be arithmetically exact or perfect, an endeavor should be made by the Court to award just and fair compensation irrespective of the amount claimed by the

applicant/s. In *Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, this Court has laid down as under:

"16. ... "Just compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit".

10. In light of the law laid down by the Supreme Court in the above referred matter and in view of the documents i.e. Ex.P-6C, Ex.P-7C and Ex.P-8C which are copies income tax returns for Assessment Years 2015-2016, 2016-2017 and 2017-2018, filed by the deceased prior to his accident. I, therefore, propose to reassess the compensation by taking into consideration the income of Rs.1,98,580/- which was earned by the deceased prior to his accident as shown in the income tax return for assessment year 2017-2018 (Ex.P-8C). In so far as the income of Rs.85,470/- which was alleged to be earned by the deceased prior to accident, the same is not acceptable as the claimants have not specifically disclosed as to from which sources, the said income has been earned by the deceased. Therefore, income shown in the income tax return for the assessment year 2017-2018 (Ex.P-8-C) filed on 05.08.2017 i.e. Rs.1,98,580/- is considered as annual income of the deceased.

11. So far as consortium part is concerned, the Supreme Court in *Magma General Insurance Company Limited (supra)*, while dealing with the case of *National Insurance Co. Ltd vs. Pranay Sethi*, (2017) 16 SCC 68, 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."

12. In view of dictum rendered in the case of Magma General Insurance Company Limited (supra), the amount of Rs.40,000/- awarded towards loss of consortium to appellant No.1 is also on lower side. I, therefore, propose to re-compute the compensation by taking into account the number of dependents i.e. 3. As the appellant No.1 is the wife of the deceased, therefore, she is entitled to be awarded Rs.40,000/- towards spousal consortium and appellant Nos. 2 & 3, who are children of deceased, are also entitled to be awarded Rs.40,000/- each towards loss of parental consortium. Thus, a sum of Rs.1,20,000/- is assessed under above heads instead of Rs.40,000/- as awarded by the Tribunal.

13. 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.4,500/- (per month) Rs.54,000/- per annum

Rs.1,98,580/- (per annum)

2.

1/3 deduction towards personal and living expenses of the deceased
(as assessed by the tribunal)

Rs.18,000/- (1/3 of Rs.54,000/-)

Rs.66,193/-

(1/3 of Rs.1,98,580/-)

4.

Annual loss of dependency

Rs.54,000/- - Rs.18,000/- = Rs.36,000/-

Rs.1,98,580/- - Rs.66,193/- = Rs.1,32,387/-

5.

Multiplier of 07 for assessing total loss of dependency (as
assessed by the tribunal)

Rs.36,000/- x 07 = Rs.2,52,000/-

Rs.1,32,387/- x 07 = Rs.09,26,709/-

6.

Towards conventional heads

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

Rs.15,000/- {for funeral expenses}

Rs.40,000/- to appellant No.1 towards loss of consortium

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

Rs.15,000/- {for funeral expenses}

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

Total Compensation

Rs.3,22,000/-

Rs.10,76,709/-

14. Since the Tribunal has already awarded Rs.3,22,000/- after deducting the same from the above amount i.e. Rs.10,76,709/-, the claimants are held entitled for an additional compensation of Rs.7,54,709/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

15. In the result, the appeal is allowed in part with modification in the impugned

award to the above extent.