(2020) 05 CHH CK 0018

In the Chhattisgarh High Court

Case No : MAC No. 88 Of 2013

Kaushaliya Devi And Ors — APPELLANT

Vs

Angira Prasad Dwivedi And Ors — RESPONDENT

Date of Decision : 20-05-2020

Acts Referred:
Motor Vehicle Act, 1988 — Section 168

Citation : (2020) 05 CHH CK 0018

Hon'ble Judges : P.R. Ramachandra Menon, CJ;Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Manoj Paranjpe, Shivendu Pandya, Qamrul Aziz, K. Rohan, Amrito Das

Final Decision : Allowed

Judgement

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P. R. Ramachandra Menon, CJ

1. Inadequacy in the compensation awarded by the Tribunal in respect of the deceased aged about 40 years is the challenge raised in this appeal.

2. Heard Shri Manoj Paranjpe, the learned counsel appearing for the Appellants, Shri Shivendu Pandya, the learned counsel appearing for 2 nd

Respondent and Shri K. Rohan, the learned counsel representing the 3 rd Respondent.

3. On 06.12.2006, the deceased was riding a Motorcycle which dashed against a Truck bearing No. CG 15 ZC/1503, insured by the Respondent

company which was lying parked on the road; leading to the claims. The deceased was employed as a 'Panchayat Karmi' and was stated as having

separate income as well from agricultural source. The claim was resisted from the part of Respondents mainly on negligence on quantum. Policy stands admitted. After evaluation of the evidence on record, the Tribunal rendered a finding that the accident was because of the negligence on the

part of the driver of the offending Truck and also due to contributing negligence on the part of deceased rider of the Motorcycle. It was accordingly,

that the negligence was fixed in the ratio of 75%:25% (3/4th on the part of Truck driver and 1/4 th on the part of the deceased).

4. It was contented that the deceased was only aged about 29 years. With reference to the evidence on record, the Tribunal rendered a finding that he

was aged above 40 years and in the said circumstance, appropriate multiplier was fixed as '15' (as shown in column No. 4 of the verdict passed by the

Apex Court in Sarla Verma Vs. Delhi Transportation Corporation reported in (2009) 6 SCC 121). The monthly income was reckoned notionally as Rs.

1,500/-, as no higher income was proved from the part of the claimants. Accordingly, the loss of dependency was worked out, after deducting 1/3 rd

towards the personal expenses, to be Rs. 1,80,000/-. The Tribunal also awarded a sum of Rs. 2,000/- towards funeral expenses, Rs. 3,000/- towards

conveyance expenses and a further sum of Rs. 15,000/- towards loss of consortium/love and affection; thus, fixing the total compensation payable as

Rs. 2,00,000/-. Based on the contributory negligence fixed on the part of the deceased to the extent of 25%, 1/4th of the compensation was deducted

from the above total sum and the balance was awarded with interest @ 6% per annum. By virtue of the valid policy, the said liability was directed to

be satisfied by the 2 nd Respondent/Insurance Company. No appeal has been preferred by the 2 nd Respondent/Insurance Company. The dispute is

only with regard to the 'just' compensation payable to the claimants in terms of Section 168 of the Motor Vehicle Act, 1988.

5. The learned counsel for the Appellants fairly submits that the grounds raised with reference to the fixation of the contributory negligence and also

the fixation of multiplier as '15' are not pressed; but the quantum fixed requires much enhancement. The Tribunal, for want of better evidence, fixed

the monthly income as Rs. 1,500/-. The certificate produced showing the engagement of the deceased as a Panchayat Karmi (issued by the

Sarpanch) was not accepted for the reason that the Sarpanch was not examined. So also, it was held that there was no evidence with regard to the

alleged income from other sources. But the fact remains that the deceased was maintaining a family consisting of 6 persons; the 1st claimant being the widow, 2nd and 3rd being children, 4th and 5th being the parents and the 6 th one, a sibling. Eventhough, the sibling is not liable to be treated as a

dependent, also having attained majority, the deceased was still maintaining a family consisting of 5 persons. That apart, admittedly, the accident

occurred when the deceased was riding his Motorcycle and the fact that he was able to maintain a Motorcycle itself is a pointer as to the possible

income.

6. The learned counsel for the Appellants also seeks for reckoning of higher income in view of the course pursued by the Apex Court in Laxmi Devi

& Others vs. Mohammad Tabbar & Another reported in (2008) 12 SCC 165 and in Sanjay Kumar vs Ashok Kumar & Another reported in (2014) 5

SCC 330. The factual situation considered in the said cases may be different with reference to the wage structure prevailing in the particular area.

However, considering the totality of the circumstances as discussed above, it would be only just and proper to double the income reckoned by the

Tribunal and fix it notionally as Rs. 3,000/- per month.

7. Going by the law declared by the Constitutional Bench of Apex Court in National Insurance Company Limited vs Pranay Sethi & Others reported

in (2017) 16 SCC 680, the dependents are entitled to get compensation of Rs. 15,000/- towards funeral expenses, Rs. 15,000/- towards loss of estate

and a sum of Rs. 40,000/- towards the loss of consortium. In a subsequent decision in Magma General Insurance Company Limited vs. Nanu Ram

Alias Chuhru Ram & Others reported in (2018) 18 SCC 130 it has been made clear by the Apex Court that the term 'Consortium' can be 'Parallel

Consortium' (payable to the children because of the death of parents, 'Spousal Consortium' payable to the spouse because the demise of the partner

and 'Final Consortium' payable to the parents because of the death of children). As it stand so, apart from the 'Spousal Consortium' awarded to the 1st

Appellant herein, we find it appropriate to award a sum of Rs. 40,000/- towards the 'Parallel Consortium' and another Rs. 40,000/- towards the 'Final

Consortium'. Similarly, it has been held by the Apex Court in Sarla Verma's (supra) case that, in the case of the family dependents consisting of

numbers between 4 to 6, deduction towards personal expenses shall be only 1/4th and not 1/3rd as above by the Tribunal.

8. 'Future prospects' in the case of salaried person of the age group between 40

years - 50 years, it has been held in Sarla Verma (supra) that 30%

has to be enhanced, whereas in the case of such other persons without a definite income, the enhancement towards future prospects for the age group

of 40 to 50 years has to be enhanced by 25%. Applying the said norm, which stands affirmed by the Constitution Bench of the Apex Court in the

Pranay Sethi's (supra) case, the monthly income, after considering the 'future prospects' in the instant case, has to be re-fixed as Rs. 3,000 + 3,000 x

25/100 = Rs. 3,750/- per month. The loss of dependency, thus comes Rs. 3,750 x 12 x Â¾ x 15 = Rs. 5,06,250/-. After deducting the compensation

awarded by the Tribunal under the said head, the balance comes to Rs. 3,26,250/- (Rs. 5,06,250 - Rs. 1,80,000).

9. Towards the funeral expenses, the Tribunal has awarded only Rs. 2,000/- which requires to be stepped up to Rs. 15,000/- and hence the balance to

be awarded in this regard will be Rs. 13,000/-. It is seen that no amount has been awarded by the Tribunal towards loss of estate and for pain and

suffering. We find it appropriate to award a sum of Rs. 15,000/- and Rs. 10,000/- respectively under these heads. Thus, the total differential

compensation comes to Rs. 4,44,250/-. Since 25% has to be deducted towards the contributory negligence on the part of the deceased, the actual

additional compensation payable is only Rs. 3,33,187.50/-; which stands rounded to Rs. 3,33,200/- (Three lakhs thirty three thousand two hundred).

10. The above compensation shall be paid with interest @ 7% per annum from the date of the accident, till the deposit. Since the policy coverage is

admitted, we direct the 2nd Respondent/Insurance Company to remit the said amount with interest as aforesaid before the Tribunal, as expeditiously

as possible, at any rate within 'two months' from the date of receipt of a copy of this judgment. Appeal stands allowed to the said extent.

