(2023) 12 CHH CK 0024

In the Chhattisgarh High Court

Case No : MAC No. 581 Of 2021

Maheshwari Paikra APPELLANT

Vs

Akendra Kumar Baitha RESPONDENT

Date of Decision : 08-12-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2023) 12 CHH CK 0024

Hon'ble Judges : Radhakishan Agrawal, J

Bench : Single Bench

Advocate : Ankita Shukla, A.N. Pandey, Anurag Singh, Shivendu Pandya

Final Decision : Partly Allowed

Judgement

1. This appeal is by the claimants against the award dated 22.02.2021 passed by Motor Accident Claims Tribunal, Ambikapur, District Surguja, C.G. in Motor Accident Claim Case No.230/2019, awarding total compensation of Rs.10,78,000/- with interest @ 7% 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.

2. As per averments made in the claim petition, on 11.10.2019 at about 9:40 pm, deceased- Bahoran Paikra, aged about 35 years, earning Rs.16,000/- per month by working as Mason, along with other companions was returning to his home from Pratappur in pickup bearing registration No.CG15-CX-8103. However, on the way near village Jagarnathpur, non-applicant No.1 had parked the vehicle Truck bearing No. CG15-AC-5784 (hereinafter called as 'offending vehicle') in the middle of the road without any signal or indicator in a negligent manner, as a result of which the said pickup got dashed against the offending vehicle. In the said accident, deceased- Bahoran Paikra suffered grievous injuries over his body and during treatment in the Medical College Hospital, Ambikapur, he died on 18.11.2019. At the time of accident, the offending vehicle was owned by non-

applicant No.2 and insured with non-applicant No.3.

3. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act to the tune of Rs.35,14,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

4. Learned counsel for the appellants/claimants submits that the income of the deceased has wrongly been assessed by the Tribunal at Rs.5,000/-per month, whereas it should be Rs.16,000/- per month, looking to the nature of work of the deceased. She further submits that the amount awarded by the Tribunal under loss of consortium is also on lower side, which deserves to be enhanced suitably. Reliance has been placed on the 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.

5. On the other hand, learned counsel for the respondent No.3 / Insurance Company supported the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation, which needs no interference by this Court. He also submits that the Insurance Company has not filed any appeal against the impugned award.

6. Learned counsel for the respondent No.2 / owner supports 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 the claimant/AW-1 Maheshwari Paikra, wife of deceased, has stated that deceased was earning Rs.16,000/- per month by working as Mason, but no documentary evidence in support thereof has been adduced by her to substantiate the said fact. Therefore, the learned Tribunal, on its own, assessed the monthly income of deceased at Rs.5,000/-, which in the considered opinion of this Court is on lower side. Therefore, by taking into consideration the nature of work of deceased, his age at the time of accident i.e. 35 yeas and rate of inflation at the relevant time, I, propose to recompute the income of the deceased at Rs.7,500/- per month i.e. Rs.90,000/- per annum, considering the deceased as unskilled labour.

9. 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 680, 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."

10. In view of dictum rendered in the case of Magma General Insurance Company Limited (supra), the amount of Rs.40,000/- awarded under 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. 5. As the appellant No.1 is the wife of deceased, she is entitled to be awarded Rs.40,000/- towards loss of spousal consortium. Appellant Nos. 2 & 3, who are the children of the deceased, are entitled to be awarded Rs.40,000/- each towards loss of parental consortium and likewise, appellant Nos. 4 & 5, who are the parents of the deceased, are also entitled to be awarded Rs.40,000/-each towards loss of filial consortium. Thus, a sum of Rs.2,00,000/- is assessed under such heads.

11. 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.5,000/- per month

Rs.5,000/- x 12 =

Rs.60,000/- (per annum)

Rs.7,500/- per month

Rs.7,500/- x 12 =

Rs.90,000/- (per annum)

2.

Future Prospect 40% (as

assessed by the tribunal)

Rs. 24,000/- Rs.60,000/- + Rs.24,000 = Rs.84,000/-

Rs.36,000/- Rs.90,000/- + Rs.36,000/- = Rs.1,26,000/-

3.

1/4 deduction towards personal and living

expenses of the deceased (as assessed by the tribunal)

Rs.21,000/- (1/4 of Rs.84,000/-)

Rs.31,500/-

(1/4 of Rs.1,26,000/-)

4.

Annual loss of dependency

Rs.84,000/- – Rs.21,000/-

= Rs.63,000/-

Rs.1,26,000/- – Rs.31,500/-

= Rs.94,500/-

5.

Multiplier of 16 for assessing total loss of dependency (as assessed by the tribunal)

Rs.63,000/- x 16 = Rs.10,08,000/-

Rs.94,500/- x 16 = Rs.15,12,000/-

6.

Towards conventional heads

Rs.15,000/- (towards loss of estate)

Rs.15,000/- {towards loss of estate (as awarded by the Tribunal)}

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

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

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

Rs.40,000/- each to appellants i.e. Rs.2,00,000/- towards loss of consortium

Rs.10,78,000/-

Rs.17,42,000/-

12. Since the Tribunal has already awarded Rs.10,78,000/- after deducting the same from the above amount i.e. Rs.17,42,000/-, the claimants are held entitled for an additional compensation of Rs.6,64,000/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

13. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

