(2024) 01 CHH CK 0111

In the Chhattisgarh High Court

Case No : MAC No. 708 Of 2016

Manorama Kamla Bariha — APPELLANT

Vs

Resham Lal Sahu — RESPONDENT

Date of Decision : 29-01-2024

Acts Referred:

Citation : (2024) 01 CHH CK 0111

Hon'ble Judges : Radhakishan Agrawal, J

Bench : Single Bench

Advocate : Balraj Gupta, Devershi Thakur, Chitra Shrivastava

Final Decision : Partly Allowed

Judgement

1. This appeal is by the claimants against the award dated 08.12.2015 passed by the 1st Additional Motor Accident Claims Tribunal, Mahasamund, District: Mahasamund, (C.G.) in Motor Accident Claim Case No. H-152/2014 awarding total compensation of Rs. 17,25,000/- with interest @ 6% per annum from the date of application till realization, while fastening liability on the respondents herein jointly and severally.

2. As per claim petition, on 20.02.2014, while the deceased Birendra Kumar Bariha was going on his motor cycle from village Bastar Bhattipara to Naikguda, at that time, the offending vehicle Bus bearing registration No. CG 04 E 0021, being driven by its driver/respondent No.1 in a rash and negligent manner, dashed the motorcycle of deceased, as a result of which, deceased received serious injuries over his body and died. At the time of accident, offending vehicle was owned by respondent No. 2 and duly insured with respondent No. 3.

3. The Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

4. Learned counsel for the appellant/claimants submits that income of the deceased has been assessed by the Tribunal at Rs. 12,500/- per month by

rounding of the figure, whereas it was assessed to be at Rs. 12,519/- per month, looking to the nature of work of the deceased. He also submits that no amount towards future prospects has been granted by the Tribunal. Reliance has been placed on the decision of Hon'ble Supreme Court in the matter of National Insurance Company Limited vs Pranay Sethi and others, (2017) 16 SCC 680.

5. On the other hand, learned counsel for the respondent No.3/insurance company, while admitting that no appeal has been filed by the Insurance Company against the impugned award, submits that the amount awarded by the Tribunal towards conventional heads is on higher side, which needs to be modified suitably. He also submits that there is no scope for any enhancement in this appeal. Reliance has been placed on the decision of Supreme Court in the matter of Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others reported in (2018) 18 SCC 130.

6. I have heard learned counsel for the appellant and perused the award impugned including the record of the Tribunal.

7. As regards the income of the deceased, initially the deceased was appointed on the post of Lecturer in the office of Jila Panchayat, Bastar, temporarily for a probation of two years and was earning a sum of Rs. 12,519/- which is evident from the documents i.e. income certificate and order of appointment i.e. vide Ex.P/9 and P/12. However, the Trial Court after taking into consideration the evidence, held that the deceased was earning Rs. 12,519/- per month and by rounding off the figure assessed the income of the deceased to Rs. 12,500/- per month, which in the considered opinion of this Court is not reasonable as the income of the deceased should be considered the same as it was assessed earlier i.e. Rs. 12,519/-Therefore, I propose to reassess the income of the deceased at Rs. 12,519/- per month i.e. Rs. 1,50,948/- per annum.

8. 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 37 years, however, erred in not granting any amount towards future prospects, which in the considered opinion of this Court is not just and proper. The Hon’ble Supreme Court in the matter of Pranay Sethi (supra) has considered 40% towards loss of future prospects, who are aged below 40 years. Therefore, in the facts of the present case, looking to the age of the deceased i.e. 37 years as assessed by the Tribunal, the applicable percentage of future prospects would be 40%.

9. So far as head consortium is concerned, the Supreme Court in Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others reported in (2018) 18 SCC 130, while dealing with the case of Pranay Sethi (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.”

10. In view of dictum rendered in the case of Magma General Insurance Company Limited (supra), the amount of Rs. 2,00,000/- awarded under loss of consortium to appellants is on higher side. I, therefore, propose to re-compute the compensation by taking into account the number of dependents i.e. 3 (wife of deceased-appellant herein & parents of deceased i.e. appellant No. 1 to 3). As the appellant No. 1 is the wife of deceased, she is entitled to be awarded Rs.40,000/- towards loss of spousal consortium and appellant No. 2 and 3, 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.1,20,000/- is assessed under such heads in place of Rs. 2,00,000/-. Further, as per the law laid down by

the Supreme Court in the matter of Pranay Sethi (supra), the appellants herein are entitled to be awarded a sum of Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate in place of Rs. 25,000/- as awarded by the Tribunal.

11. In view of above, the appellants herein wife and parents of the deceased 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. 12,500/- per month

Rs. 12,500/- x 12 =

Rs.1,50,000/- (per annum)

Rs.12,519/- per month

Rs.12,519/- x 12 = Rs.1,50,228/- (per annum)

2.

Future Prospect

Not granted

40% of Rs.1,50,228/- Rs.60,091/-

Rs.1,50,228/- +

Rs.60,091/- = Rs.2,10,319/-

3.

Deduction towards personal and living expenses of the deceased

Rs.50,000- (1/3 of Rs.50,000/-)

Rs.2,10,319/- (1/3 of Rs.70,106/-)

4.

Annual loss of dependency

Rs.1,50,000/- – Rs.50,000/-

= Rs.1,00,000/-

Rs.2,10,319/- –

Rs.70,106/- = Rs.1,40,213/-

5.

Multiplier for assessing total loss of dependency

Rs.1,00,000/- x 15 = Rs.15,00,000/-

Rs.1,40,213/- x 15 = Rs.21,03,195/-

6.

Towards conventional heads

Not granted

Rs.25,000/- (for funeral expenses)

Rs.2,00,000/- to appellants towards loss of consortium

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

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

Rs.40,000/- each to appellants herein i.e. Rs.1,20,000/- towards loss of consortium

Rs.17,25,000/-

Rs.22,53,195/-

12. Since the Tribunal has already awarded Rs.17,25,000/- after deducting the same from the above amount i.e. Rs. 22,53,195/-, the appellants herein are held entitled for an additional compensation of Rs.5,28,195/- 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.