

(2023) 05 CHH CK 0033
In the Chhattisgarh High Court
Case No : MAC No. 1055 Of 2016

Meena Devi

APPELLANT

Vs

Bijendra Kumar

RESPONDENT

Date of Decision : 12-05-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2023) 05 CHH CK 0033

Hon'ble Judges : Radhakishan Agrawal, J

Bench : Single Bench

Advocate : Ritesh Verma, Aishley Shrivastava, Qamrul Aziz

Final Decision : Partly Allowed

Judgement

1. This appeal is by the claimants against the award dated 18.03.2016 passed by the Motor Accident Claims Tribunal, District Janjgir-Champa, C.G. in Motor Accident Claim Case No.30/2015 awarding total compensation of Rs.40,59,052/- with interest @ 8% 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 31.05.2015, deceased Geetaram, aged about 55 years, earning Rs.62,037/- per month as ADC Attendant Grade-I, working in C.G. State Power Transmission Company Limited, Bhilai, was going from railway station Naila to Siwani in auto-rickshaw along with others passengers. However, on the way non-applicant no.1 by driving the vehicle truck hyva bearing no.CG10-C-7568 (hereinafter referred to as 'offending vehicle') in a rash and negligent manner, dashed the said auto-rickshaw, as a result of which, deceased- Geetaram suffered grievous injuries on his body and succumbed to the same. 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.95,56,107/-, 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 though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds:-

(i) that income of the deceased has wrongly been considered by the Tribunal as Rs.45,841/- per month whereas it should have been Rs.62,037/- per month looking to the job of the deceased and pay slip of deceased i.e. Ex.A-13.

(ii) that no amount towards future prospect has been granted to the claimants.

(iii) that the Tribunal has wrongly deducted 1/3 towards personal and living expenses whereas it should have been ¼.

(iv) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

5. On the other hand, learned counsel for the respondent No.2/owner and respondent No.3/insurance company support the impugned award and submit that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

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

7. As regards the income of the deceased, admittedly the deceased was working as ADC Attendant Grade-I in C.G. State Power Transmission Company Limited, Bhilai and used to receive net salary of Rs.45,841/- per month as per pay slip Ex.A/13. The Tribunal for the purposes of assessment of his salary has taken net salary of Rs.45,841/- whereas the Tribunal should have taken the basic pay i.e. Rs.26,050/- + dearness allowance i.e. Rs.31,791/- of the deceased employee, which comes to Rs.57,841/- and the Tribunal has wrongly taken the net salary of the deceased employee as Rs.45,841/-. In the facts and circumstances of the case, I propose to recompute the salary of the deceased employee on the basis of Ex.A-13 (pay slip) as Rs.57,841/- per month.

8. So far as dependency upon the deceased is concerned, the deduction of 1/3 made by the Tribunal towards personal and living expenses of the deceased also cannot be faulted with for the reason that the appellant No.2, who is the daughter of the deceased, has already married and is residing in her matrimonial home, therefore, for the purpose of assessing dependency of appellant No.2, cannot be considered as dependent of the deceased at the relevant time. Thus, considering the number of dependents on the deceased i.e. wife and two children, the Tribunal was justified in making 1/3 deduction towards personal and living expenses of the deceased.

9. Further, the Tribunal has not awarded any amount towards future prospects. While dealing with the same aspect, the Hon'ble Supreme Court in the matter of

National Insurance Co. Ltd. vs. Pranay Sethi, (2017) 16 SCC 680 has held in para 59.3 as under:-

xxxxx xxxxx xxxxx xxxxx xxxxx

"59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."

xxxxx xxxxx xxxxx xxxxx xxxxx

10. Therefore, keeping in mind the aforesaid observation by the Supreme Court and considering the age of the deceased as 55 years, this Court is of the opinion that 15% of his annual income ought to have been added to annual income.

11. While dealing with the head consortium, the Supreme Court in Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others reported in (2018) 18 SCC 130 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 vs. Nanu Ram @ Chuhru Ram and others (supra), the amount of Rs.25,000/- awarded under loss of love and affection, loss of estate and for funeral is also on lower side. I, therefore, propose to re-compute the compensation taking into account the number of dependents. As the claimant/applicant No.1, who is the wife of deceased, is entitled to be awarded Rs.40,000/- towards spousal consortium whereas appellants Nos. 2 to 4 are children of the deceased, therefore, each of them are entitled to be awarded a sum of Rs.40,000/- in the light of Magma General Insurance Company Limited (supra). In addition, the claimants are also entitled to be awarded a sum of Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate in view of the decision of Hon'ble Supreme Court in the matter of Pranay Sethi (supra).

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.45,841/- per month

Rs.57,841/- per month

Rs.57,841 x 12 =

Rs.6,94,092/- (per annum)

2.

Future Prospect 15%

Not Considered

Rs.1,04,113/-

Rs.6,94,092/- + Rs.1,04,113/- = Rs.7,98,205/-

3.

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

Rs.15,280/- (1/3 of Rs.45,841/-)

Rs.2,66,068/- (1/3 of Rs.7,98,205/-)

4.

Annual loss of dependency

Rs.45,841/- – Rs.15,280/-

= Rs.30,561/-

Rs.7,98,205/- – Rs.2,66,068/- = Rs.5,32,137/-

5.

Multiplier of 11 for assessing

total loss of dependency

Rs.30,561 x 12 x 11 = Rs.40,34,052/-

Rs.5,32,137 x 11 = Rs.58,53,507/-

6.

Towards conventional heads

Rs.25,000/-

(towards loss of estate, loss of funeral and loss of love and affection)

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

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

Rs.40,000/- to appellant No.1 (towards spousal consortium)

Rs.1,20,000/- to appellants No. 2 to 4 (towards parental consortium)

Rs. 40,59,052/-

Rs.60,43,507/-

14. Since the Tribunal has already awarded Rs.40,59,052/- after deducting the same from the above amount i.e. Rs.60,43,507/-, the claimants are held entitled for an additional compensation of Rs.19,84,455/- with interest @ 8% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

15. It is pertinent to mention here that the Motor Vehicles Act is a beneficial and welfare legislation aimed at providing relief to the victims or their families, in cases of genuine claims. The Tribunals must bear in mind the object of the Act in awarding just and fair compensation to the victim or motor accident cases and it is also the bounden duty of the Court/Tribunals to see that the victim or injured of the motor accident to get just compensation and in assessing, what has been described as a just compensation under the Act, all factors including possibilities have to be kept in mind. But in this case, learned MACT has not properly assessed the income of the deceased by not taking a salary slip available on record and also ignored the compensation under the head future loss of income as well as towards loss of consortium as held in *Pranay Sethi (supra)*, *Sarla Verma (supra)* & *Magma General Insurance Company Limited (supra)*.

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