(2023) 06 CHH CK 0032

In the Chhattisgarh High Court

Case No : MAC No. 1286 Of 2019

Pratap Singh Netam APPELLANT

Vs

Rajesh Chakradhari RESPONDENT

Date of Decision : 22-06-2023

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2023) 06 CHH CK 0032

Hon'ble Judges : Radhakishan Agrawal, J

Bench : Single Bench

Advocate : Vipin Singh, Abhishek Sharma, B.N. Nande, Anil Gulati

Final Decision : Partly Allowed

Judgement

1. This appeal is by the claimants against the award dated 07.05.2019 passed by the 9th Additional Motor Accident Claims Tribunal, Bilaspur, C.G. in Claim Case No.416/2018, awarding total compensation of Rs.10,07,440/- with interest @ 8% per annum from the date of application till its realization, fastening liability on the Insurance Company, driver and owner jointly and severally. 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 03.05.2018 at about 5:00 pm, deceased- Narendra Singh Netam, aged about 22 years, earning Rs.8,000/- per month as Helper in Hywa Truck and Trailer, was returning to his home on motorcycle bearing registration No.CG10-U-2136. However, when they reached near Kadaar National Highway, non-applicant No.1 /driver of the vehicle Trailer bearing registration No.CG13-LA-5360 (hereinafter referred to as 'offending vehicle'), by driving the trailer in a rash and negligent manner, dashed the vehicle of the deceased, as a result of which, deceased sustained 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.23,08,000/-, 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 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.6,200/- per month whereas it should have been Rs.8,000/-per month looking to the job of the deceased.

(ii) that the amount awarded under loss of consortium also being on the lower side deserves to be enhanced suitably. In support of his contention, he has placed reliance 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 awarded by the Tribunal under the head of loss of consortium is also just and proper. In support of his contention, he has placed reliance on the decision of Hon'ble Supreme Court in the matter of Pranay Sethi, (2017) 16 SCC 680.

6. Counsel for the respondent No.1/driver submits that the finding of learned Tribunal in fastening the liability on non-applicants jointly and severally is not sustainable in the eye of law. Since the vehicle was insured with the Insurance Company, the liability, if any, could be fastened upon the Insurance Company.

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

8. As regards the income of the deceased, though the claimants have pleaded that the deceased was earning Rs.8,000/- per month by working as Helper in Hywa Truck and Trailer, but no documentary evidence in support thereof has been adduced to substantiate that fact. Therefore, in these circumstances, in absence of any proof regarding income, the Tribunal has assessed the monthly income of the deceased as Rs.6,200/-per month, which in the considered opinion of this Court is not reasonable. I, therefore, propose to recompute the income of the deceased by taking into account the fact that the accident occurred on 03.05.2018, at that time, deceased was a young boy, aged about 22 years, his income can safely be taken as Rs.7,500/- per month.

9. So far as head consortium is concerned, the Supreme Court in Magma General Insurance Company Limited (supra), 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 vs. Nanu Ram @ Chuhru Ram and others (supra), the amount of Rs.40,000/- awarded by the learned Tribunal under loss of consortium is on lower side. I, therefore, propose to re-compute the compensation by taking into account the number of dependents i.e. 2 in number. As the claimants/appellants are the parents of deceased, therefore, they are entitled to be awarded Rs.40,000/- each i.e. Rs.80,000/-towards filial consortium in the light of Magma

General Insurance Company Limited (supra).

11. In view of above, the claimants are held entitled for compensation in the following manner:

S.

No.

Head

Awarded by (Rs.)

the

Tribunal

Awarded by this Court (Rs.)

1.

Income of the deceased

Rs.6200/- per month Rs.6,200/- x 12 = 74,400/-

Rs.7,500/- per month Rs.7,500/- x 12 = Rs.90,000/- (per annum)

2.

Future Prospect 40%

Rs.29,760/- Rs.74,400/- + Rs.29,760/- = Rs.1,04,160/-

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

3.

1/2 deduction towards personal and living expenses of the deceased (as assessed by the tribunal)

Rs.52,080/- (1/2 of Rs.1,04,160/-)

Rs.63,000/- (1/2 of Rs.1,26,000/-)

4.

Annual loss of dependency

Rs.1,04,160/- – Rs.52,080/- = Rs.52,080/-

Rs.1,26,000/- – Rs.63,000/- = Rs.63,000/-

5.

Multiplier of 18 for assessing total loss of dependency

Rs.52,080/- x 18 = Rs.9,37,440/-

Rs.63,000/- x 18 = Rs.11,34,000/-

6.

Towards conventional heads

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

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

Rs.40,000/- (towards loss of consortium)

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

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

Rs.40,000/- each to appellants (towards filial consortium) i.e. Rs.80,000/-

Rs.10,07,440/-

Rs.12,44,000/-

12. Since the Tribunal has already awarded Rs.10,07,440/- after deducting the same from the above amount i.e. Rs.12,44,000/-, the claimants are held entitled for an additional compensation of Rs.2,36,560/- with interest @ 8% per annum from the date of application till realization. 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.

