

(2024) 01 CHH CK 0109
In the Chhattisgarh High Court
Case No : MAC No. 482 Of 2016

Savitri Bai

APPELLANT

Vs

Kamlesh Kumar

RESPONDENT

Date of Decision : 30-01-2024

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2024) 01 CHH CK 0109

Hon'ble Judges : Radhakishan Agrawal, J

Bench : Single Bench

Advocate : Jitendra Gupta, P.K. Goswami, Chitra Shrivastava

Final Decision : Partly Allowed

Judgement

1. This appeal is by the claimants against the award dated 23.11.2015 passed by the 4th Additional Motor Accident Claims Tribunal, Durg, C.G. in Claim Case No.42/2015, awarding total compensation of Rs.8,39,100/-with interest @ 6% 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 15.05.2015, deceased-Pannalal, aged about 45 years, earning Rs.20,000/- per month by running a General Store, along with his wife (Smt. Savitri Bai)- appellant No.1 was going to village Somni on motorcycle bearing registration No. CG08-U-8284. However, on the way, when they reached near village Kandul, non-applicant No.1 / driver of the Metador bearing registration No.CG04-G-6482 (hereinafter referred as 'offending vehicle') by driving the same in a rash and negligent manner, dashed the said motorcycle of deceased, as a result of which, deceased sustained grievous injuries over his body and died. In the said accident, appellant No.1-Smt. Savitri Bai also sustained injuries over her body. At the time of accident, the offending vehicle was owned by non-applicant no.2 and duly insured with non-applicant no.3.

3. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act seeking compensation to the tune of Rs.37,50,000/-, 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.4,500/-per month, whereas it should be Rs.20,000/- per month, looking to the nature of work of the deceased. He further submits that the Tribunal has not awarded any amount towards loss of estate. He also submits that the amount awarded by the Tribunal under the head of loss of consortium is also on lower side, which needs to be enhanced suitably. Reliance has been placed on the decisions of Hon'ble Supreme Court in the matters of Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others reported in (2018) 18 SCC 130 & National Insurance Co. Ltd vs Pranay Sethi, (2017) 16 SCC 680.

5. On the other hand, learned counsel for the respondent No.3 / Insurance Company, while admitting that no separate appeal has been filed by the Insurance Company against the impugned award, submits that Tribunal has already awarded compensation on the higher side and also submits that the Tribunal has erred in granting 30% towards loss of future prospects, whereas it should be 25%, looking to the age of the deceased i.e. 45 years as assessed by the Tribunal, therefore, the compensation needs to be reassessed suitably. Reliance has been placed on the decision of Hon'ble Supreme Court in the matter of Pranay Sethi (supra).

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

7. As regards the income of the deceased, though the claimants have pleaded in the claim petition that deceased was earning Rs.20,000/- per month by running a General Store, but no documentary evidence in support thereof has been adduced by the claimants to substantiate the said fact. However, the Tribunal assessed the monthly income of the deceased at Rs.150/- per day i.e. Rs.4,500/- per month on notional basis, which in the considered opinion of this Court is on lower side. Therefore, considering the facts and circumstances of the case, the nature of work of the deceased, his age i.e. 45 years as assessed by the Tribunal and the rate of inflation at the relevant time, I propose to recompute the compensation by taking into account the monthly income of the deceased at Rs.5,500/- per month i.e. Rs.66,000/- per annum on notional basis.

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 45 years, however, erred in granting 30% towards future prospects, which needs to be reduced suitably. The Hon'ble Supreme Court in the matter of Pranay Sethi (supra) has considered 25% towards loss of future prospects for the self-employed persons who are aged between 40-50 years.

Therefore, in the present case, the applicable percentage of future prospects would be 25% in place of 30% as has been done by the Tribunal.

9. So far as consortium part 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 (supra), the amount of Rs.70,000/- awarded under loss of consortium to appellants is also on lower side. I, therefore, propose to re-compute the compensation by taking into account the number of dependents i.e. 6. 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 to 4, who are the children of the deceased, are also entitled to be awarded Rs.40,000/- each towards loss of parental consortium. Likewise, appellant Nos. 5 & 6, who are the parents of the deceased, are also entitled to be awarded Rs.40,000/- each towards filial consortium. Thus, a sum of Rs.2,40,000/- is assessed under such heads. Further, as per the law laid down by the Supreme Court in the matter of Pranay Sethi (supra), 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 place of Rs.25,000/- as awarded by the Tribunal towards funeral expenses.

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.4,500/- per month

Rs.4,500/- x 12 =

Rs.54,000/- (per annum)

Rs.5,500/- per month

Rs.5,500/- x 12 =

Rs.66,000/- (per annum)

2.

Future Prospect

30% of Rs.54,000/- Rs. 16,200/-

Rs.54,000/- + Rs.16,200 = Rs.70,200/-

25% of Rs.66,000/- Rs.16,500/-

Rs.66,000/- + Rs.16,500/-

= Rs.82,500/-

3.

1/4 deduction towards personal and living expenses of the deceased

Rs.17,550/- (1/4 of Rs.70,200/-)

Rs.20,625/- (1/4 of Rs.82,500/-)

4.

Annual loss of dependency

Rs.70,200/- – Rs.17,550/-

= Rs.52,650/-

Rs.82,500/- – Rs.20,625/-

= Rs.61,875/-

5.

Multiplier of 14 for assessing total loss of dependency (as assessed by the tribunal)

Rs.52,650/- x 14 = Rs.7,37,100/-

Rs.61,875/- x 14 = Rs.8,66,250/-

6.

Towards conventional heads

Not granted

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

Rs.70,000/- 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 Nos. 1 to 6 i.e. Rs.2,40,000/- towards loss of consortium

7.

For medical expenses and injuries sustained by the appellant No.1 in the said accident

Rs.7,000/-

Rs.7,000/-

Rs.8,39,100/-

Rs.11,43,250/-

12. Since the Tribunal has already awarded Rs.8,39,100/- after deducting the same from the above amount i.e. Rs.11,43,250/-, the claimants are held entitled for an additional compensation of Rs.3,04,150/- 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.