**(2020) 05 CHH CK 0011**

**In the Chhattisgarh High Court**

**Case No :** MAC No. 446 Of 2013

Siyaram Patel And Ors APPELLANT

Vs

Neeraj Singh Chouhan And Ors RESPONDENT

**Date of Decision :** 21-05-2020

**Acts Referred:**

**Citation :** (2020) 05 CHH CK 0011

**Hon'ble Judges :** P.R. Ramachandra Menon, CJ;Parth Prateem Sahu, J

**Bench :** Division Bench

**Advocate :** B.P. Singh, Deepak Gupta

**Final Decision :** Allowed

## Judgement

@JUDGMENT-JUDGMENT

P. R. Ramachandra Menon, CJ

1. Inadequacy of compensation ordered by the Tribunal in respect of the death of the son/sibling made the Appellants herein (parents and minor sister

respectively) to approach this Court by filing this appeal.

2. The sequence of events is as follows: the accident occurred on 13.02.2012 at about 6.00 am. The deceased Prakash Kumar Patel was proceeding

on his Motorcycle bearing No. TVS XL-C.G.-07-AA-2532. While so, he was knocked down by the Truck bearing No. C.G. 04-JA-7604 owned by

the 1 st Respondent and insured by the 2nd Respondent, causing fatal injuries ultimately leading to his death. This claim petition preferred by the

dependents as aforesaid, was sought to be contested from the part of the Respondents. Issuance of policy in favour of the Truck was virtually

conceded. After appreciating the materials on record, in the light of the pleadings and evidence, the Tribunal held that the accident was solely because of the negligence on the part of the driver of the truck. A notional income of Rs. 15,000/- per annum was taken for the purpose of working out the

dependency compensation. Amounts were awarded under different heads; such as loss of dependency (adopting multiplier of 18) Rs. 1,35,000/-, loss

of estate Rs. 5,000/-, funeral expense Rs. 5,000/-, loss of love and affection Rs. 15,000/- (Rs. 5,000/- each) thus, granting a total compensation of Rs.

1,60,000/-. The liability was fastened on the shoulders of the Insurance Company. The quantum, according to the Appellants, is on the lower side and

hence sought to be enhanced by this Court.

3. We heard Shri B.P. Singh, the learned counsel for the Appellants and Shri Deepak Gupta, the learned counsel representing the Respondent No.

2/Insurance Company.

4. The learned counsel for the Appellants submits that the deceased was of 18 years and was sporting a bike of his own. He was also engaged in the

trade of vegetables apart from his studies and that the Tribunal was not justified in taking a notional income of just Rs. 15,000/- per annum to work out

the compensation. It is also pointed out that the deduction of 50% towards the 'personal expenses' was not correct and proper. The learned counsel

appearing for the 2nd Respondent/Insurance Company submits that, by virtue of the law declared by the Apex Court in Sarla Verma Vs. Delhi

Transportation Corporation reported in (2009) 6 SCC 121, in the case of a deceased bachelor, the contribution to the family has to be reckoned only as

50% and hence the Tribunal done it correctly. It is further pointed out that, since the deceased was stated as going for tuition at the time of accident,

he was only a student and hence the fixation of annual income does not warrant any interference.

5. Fixation of notional annual income as Rs. 15,000/- was firstly introduced in the second schedule to the Motor Vehicle Act, 1988 with effect from

14.11.1994, when the Act was amended. The accident in the present case had occurred in the year 2012 (on 13.02.2012) that is, after a period of 18

years. Even if the deceased was a student, it is not a disputed fact that he had crossed 18 years, attaining majority and hence an able bodied youth

who could get himself engaged him in any manual job to have earned move at the prevailing daily wage rate, since the accident was in the year 2012.

6. Considering the facts and circumstances, we are of the view that the notional

 

income fixed by the Tribunal is much on the lower side and it requires

to be enhanced to Rs. 3,000/- per month. Of course, in tune with the decision taken by the Apex Court in Sarla Verma's (supra) and by the

Constitution Bench in the National Insurance Company Limited vs Pranay Sethi & Others reported in (2017) 16 SCC 68,0 we find it appropriate to

add 'future prospects' as well, to an extent of 40%, the deceased being a person without a fixed income and a man below 40 years. In the said

circumstance, the monthly income will become Rs. 3,000 + 3,000 x 40/100 = Rs. 4,200/-. The appropriate multiplier to be taken is '18' and the monthly

contribution to the family is to be reckoned as 50% with the said figures in hand, the loss of dependency is to be reworked as Rs. 4,200 x 12 x 50/100

x 18 = Rs. 4,53,600/-. After giving credit to sum of Rs. 1,35,000/- awarded by the Tribunal, the balance comes to Rs. 3,18,600/-. By virtue of the law

declared by the Apex Court in the decisions cited above, the claimants are entitled to get amounts under the conventional heads such as loss of estate,

funeral expenses and also towards loss of consortium/love & affection to the extent as prescribed therein.

7. In the instant case, loss of estate has been compensated only to an extent of Rs. 5,000/- and so goes the funeral expenses fixed at Rs. 5,000/-. Both

the above heads are required to be enhanced to Rs. 15,000/- thus, carrying a differential portion to be awarded as Rs. 10,000/- each. Regarding the

loss of consortium, it is true that the deceased was a bachelor of 18 years. The scope of 'Consortium' was subsequently explained by the Apex Court

(w.r.t. the decision in Pranay Sethi's case (supra)), as per the verdict in Magma General Insurance Company Limited vs Nanu Ram Alias Chuhru

Ram & Others reported in (2018) 18 SCC 130 that there are 'three' types of consortium: one is 'Spousal Consortium', the other one is 'Parental

Consortium' and the third one is 'Filial Consortium'. Though there is no scope for any spousal consortium, the parents are entitled to get the 'Filial

Consortium' because of the demise of the deceased son to the extent of Rs. 40,000/-. It is awarded accordingly. Similarly, the 3 rd Appellant/claimant

is the minor sister who has suffered the loss towards the love and affection and as such, this requires to be compensated to an appropriate extent.

Tribunal has awarded Rs. 5,000/- each to the 3 claimants together, totaling a sum of Rs. 15,000/-. We are of the view that this has to be enhanced to

 

Rs. 40,000/-, thus resulting in a balance of Rs. 25,000/- as well. It is also awarded accordingly. No amount has been awarded by the Tribunal towards

pain and suffering. Even if it is taken that the death was instantaneous, we are of the view that a sum of Rs. 10,000/- can be awarded under this

circumstance head as well. It is ordered accordingly. Thus, the total balance compensation payable comes to Rs. 4,13,600/- (Four lakhs thirteen

thousand six hundred).

8. The said compensation is to be paid with interest @ 7% per annum from the date of the accident till the deposit. Since the policy is admitted, we

direct the 2nd Respondent/Insurance Company to remit the said amount with interest as aforesaid, as expeditiously as possible, at any rate, within two

months from the date of receipt of a copy of this judgment.

Appeal stands allowed to the said extent.