(2024) 02 CHH CK 0011

In the Chhattisgarh High Court

Case No : MAC No. 979 Of 2016

Vinita Panjawani APPELLANT

Vs

Ravinarayan Pandey RESPONDENT

Date of Decision : 02-02-2024

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2024) 02 CHH CK 0011

Hon'ble Judges : Radhakishan Agrawal, J

Bench : Single Bench

Advocate : Rakesh Thakur, Sourabh Sharma

Final Decision : Partly Allowed

Judgement

1. This appeal is by the claimants against the award dated 13.04.2016 passed by the 1st Additional Motor Accident Claims Tribunal, Rajnandgaon, C.G. in Claim Case No.68/2013, awarding total compensation of Rs.4,26,000/- with interest @ 6% per annum from the date of application till its realization, fastening liability on the Insurance Company along with 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 04.09.2013, deceased-Khubchand Panjwani, who was engaged in making mixture / snacks items by running small scale industry with the help of 8-9 workers and used to earn Rs.20,000/- per month therefrom, died in the motor vehicular accident caused due to rash and negligent driving of Trailor bearing registration No.CG04-JC-6555 (hereinafter referred as 'offending vehicle') by non-applicant no.1/driver. 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.61,00,000/-, 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.3,000/- 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 future prospects and loss of estate, which ought to have been awarded looking to the decision of Supreme Court in the matter of National Insurance Company Limited vs Pranay Sethi and others, (2017) 16 SCC 680. He also submits that the amount awarded by the Tribunal under the head of loss of consortium is extremely on lower side, which needs to be enhanced suitably, in view of 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.

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, on the basis of evidence available on record, has rightly assessed the income of the deceased, which needs no interference by this Court. He further submits that the Tribunal has erred in not deducting any amount towards personal and living expenses of the deceased, whereas looking to the dependency upon the deceased i.e. 3, the Tribunal ought to have deducted 1/3 towards personal and living expenses of the deceased. Therefore, the amount of compensation needs to be reassessed suitably.

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

7. As regards the income of the deceased, the claimants pleaded in the claim petition that deceased was earning Rs.20,000/- per month by running a small scale industry where he used to prepare mixture / snacks items and for proving the said fact, wife of the deceased was examined herself as AW-1, although she has stated in her statement that her husband was running a small scale industry by preparing mixture / snacks items and was earning Rs.20,000/- per month, but in her cross-examination, she has admitted that she has not filed any income certificate, accounts book and documents relating to profit or loss in business run by the deceased to prove that the deceased was earning Rs.20,000/- per month. However, the Tribunal, on its own, assessed the monthly income of the deceased at Rs.3,000/- per month on notional basis, which in the considered opinion of this Court is on lower side. From perusal of the documents Ex.P-6(C) showing registration for establishment of Namkin product and Ex.P-7(C) which is an inspection report, it is evident that the deceased was running a small scale industry making mixture / snacks items since 1997 and his name was also registered under C.G. Shops and Establishment Act, 1958 in Municipal

Corporation Rajnandgaon and it was found that 8-9 workers were also engaged under his employment. Therefore, considering the facts and circumstances of the case, the nature of job of the deceased, which is evident from the documents (Exs.P-6C and 7-C) 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.10,000/- per month i.e. Rs.1,20,000/- per annum on notional basis.

8. 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 52 years, however, erred in not granting any amount towards future prospects. The Hon’ble Supreme Court in the matter of Pranay Sethi (supra) has considered 10% towards loss of future prospects for the persons who are aged between 50-60 years. Therefore, in the present case, the applicable percentage of future prospects would be 10%.

9. So far as dependency upon the deceased is concerned, the Tribunal has fallen into error in not deducting any amount towards personal and living expenses of the deceased, whereas in view of judgment of Hon'ble Supreme Court in Sarla Verma & Ors vs. Delhi Transport Corporation, 2009 (6) SCC 121, the deduction should be 1/3 had there been 3 members. Thus, in view of above, the appropriate deduction would be 1/3 towards personal and living expenses of the deceased in this case.

10. As regards the consortium part, 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."

11. In view of dictum rendered in the case of Magma General Insurance Company Limited (supra), the amount of Rs.5,000/- 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. 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 Nos. 2 & 3, who are the children of the deceased, are also entitled to be awarded Rs.40,000/- each towards loss of parental consortium. Thus, a sum of Rs.1,20,000/- 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.

12. 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.3,000/- per month

Rs.3,000/- x 12 =

Rs.36,000/- (per annum)

Rs.10,000/- per month Rs.10,000/- x 12 = Rs.1,20,000/- (per annum)

2.

Future Prospect

Not granted

10% of Rs.1,20,000/- Rs.12,000/-

Rs.1,20,000/- + Rs.12,000/-

= Rs.1,32,000/-

3.

Deduction towards personal and living expenses of the deceased

Not considered

Rs.44,000/-

(1/3 of Rs.1,32,000/-)

4.

Annual loss of dependency

-

Rs.1,32,000/- – Rs.44,000/-

= Rs.88,000/-

5.

Multiplier for assessing total loss of dependency

Rs.36,000/- x 11 = Rs.3,96,000/-

Rs.88,000/- x 11 = Rs.9,68,000/-

6.

Towards conventional heads

Not granted

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

Rs.5,000/- 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 3 i.e. Rs.1,20,000/- towards loss of consortium

Rs.4,26,000/-

Rs.11,18,000/-

13. Since the Tribunal has already awarded Rs.4,26,000/-, after deducting the same from the above amount i.e. Rs.11,18,000/-, the claimants are held entitled for an additional compensation of Rs.6,92,000/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

14. 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 in motor accident cases and it is also the bounden duty of the Courts/Tribunals to see that the victim or injured of the motor accident cases is properly and reasonably compensated and in assessing, what has been described as a just compensation under the Act, all factors including possibilities have to be kept in mind. In the present case, learned MACT has, however, not properly assessed the income of the deceased, whereas it ought to have assessed the income of the deceased by taking into consideration the above aspects.

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

