NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 749 of 2013

1. Mus. Shanta Singh, W/o. Late Jainath Singh, Aged About 30 Years,
2. Ku. Neha Singh, D/o. Late Jainath Singh, Aged About 16 Years.
3. Nikhil Pratap Singh, S/o. Late Jainath Singh, Aged About 12 Years.

   All are R/o. Gudi, Tahsil Seepat, District Bilaspur (C.G.)

---- Appellants

Versus

1. Karmu Singh, S/o. Daasin Ram, R/o. Village Shivnandanpur, Ward No. 13, Vishrampur, Distt. Surguja (C.G.)
2. Branch Manager, Reliance General Insurance Company Ltd., Raipur, Through- Branch Manager, Reliance General Insurance Company Ltd., Bilaspur, Tahsil & District Bilaspur (C.G.)
3. Mohan Singh, S/o. Late Bholaram, Aged About 81 Years, R/o. Village & Post- Tiwra Buti, Tahsil Surajpur, District Surguja (C.G.)
4. Anand Shandilya, S/o. Late Ramsharan Shandilya, Aged About 23 Years, R/o. Shivnandanpur, Mahaveer Colony, Vishrampur, District Surguja (C.G.)

---- Respondents

For Appellants : Shri N.P.Chandravanshi with Smt.Bhagwati Kashyap, Advocate

For Respondent No.2 : Shri S.S.Rajput, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

13.10.2015

1. The instant appeal is against the award dated 18.06.2013, passed in Claim Case No.330/2007 by the learned First Additional Motor Accident Claims Tribunal, Bilaspur. The award arises out of a second round of litigation.

2. The brief facts of the case are that a claim petition was preferred by the widow, two minor children. The father of the deceased was arrayed as a

respondent. The claim was filed with the averments that on 10.11.2007 the deceased was traveling on his motorcycle alongwith the claimant No.2 his daughter. They were coming from Ambikapur at a moderate speed and when they reached near a place known as village Kanakpur, at that time, another motorcycle being driven by the non-applicant No.4 dashed the motorcycle of the deceased on their right side whereby the deceased and his daughter fell down and sustained injuries. When the deceased namely Jainath Singh was further taken to the Hospital, he was declared dead. It was stated that at the time of accident, the deceased Jainath Singh was working as a Principal in the School named Darripara School and it was stated that he was getting a salary of Rs.19,242/- and therefore on different heads, the claim was made.

3. The non-applicant No.1 denied the averments and stated that the motorcycle namely Bajaj Platina was stolen from his house which was reported to the Police Station Vishrampur and the case was registered under Section 380 of IPC. He further stated that at the time of accident, the deceased was also traveling in the motorcycle and because of head on collision, the accident occurred. The deceased has not made the insurance company as a party wherein he was traveling and as such the claim petition may be rejected.

4. The original non-applicant No.2, the insurance company, also pleaded same fact and stated that the motorcycle wherein the deceased was traveling was met with the accident and the insurer of the said motorcycle was a necessary party. It was stated that at the time of accident, the driver of the motorcycle was not holding a valid licence and therefore a breach of the terms of policy was committed and the insurance company cannot be held liable to make good the payment.

5. The non-applicant No.3, Mohan Singh, the father of the deceased remained exparte and the respondent No.4 namely Anand Shandilya also remained exparte.

6. Initially, the Court had passed an award of Rs.20,95,000/- in favour of the claimants by its award dated 19.08.2009. Against such award, the insurance company filed an appeal, which was numbered as M.A.C. No.1546 of 2009. The Division Bench of this Court by its order dated 19.04.2011 found it that the Tribunal has not considered the aspect of contributory negligence, as it was held that the accident appears to have been happened for head on collision and therefore remanded the case back before the Court below by setting aside the award dated 19.08.2009. The Court found that the issue regarding the contributory negligence was not considered properly and the fact of compassionate appointment has also not been considered. After the remand was made, the parties appeared before the Court. The appellant again adduced his evidence and examined one person namely Ramsay as AW-4 and thereafter the case was fixed for non-applicants' evidence initially on 18.04.2012. Subsequently, the case was adjourned from time to time and no evidence was adduced by the non-applicants and eventually an award was passed on 18.06.2013 wherein the Court awarded an amount of Rs.20,06,234/- and deducted 50% of the amount by holding it that deceased was also liable for contributory negligence. Now this appeal is against such award.

7. Learned counsel for the appellants/claimants would submit that after the case was remanded by the High Court to decide on the issue of contributory negligence but in order to prove the contributory negligence, the respondents ought to have adduced the evidence. It is further submitted that in absence of any evidence, the finding of contributory

negligence cannot be assumed. It is further submitted that the compassionate appointment and the amount deducted from provident fund cannot be deducted to arrive at a quantum of compensation. It is further submitted that the future prospect has also not been awarded, which too needs to be awarded.

8. Per contra, learned counsel for the insurance company vehemently opposes the argument and would submit that admittedly accordingly to the claimants, the wife of the deceased has been appointed on compassionate basis, therefore, in view of the law laid down in case of ***Bhakra Beas Management Board v. Kanta Aggarwal (Smt) & Others*** reported in ***(2008) 11 SCC 366,*** the benefit accrued to the claimant has to be deducted. He further submits that the contributory negligence has been proved as there is head on collusion between the two vehicle. Consequently, even if, the contributory negligence of 50% not held, it cannot be go down less than 35%. He therefore submits that the award under the facts of the case is well merited and do not require any interference.

9. I have heard the learned counsel appearing for the parties, perused the pleadings, documents & evidence on record.

10. Admittedly, initial award was passed on 19.08.2009, which was subject of appeal before this Court and the award was set aside by this Court by an order dated 19.04.2011 and the case was remanded back to Tribunal with a direction to reconsider the issue regarding contributory negligence and fact of compassionate appointment. After the case was remanded to the Tribunal, the parties appeared before the Tribunal. The order sheet would show that the claimants on their behalf examined one witness on 27.03.2012 i.e. Ramsay to negate the theory of contributory negligence. Thereafter, the case was fixed for evidence of non-applicants.

Subsequently, it was fixed for 07.05.2012 and thereafter on 18.06.2012 and lastly on 17.07.2012. On 17.07.2012, the right to lead evidence of the respondents were closed. Further, the order sheet would show that again the case was fixed for evidence of both the parties by an order dated 29.11.2012 thereafter on 18.01.2013, 28.02.2013, 25.04.2013 but even then no evidence was adduced by the insurance company. Ultimately on 01.05.2013 the right to lead evidence of the insurance company was closed and the arguments were heard and award was passed. Therefore, it would show that after remand of the case no evidence was adduced on behalf of the respondent insurance company, as against it, on behalf of the appellants one witness namely Ramsay was examined.

11. To find out the factum of contributory negligence, again the statements of witnesses were perused. There are two witness in this case one is Neha Singh, AW-2, who was traveling alongwith the deceased and another one is Ramsay, AW-4, who was examined on 27.03.2012. Perusal of the statement of Neha Singh, the daughter of the deceased, would show she had stated that the offending vehicle i.e. Bajaj Platina motorcycle was driven in a rash and negligent manner dashed the motorcycle wherein she alongwith her father was traveling. She further stated that the said Bajaj Plantina was at an excessive high speed and as the driver could not control the motorcycle it dashed into their motorcycle by coming to the right side. It is further stated that at the time of accident, they were in the correct side of the road. In the cross examination, nothing has come out to negate the entire incident.

12. Now, if the statement of Ramsay, the another eye-witness, is referred, he has stated that at the time of accident, he was also traveling in the motorcycle and before the incident one Bajaj Platina motorcycle wherein

two boys were traveling took-over him at a very high speed and the overtaking was made from the wrong side and while overtaking the Bajaj Platina motorcycle could not control itself and went into completely wrong side of the road. He further stated that at that time another motorcycle which was coming from the opposite direction looking to the speed of the Bajaj Platina went towards the side of the road but even then the driver of the Bajaj Platina could not control it and dashed into the motorcycle by moving into complete wrong side of the road whereby the driver of the motorcycle and the girl who was traveling in other motorcycle fell down. He further stated that after causing the accident, the driver of the Bajaj Platina motorcycle namely Anand Shandilya fled away alongwith his friend. He further states that after some time he came to know that the driver of the motorcycle who died his name was Jainath Singh, the deceased.

13. In the cross examination of this witness when suggestion were given that the deceased was on the middle of the road, it was denied. He further stated that at the time of accident since the driver of the offending vehicle were talking to each with it's pillion rider as such he could know the name. Therefore, considering both the evidence of AW-2 and AW-4, the factum of driving the vehicle i.e. Bajaj Platina in a rash and negligent manner is not been diluted. The record would show that no evidence was adduced on behalf of the driver of the offending vehicle who was arrayed as respondent No.4. The insurance company have also not adduced any evidence on the issue of contributory negligence.

14. Perusal of the record of criminal case do not show the spot map. If the insurance company was raising a defence of contributory negligence they should have adduced the evidence to prove that how the accident happened by summoning any eye-witness or calling the document and

map of the spot. The order sheet would show that more than 5 to 6 dates were given to the insurance company but the insurance company have not produced any witness, therefore, when the onus is not discharge then the presumption of contributory negligence cannot be presumed.

15. As has been held in ***National Insurance Company Limited v. Sinitha & Others*** reported in ***(2012) 2 SCC 356*** their Lordship have categorically held that in case when theory of contributory negligence is raised then the onus of proof of contributory negligence lies on the shoulder of defence (owner or insurer). The similar proposition has been laid down by the Hon'ble Supreme Court in case of ***Syed Sadiq & Others v. Divisional Manager, United India Insurance Company Limited*** reported in ***(2014) 2 SCC 735***. Therefore, applying the aforesaid principles, the finding arrived at by the Tribunal appears to be without appreciation of fact on record and simply since the case was remanded back by the High Court to consider the issue of contributory negligence without any evidence on record even when the evidence was not adduced, finding of contributory negligence was recorded by Tribunal. The same appears to be absurd and without any evidence. Therefore, the finding of the contributory negligence is set aside.

16. Now coming to the quantum of compensation, the Tribunal has assessed the monthly income of the deceased to Rs.17,900/- on the basis of Ex. P-7. Ex.P-7 is a salary certificate which is proved by PW-3 S.K.Singh Rathore. According to Ex.P-7, the salary is shown with all the allowances Rs.19,242/- which shows a deduction of Rs.2000/- as GPF and Rs.180/- for GIS and payable amount was shown to be Rs.17,062/-.

17. The amount of deduction so made appears to be a statutory deduction of GPF and consequently it cannot be a part of deduction to calculate the salary. Therefore, the salary would be Rs.19,242/-. The argument which

is advanced by the learned counsel for the insurance company that the wife has been granted compassionate appointment should be deducted while computing the income, that argument also cannot be appreciated as it also appears to be against the law laid down by their Lordship in case of ***Vimal Kanwar & Others v. Kishore Dan & Others*** reported in ***(2013) 7 SCC 476,*** wherein the Court has held that the provident fund, pension and insurance receivable by the claimants cannot be considered under the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. Similarly, the Court also in that case held that the compassionate appointment cannot be held to be an advantage receivable by the hears on account of once death under the statute occasioned on account of accidental death. Paragraphs 18, 19, 20 & 21 of the said decision is relevant here and quoted below:

> "18. The first issue is "whether Provident Fund, Pension and Insurance receivable by the claimants come within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction."
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> 19. The aforesaid issue fell for consideration before this Court in *Helen C. Rebello (Mrs.) and others v. Maharashtra State Road Transport Corporation & another reported in (1999) 1 SCC 90 : 1999 (1)TAC 1*. In the said case, this Court held that Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits etc., are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and finding of this Court:
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> *"35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such*

employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which, the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc, though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount *under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."*

20. The second issue is "whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction."

21. "Compassionate appointment" can be one of the conditions of service employer. In case, the employee dies in harness i.e., while in service leaving behind the dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as "Pecuniary Advantage" that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act."

18. Therefore, the wife though has been granted compassionate appointment, the pecuniary benefit cannot be subject of consideration for deduction while calculating the compensation payable under the Motor Vehicle Act.

19. The salary in this case has been held to Rs.19,242/-, therefore, the yearly salary comes to Rs.19,242 x 12 = 2,30,904/-. Further, the law as has been laid down by their Lordship three Judges Bench in case of ***Rajesh***

& others Vs. Rajbir Singh & others reported in ***(2013) 9 SCC 54,*** since the deceased was with the fixed wages and he belonged to the age group in between 40-50 years, there would be further addition of 30% as future prospect, which comes to Rs. 69,271 and thus the total income comes to Rs. (69,271 + 2,30,904 = 3,00,175) 3,00,175/-.

20. The accident in this case had happened on 10.11.2007, therefore, the income tax will be leviable as per the Financial Year 2007-2008 and Assessment Year 2008-2009. In such assessment year, up till Rs.1,10,000/- no tax was payable and therefore the taxable income comes to Rs.1,90,175/-. Thereafter, on the next Rs.40,000/-, 10% tax was leviable which comes to Rs.4,000/-. Thereafter, the taxable income comes to Rs.1,50,175/- and on the next Rs.1,00,000/-, 20% tax was leviable which comes to Rs. 20,000/-. Thereafter, the remaining last slab of tax leviable comes to Rs.50,175/- on which 30% tax was leviable, which comes to Rs.15,052/-. Therefore, the total income tax comes to Rs.4000 + 20000 + 15052 = 39,052/-. So deducting it from the annual income of Rs.3,00,175/-, the amount comes to Rs.2,61,123/-.

21. As the claim petition was filed by three persons and respondent No.3, Mohan Singh, the father was also made a party and was paid the compensation, as such, the dependency would be of four and one-fourth will be deducted as personal expenses, which comes to Rs.65,280/-, so the dependency comes to Rs. 2,61,123 – 65,280/- = 1,95,843/-. The age of the deceased is shown to be 43 years as per the post mortem report Ex.P-5, therefore, there the multiplier of 14 would be applicable which comes to Rs.27,41,802/- (1,95,843 x 14).

22. Under the conventional heads, the learned Claims Tribunal has awarded Rs.5,000/- for loss of consortium to the wife, Rs.5,000/- for loss of estate and Rs.5,000/- for funeral expenses and no amount has been granted to the children and father for loss of love & affection. In the opinion of this Court,

the amount so granted under the conventional heads also need to be reassessed in view of the law laid down in case of ***Asha Verman Vs. Maharaj Singh and others.,*** reported in ***2015 AIR SCW 3577***. Therefore, considering the age of the deceased, I am inclined to award Rs.1,00,000/- to the wife for loss of consortium, Rs.25,000/- for loss of estate, Rs.25,000/- for funeral expenses, Rs.25,000/- for loss of love and affection to the father and Rs.25,000/- each for loss of love and affection to the children. Thus, the total compensation to be reassessed is as follows:-

S.No.	**Heads**	**Calculation**
(i)	Income of the deceased per month @ Rs.19,242/-.	Rs.2,30,904/- per annum.
(ii)	30% of (i) above to be added as future prospects.	Rs. 2,30,904 + 69,271 = Rs. 3,00,175/-
(iii)	Income after deduction of income tax of Rs.39,052/-.	Rs. 3,00,175 – 39,052 = 2,61,123/-
(iv)	One-fourth of (iii) deducted as personal expenses of the deceased.	Rs. 2,61,123 – 65,280 = Rs. 1,95,843/-
(v)	Compensation after multiplier of 14 is applied.	Rs. 1,95,843 x 14 = Rs. 27,41,802/-
(vi)	For loss of consortium to the wife.	Rs. 1,00,000/-
(vii)	For loss of estate.	Rs. 25,000/-
(viii)	For love & affection to the father.	Rs. 25,000/-
(ix)	For love & affection to the children @ Rs.25,000/- each.	Rs. 50,000/-
(x)	For funeral expenses	Rs. 25,000/-
	Total	**Rs. 29,66,802/-**

23. Thus, the total compensation will be Rs.29,66,802/-. After deducting Rs.10,03,117/- awarded by the tribunal, the enhancement would be Rs.19,63,685/-.

24. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 19,63,685/- in addition to what is already awarded by the Claims Tribunal.

25. Now coming to grant of interest, the Supreme Court in ***Asha Verman & others V. Maharaj Singh & others (supra)*** held in para 19 that the High Court has erred in awarding an interest at the rate of 8% per annum only, instead of 9% per annum on the compensation amount as per the principles laid down in case of ***Municipal Corporation of Delhi V. Association of Victims of Uphaar Tragedy (2011) 14 SCC 481 : AIR 2012 SC 100***. Therefore, in the instant case, interest @ 9% per annum is awarded on the compensation amount from the date of filing of the application till the date of payment. The claimants are entitled to receive the said compensation from the Insurance Company. No order as to costs.

26. So far as it relates to apportionment, out of total dependency of Rs.29,66,802/-, the father of deceased will get Rs.5,00,000/- and since the wife of the deceased has already been granted compassionate appointment, as such, the amount of Rs.7.5 Lacs each i.e. total 15 Lacs in name of both the children shall be kept in a Nationalized Bank in a Fixed Deposit for 5 years. The rest of the amount shall be granted to the wife.

27. The Registry is further directed to communicate the claimants in writing the “amount enhanced in this appeal” as against the award made by the Tribunal below. The said communication be made in Hindi Devanagari language.

Sd/-

Ashok

(Goutam Bhaduri)
Judge