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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1018 of 2013

1. Gunu Ram S/o Late Sukhlal Ram,aAged About 75 years R/O Manpur, P.S. & Tah. Batouli, Distt. Surguja C.G.

2. Smt. Majho Ekka, W/o Gunu Ram Aged About 70 Years R/O Manpur, P.S. & Tah. Batouli, Distt. Surguja C.G.

3. Smt. Gulab Ekka, W/o Late Ramsai Ekka Aged About 35 Years R/O Manpur, P.S. & Tah. Batouli, Distt. Surguja C.G.

4. Rowin Ekka S/o Late Ramsai Ekka Aged About 10 Years Minor, Thru- Mother Smt. Gulab Ekka, R/O Manpur, P.S. & Tah. Batouli, Distt. Surguja C.G.

5. Rohit Ekka S/o Late Ramsai Ekka Aged About 8 Years Minor, Thru- Mother Smt. Gulab Ekka, R/O Manpur, P.S. & Tah. Batouli, Distt. Surguja C.G.

6. Ku. Roshani Ekka D/o Late Ramsai Ekka Aged About 6 Years Minor, Thru- Mother Smt. Gulab Ekka, R/O Manpur, P.S. & Tah. Batouli, Distt. Surguja C.G.

….. **Appellants**

Vs.

1. Mohd. Soyef Ahmed & Ors. S/o S. Budhanmiyan Aged About 38 Years R/O Akberpur, Gangaganj, P.S. Nawabganj, Distt. Allahabad U.P.

2. Nousher Ahmed S/o Lal Mohmed Aged About 38 Years R/O House No. 21/1 D Karamat Karaili Chouki, P.S. Karaili, Tah. Sader, Distt. & Nagar- Allahabad U.P.

3. Branch Manager United India Insurance Co.Ltd., Rammohan Plaza, Madhokunj Katra, Allahabad, Thru- Branch Manager, United India Insurance Co.Ltd., Branch Office Brahm Road, Ambikapur, P.S. and Nagar Ambikapur, Distt. Surguja C.G. ***Insurer Vehicle No.UP 70/BT-2796***

4. Branch Manager United India Insu.Co.Ltd., Branch Office Brahm Road, Ambikapur, P.S. Nagar & Tah. Ambikapur, Distt. Surguja C.G. ***Insurer of Hero Honda Motorcycle No.C.G.15/CF 1479.***

……. **Respondents**

For the Appellants	:	Mr. A. N. Pandey, Advocate.
For respondent No.4	:	Mr. Sanjay S. Agrawal & Mr. Ashutosh Ghade, Advocates.

S.B. Hon'ble Goutam Bhaduri, J

JUDGMENT ON BOARD
(29.07.2015)

1. This is an appeal against the award dated 13.08.2013 passed in Claim Case No. 16 of 2013 by the Additional Motor Accident Claims Tribunal (FTC), Ambikapur, Distt. Sarguja, whereby the claim application filed was partly allowed by awarding Rs. 8,08,500/- as against the claim of Rs.79,71,104/-. Therefore, the instant appeal is by the Claimants seeking enhancement of the award.

2. The claim petition was preferred by the widow, 3 children, mother and father of deceased namely Rasayam Ekka. It was pleaded that on 05.11.2010 Rasayam Ekka was going for his duty by his Motorcycle bearing Regn. No. C.G. 15 CF 1479 from his village Manpur to the place of office i.e., Latori. On the way at about 5 p.m., near a place known as village Lamgaon a Truck bearing Regn.No.U.P. 70/VT/ 2796 driven by Non-applicant No.1 Mohd. Soyef Ahmad in rash and negligent manner came to wrong side and dashed the motorcycle whereby the deceased died on the spot. At the time of accident, the deceased was aged about 38 years and was working as Electrician Fitter in Latori colliery of SECL, Bhatgaon area. It was stated that the deceased was drawing a salary of Rs.25,561/- and the claimants were dependents of deceased. Therefore, the claimants have filed claim petition seeking a compensation of Rs.79,71,104/-.

3. Non-applicants 1 & 2 refuted the averments of claim petition and stated that the Truck was driven in moderate speed and the deceased who was in drunken condition drove the motorcycle in rash and negligent manner and came on wrong side from opposite direction and dashed against the truck. Therefore, the non-applicants driver and owner are not liable for the accident. It was further pleaded that at the time of accident, the offending vehicle was insured with the original non-applicant No.3 United India Insurance Company, therefore, the liability, if any, has to be made good by the Insurance Company.

4. The Insurance Company in its reply also refuted the averments and contended that at the time of accident, the driver of the offending vehicle was not having a valid and effective driving licence and therefore, there has been a breach of terms of insurance policy. It was further stated that the accident happened due to rash and negligent driving of deceased itself. Consequently the insurance Company is not liable to make good the payment.

5. The Tribunal after evaluating the evidence and documents on record came to a finding that at the relevant time, the offending vehicle i.e., the Truck driven by N.A.1 Mohd. Soyeph Ahmad in rash and negligent manner dashed the deceased while he was traveling on his motorcycle, due to which, the deceased sustained injuries and died on spot. The said finding has been arrived at on the basis of evidence of A.W.3 Praveen Kumar Tidke. Consequently, it was held that the offending vehicle was driven on the wrong side of the road and dashed the deceased which eventually caused death of deceased. The said finding of rash and negligent act is not challenged by any of the parties, therefore, in absence of any challenge to such finding, the same is affirmed.

6. Learned counsel for the appellants/claimants would submit that in this case the Tribunal has wrongly assessed the monthly salary at 13,441/- and there from deducted Rs.7,541/- towards 50% of the salary being drawn by the deceased wife on compassionate appointment. It is further submitted that the Tribunal has not taken into account the amounts of

GPF, GIS etc., while calculating the income. He would submit that the widow though has been given job on compassionate ground in the SECL but the income of such appointment cannot be considered for calculating the compensation. He placed reliance on a case law reported in ***2013 (3) TAC 6 (SC) – Vimal Kanwar and others Vs. Kishore Dan & others*** and would submit that the amounts of PF, Pension, Insurance and also any amount received on compassionate appointment cannot be considered as pecuniary advantage, therefore, these amounts are not liable for deduction. Accordingly, he prays that the claim should be suitably enhanced.

7. Per contra, Mr. Sanjay S. Agrawal, learned counsel appearing on behalf of the Insurance Company vehemently opposes the submission and submits that in the facts and circumstances of the case, just compensation has been awarded which do not call for any interference by this Court.

8. I have heard learned counsel for the parties and have also perused the evidence and documents on record.

9. The evidence which is available would reveal that the deceased at the time of accident was working as Electrician/Fitter in SECL. The salary certificates have been proved by A.W.1 Kuber Prasad. The salary certificates are exhibited and marked as Ex.P-9, P-10 & Ex.P-11 for the months of July, August & October, 2010 respectively. Reading of these certificates would show that the average salary of the deceased after deduction of the income tax works out to be Rs.19,731/- as per Ex.P-10. However, the Tribunal has assessed the income of deceased as Rs.13,441/- on the basis of per day salary @ Rs.672.05 for only 20 working days. It appears that though the deceased was regular employee of SECL, but the Tribunal has wrongly calculated the monthly income of the deceased on the basis of average of total 20 working days in a calendar month. The said calculation in view of the salary certificates placed on record is completely misreading of the fact. On perusal of salary certificate P-10, it would be clear that the average income comes to Rs.19,731/- barring overtime, bonus etc. Therefore, ignoring such documentary evidence, the salary of Rs.13,441/- as has been calculated by the learned Tribunal is completely misreading of the facts and evidence.

10. Further the Tribunal has taken into account the fact that the wife of deceased was given a compassionate appointment in the department and is drawing a salary of Rs.15,000/-. Thus it has wrongly deducted a further sum of Rs.7541/- being 50% of salary paid to the wife from the total monthly income of Rs.13,441/- so assessed by the Tribunal and thereby it came to conclusion that the monthly income is Rs.5900/-. The said calculation, in the opinion of this Court, appears to be against the principles laid down in case of ***Vimal Kanwar Vs. Kishore Dan (supra)*** wherein the Supreme Court held that the amounts of Provident Fund, Pension, Insurance receivable by the claimants do not come within the periphery of M.V. Act to be termed as pecuniary advantage and therefore, those amounts are not liable for deduction. Similarly with respect to compassionate appointment, the Supreme Court has held that the salary receivable by the claimants on account of compassionate appointment 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. Paragraphs 19 & 20 of the said decision is relevant here and quoted below:

> "19. 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."

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:

"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."

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."

11. Therefore, by application of such principles, the wife having been appointed on compassionate appointment, the salary payable to her cannot be subject of deduction as it has no correlation with the amount receivable under the statute occasioned on account of accidental death. Consequently the salary of the deceased is assessed as Rs.19,731/- or say Rs.19730/- per month on the basis of salary certificate Ex.P-10 and the annual income comes to Rs.2,36,760/-.

12. A perusal of the award would show that the Tribunal has not added any sum towards future prospects. Considering the fact that the deceased was salaried person and was aged about 38 years at the time of accident, applying the principles laid down in ***Rajesh and others Vs. Rajbir Singh & others (2013) 9 SCC 54***, further 50% is added to the income towards future prospects. Thus the total income is worked out to Rs.3,55,140 (2,36,760 plus 1,18,380) per annum (29,595 x 12) after deduction of income tax, as per salary slip.

13. Now coming to the deduction towards personal and living expenses, the claim petition was initially filed by 6 persons i.e., mother, father, widow and children of deceased being dependents, therefore, following the principles laid down in ***Sarla Verma Vs. Delhi Transport Corporation, 2009 6 SCC 121,*** 1/4th would be deducted. After deducting 1/4th the annual dependency comes to Rs.2,66,355/- (3,55,140 minus 88,785)/-. Since the deceased belonged to the age group of 36-40 years, as per the multiplier table given in *Sarla Verma's case*, multiplier 15 would be applicable. Thus the total dependency comes to Rs.39,95,325/-.

14. Further, under other heads, the Tribunal has only awarded Rs.2000/- for funeral expenses and Rs.10,000/- for loss of love and affection to the children which appear to be very meagre. Taking into the age of the wife and children, following the law laid down in ***2015 AIR SCW 3577 – Asha Verma Vs. Maharaj Singh and others***, Rs.1,00,000/- is granted for loss of consortium to the wife. Further Rs.1,00,000/- towards loss of love and affection, care and guidance etc., to 3 claimant-children, Rs.50,000/- for loss of love and affection to the mother and father of deceased are also awarded. The amount of Rs. 2000/- granted for funeral expenses is enhanced to Rs.25,000/-. Thus the compensation to be reassessed is as follows:

S.No.	**Heads**	**Calculation**
(i)	Annual income	Rs. 2,36,760/-
(ii)	50% of (i) above to be added as future prospects	(Rs.2,36,760 + 1,18,380 = Rs.3,55,140/-
(iii)	One fourth of (ii) deducted as personal expenses of the deceased	Rs. 3,55,140 – 88,785 = Rs. 2,66,355/-
(iv)	Compensation after multiplier 15 is applied	Rs.2,66,355 x 15 = **Rs.39,95,325/-**
(v)	Loss of consortium to the wife	Rs.1,00,000/-
(vi)	Loss of Love and affection to the four minor children, care and guidance etc.	Rs.1,00,000/-

(vii)	Loss of love and affection for the parents	Rs. 50,000/-
(viii)	Funeral Expenses	Rs. 25,000/-
	Total	**Rs.42,70,325/-**

15. Thus the total compensation will be Rs.42,70,325/-. After deducting Rs.8,08,500/- awarded by the Tribunal, the enhancement would be Rs.34,61,825/-.

16. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs.34,61,825/- in addition to what is already awarded. The said amount shall carry interest @ 6% per annum as awarded by the Tribunal.

17. The Registry is further directed to communicate the claimants in writing the "amount of award enhanced in this appeal" as against the award made by the Tribunal. The said communication be made in Hindi Deonagari language.

Sd/-
GOUTAM BHADURI
JUDGE

Rao