

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1147 of 2010

1. Smt. Jagbai Sahu aged about 46 years W/o Late Sadhram
 2. Manoj Kumar Sahu aged about 21 years, S/o Late Sadhram,
- Both are R/o Village Bhathora, Katghora, Dist- Korba (C.G.)

---- Appellants

Versus

1. Satyendra Sharma aged about 35 years S/o Sudama R/o Sher, Thana Siha, Balaya, Gopalganj (U.P.)
2. Md. Anis Memon Aged about 40 years, S/o Aziz Memon, R/o Qrt. No.481, Rani Road Korba, Distt. Korba (C.G.)
3. National Insurance Company, Through Branch Manager, Kosabadi, Korba, Distt. Korba (C.G.)

---- Respondents

For Appellants – Shri Sanjay Patel, Advocate.
For Respondent No.3 – Shri B.N. Nande, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

8/10/2015

1. Appeal is against the award dated 20/08/2010 passed by the Additional Motor Accident Claims Tribunal, Katghora, Korba in Claim Case No.94/2007.
2. Briefly stated facts are that claim petition was filed by the widow and the son of the deceased namely Sadhram Sahu on the ground that on 21/03/2008 the deceased was travelling on his motorcycle bearing No. C.G. 12 K 7078 and was going for his duty. While such traveling, the deceased dashed into the truck which was parked without any sign of parking in the middle of the road in midst of night whereby deceased dashed into it and he died. It is contended that at the time of accident

deceased was aged about 50 years and was working as Senior Mechanic in SECL Deepika and was earning Rs.40,000/- per month. On the different heads compensation of Rs.50,39,720/- was claimed. Non-applicant No.1 driver of the offending vehicle who parked the truck bearing No. C.G. 12 C 2427 remained ex-parte whereas non-applicant No.2 admitted the ownership. It was contended that vehicle was insured with non-applicant No.3, National Insurance Company Limited. It was further stated that non-applicant No.1 was not liable for the death caused as it happened due to the rash and negligent act of the deceased himself. Non-applicant No.3 insurance company contended that at the relevant time driver of the offending truck was not having any licence and the vehicle was being used in contravention to the policy. Therefore, the insurance company is not liable to pay compensation.

3. Learned tribunal on the basis of evidence adduced came to a finding that at the relevant time because of the rash and negligent act and use of the vehicle by non-applicant No.1 the accident occurred. The tribunal has held that for death caused offending vehicle was liable as it was used in a rash and negligent manner. Said finding is not under any challenge by either of the parties. Consequently, the same are affirmed.

4. Learned counsel for the appellants/claimants would submit that in this case accident had occurred on 21/03/2008 and the salary slip which is marked as Ex.P-8 only reflects salary for 21 days. Consequently, it cannot be made the basis to compute income. He contended that at relevant time deceased was working with SECL and used to earn Rs.40,000/- per month. Salary slip have been placed in this appeal along with application under Order 41 Rule 27 of the CPC whereby salary payable to the

deceased has been shown and would submit that same may be calculated for assessing the compensation.

5. Per contra, learned counsel for the insurance company opposes the same and would submit that in absence of any evidence and proof by simply filing salary form, it cannot be computed to be salary and therefore submits that award is well merited which do not call for any interference.

6. I have heard learned counsel for the parties at length and perused the evidence.

7. Perusal of the evidence would show that deceased was working in SECL on the date of accident on 21/03/2008. Consequently, if dependency is calculated only upon salary of 21 days it would amount to rejection of the just claim to the claimants. The salary slip which is filed before this court with the aid of Order 41 Rule 27 of CPC reflects salary of the deceased. In absence of proof of the same it cannot be taken to be gospel truth. At the same time, if dependency is calculated only on the basis of 21 days it will amount to rejection of just pay.

8. In view of the above, I deem it proper to remand the case back only to re-assess the quantum of dependency by admitting the salary slip which is placed on record in this appeal and also I deem it proper to direct the tribunal to adjudicate the case by further evidence by taking into the salary slip which is placed on record before this appellate court. Parties shall be at liberty to adduce evidence and call for the witness to prove the same.

9. Reading of the award would show that only on the conventional head tribunal has awarded Rs.10,000/- to the wife for loss of consortium and Rs.5000/- to the son for loss of love and affection, for loss of estate

Rs.2500/- and for funeral expenses Rs.2000/- has been awarded. In my considered opinion the award made under the conventional head appears to be too meager. Therefore, in view of the law laid down in case of **Asha Verman Vs. Maharaj Singh and others**, reported in **2015 AIR SCW 3577** and considering the facts I am inclined to award Rs.1 lakh to the wife for loss of consortium, Rs.50,000/- to the son for loss of love and affection and Rs.25,000/- for loss of estate and expenses granted for funeral is enhanced to Rs.25,000/-. On the conventional head it is re-assessed as under:-

S.No.	Head	Amount
1.	For loss of consortium to the wife	Rs.1,00,000/-
2.	For loss of love and affection to the son	Rs.50,000/-
3.	For loss of estate	Rs.25,000/-
4.	For funeral expenses	Rs.25,000/-
	Total	Rs.2,00,000/-

10. Accordingly, case is remanded back to the trial court to re-assess the quantum of dependency by taking into evidence as observed in foregoing paragraph of the order. Parties shall appear before the trial court on 26th November, 2015. Trial court shall be obliged to decide the case within further period of three months from the date of appearance of the parties i.e. from 26th November, 2015.

Sd/-
(Goutam Bhaduri)
JUDGE