AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 481 of 2011

1. Smt. Jana Bai Tandan, Aged about 52 years, W/o. Late Pundas Tandan,
2. Preetamdas Tandan, Aged about 35 years,
3. Om Prakash Tandan, Aged about 30 years,
4. Devprakash Tandan, Aged about 28 years,
5. Satyaprakash Tandan, Aged about 26 years,
6. Ram Tandan, Aged about 24 years,
7. Shyam Tandan, Aged about 22 years,
8. Amarnath Tandan, Aged about 20 years,

   Respondent No. 2 to 8 S/o. Late Pundas Tandan, All are R/o. Dharam Nagar, Tikrapara, Police Station Tikrapara, Tahsil and District Raipur Chhattisgarh

---- Appellants

Versus

1. Mohan Yadav, S/o. Ram Janam Yadav, Aged about 28 years, R/o. Village Chhapiya, Police Station Taraiya, District Bihar, At present R/o. Raghunandan Nagar, Police Station Civil Lines Bilaspur Chhattisgarh (Driver)
2. Shri Mansur Aalam Ansri, Aged about 45 years, S/o. Late Amir Ali, R/o. Tatibandh, Raipur, Chhattisgarh (Owner)
3. Branch Manager, Bajaj Allianz General Insurance Company Limited, Office at Pandri "Shiv Mohan Bhawan" Vidhan Sabha Road, Raipur Chhattisgarh (Insurer)

----Respondents

For Appellants	:	Mr. Malay Kumar Bhaduri, Advocate
For Respondent No.3	:	Mr. S.S. Rajput, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/11/2017

1. Present is an appeal by the Claimants challenging the award dated 10.01.2011, passed by the 10th Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh, in Claim Case No. 35/2010. Vide the impugned award the Tribunal has awarded a compensation of Rs.3,73,072/- with interest @6% per annum.

2. The appeal is by the Claimants seeking enhancement of the compensation. The contention of the counsel for the appellants is that the Tribunal has erroneously deducted the pension which the widow was receiving from the income of the deceased for calculating the monthly income and further computing the compensation. This according to the counsel for the appellant was erroneous as any emolument which the widow was getting on the death of the deceased cannot be taken into consideration as part of the income of the deceased for quantification of the compensation and thus prayed for the amount of compensation to be suitably enhanced. He further submits that the award is also bad in law so far as the multiplier applied and the compensation under the conventional head is concerned.

3. The counsel for the Insurance Company however opposing the appeal submits that the award is fair and reasonable as it is based upon the evidence which have come on record, particularly in respect of the pension and other monitory benefits which the widow and children have received on the death of the deceased and thus prayed for the rejection of the appeal.

4. Before going into the merits of the case, this Court would intent to refer to the decision of the Hon'ble Supreme Court in the case of ***"Helen C. Rebello (Mrs) and others vs. Maharashtra State Road Transport Corporation & Anr." reported in (1999) 1 SCC, 90***, wherein it has been held as under:-

> "***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........***"

5. Applying the principles in the aforesaid judgment of the Hon'ble Supreme Court in the case of ***"Helen C. Rebello"*** (supra) this Court also earlier in MAC No. 64/2008 decided on 23.10.2007 and MAC No. 515/2013 also decided on the same day has taken a view that the amount received under the pension and other benefits on the date of the deceased cannot be considered while quantifying the compensation or while assessing the income of the deceased person.

6. It would be relevant at this juncture to also refer to the case of the Hon'ble Supreme Court in the case of ***"Vimal Kanwar & Others vs. Kishore Dan & Others" (2013) 7 SCC 476***, wherein in paragraphs No. 20 & 21, the Hon'ble Supreme Court has held as under:-

> ***"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 of an employee, if a scheme to that effect is framed by the 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."***

7. In the light of the aforesaid two judicial pronouncements of the Hon'ble Supreme Court and the couple of decisions rendered by this Court, this Court has no hesitation in reaching to the conclusion that the finding of the Tribunal in reducing the income of the deceased at Rs.5,173/- to be erroneous as from the pay slip which has been marked before the Tribunal as Exhibit P/14, basic pay of the deceased itself was Rs.12,550/- and with D.A. of Rs.3389/- which comes to at Rs.15,939/-. Under no circumstances, the income of the deceased could have been reduced from this figure.

8. This Court thus assesses the income of the deceased at Rs.15,939/- instead of Rs.5173/-. We now proceed to decide the compensation payable accordingly. If we accept the salary of the deceased at Rs.15,393/-, the annual income would come to Rs.1,91,268/-, of which considering the total number of claimants if 1/4th is deducted towards personal expenses, the amount would come to Rs.1,43,451/-, which if multiplied applying the multiplier of 9, the amount would come to Rs.12,91,059/-. In addition, the claimants shall be entitled for a lump sum compensation under conventional head of Rs.70,000/-, which would bring the total compensation at Rs.13,61,059/-. Thus, the appellant No.1 shall be entitled for a total compensation of Rs.13,61,059/- instead of Rs.3,73,072/-.

9. The said amount shall also carry interest at the same rate as has been awarded by the Tribunal.

10. Rest of the award as has been assessed by the Tribunal so far as the entitlement is concerned, the same remains intact.

11. Thus, the appeal is allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved