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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No. 1116 of 2009

Smt. Gyandevi Sahu Wd/o Ramji Sahu, AGed about 55 years, R/o village Aaveri Tahsil Charama District Kanker, Chhattisgarh

---- Appellant

VERSUS

1. Hari Ram Baghel Aged about 45 years, S/o Suderson Baghel, Occupation-Driver, R/o Gram Manchiguda, Darbha, District Baster (CG) Scropioa No. CG02/3253)
2. Director, State Garage Raipur, Chhattisgarh (Scropioa No.CG 02/3253)
3. State of Chhattisgarh, Through Collector Kanker.

---- Respondents

For Appellant	:	Shri Anurag Khatri, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

27/01/2017

1. This appeal by the Claimant is directed against the award dated 25.05.2009 passed by the Motor Accident Claims Tribunal, Kanker, District North Bastar, (*hereinafter called 'the Tribunal'*) in Claims Case No. 140 of 2008 whereby the learned Tribunal awarded Rs. 2,30,810/- to the claimant.

2. This appeal has been filed by the Appellant/Claimant for enhancement of the compensation and the State has filed cross-objection (IA No. 1) that Rs.75,000/- paid by the State towards expenses during the treatment of the deceased should be deducted.

3. The undisputed facts are that the deceased Ramji Sahu was travelling on his moped which was hit by a vehicle i.e. Scorpio bearing registration No. CG 02 /3253 belonging to the State Government. The stand of the Claimant is that in fact at the time of accident, the moped of the deceased was stationary. The finding of negligence arrived at by the learned Tribunal has not been disputed before me. Therefore, I will only deal with the issue of quantum of compensation. It appears that after the accident took place on

01.03.2008, injured Ramji Sahu remained hospitalized upto 14.03.2008 and a lot of money was spent on his treatment. The learned Tribunal has come to the conclusion that an amount of Rs.2,12,810/- (Rs.81,000+Rs.1,27,310+Rs.4,500) was spent on the treatment of the deceased. In addition to the above, the learned Tribunal also awarded Rs. 5000/- for special diet; Rs. 3000/- for conveyance and Rs. 10,000/- for funeral expenses, pain and suffering etc. i.e. a total sum of Rs. 2,30,810/-. However, the Tribunal has also ordered in para 19 that the amount of Rs.75,000/- paid by the State is to be deducted from this amount. As far as this part of the award is concerned, this is not seriously challenged and what is under challenge before me is that portion of the award whereby the learned Tribunal has held that since the Appellant/Claimant is now getting pension of Rs.5000/- per month, she cannot be said to be dependent on the deceased and therefore, she is not entitled to any amount as compensation.

4. To say the least, this award shows total lack of judicial knowledge of the learned Tribunal concerned. Even in a claim where no negligence is alleged, a person is entitled to compensation under Section 163-A of the Motor Vehicles Act. It has been repeatedly held by the Apex Court that pension is one of the conditions of the service of the deceased and the tort feasor who is a wrong doer cannot take the benefit of pension granted. In this regard, reference may be made to the judgment of the Apex Court in *Helen C. Rebello v. Maharashtra State Road Transport Corporation* {(1999) 1 SCC 90} wherein the Apex Court held that any pecuniary advantage receivable by the heirs on account of death of the deceased payable on account of any pension, insurance etc. have no co-relation with the amount receivable under the Motor Vehicles Act. The Apex Court held as follows:

> "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 co-relation 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 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 insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any case, 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 similar and same plane having nexus inter so between them and not to which, there is no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the compensation computed as against torfeasor for his negligence on account of accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury of death without making any contribution towards it then how can 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 received under the life insurance policy is contractual."

5. Therefore, the learned Tribunal was unjustified in not awarding any amount for death of the deceased. It is proved that the deceased was 70 years of age. He was drawing Rs. 6000/- per month. Dependency of the wife is fixed at Rs.3000/- per month or Rs. 36,000/- per annum and keeping in view the age of the deceased, the multiplier of 5 is applied. Therefore, the compensation works out to Rs.1,80,000/- (Rs. 36000x5). In addition thereto, the Claimant-wife is held entitled to Rs. 50,000/- for loss of consortium and she is awarded another sum of Rs. 20,000/- for funeral expenses and other post death ceremonial expenses. Thus, the total compensation works out to Rs.2,50,000 (Rs. 1,80,000 + Rs.50,000 + Rs. 20,000).

6. In view of the above discussion, it is held that the award of the learned Tribunal is modified and enhanced by Rs. 2,50,000/-. On this amount, the Claimant shall also be entitled to interest at the rate of 7.5% per annum from the date of filing of the claim petition till payment/deposit of the entire amount. This amount shall be in addition to the amount already awarded by the Tribunal.

7. With the aforesaid observations, the appeal is disposed. The cross objection (IA No. 1) is disposed of by holding that the amount of Rs.75,000/- is to be deducted from the total amount of compensation, as already ordered by the learned Tribunal.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

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