NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 515 OF 2013

1. Smt. Sita Devi Kodopi, W/o Late Rajkumar Kodopi, age about 39 yrs
2. Uma Shankar Kodopi, S/o Late Rajkumar Kodopi, aged about 20 yrs
3. Sanjay Kumar Kodopi, S/o Late Rajkumar Kodopi, age about 18 yrs
4. Smt. Rambati Kodopi, W/o Shobhrai Kodopi, aged about 70 years

All are R/o Village Bade Gudera, Thana Kunwakonda, District South Bastar Dantewada (C.G.)

... Appellants

versus

1. Ramkumar Nag, S/o Motiram Nag, aged about 32 years, R/o Mailawada, Thana Kunwakonda, District South Bastar Dantewada (C.G.)
2. Motiram Nag, S/o Lalu, aged about 58 years, R/o Village Mailawada, Thana Kunwakonda, District South Bastar Dantewada (C.G.)
3. United India Insurance Co. Ltd., Anupama Chowk, Branch Jagdalpur, District Bastar (C.G.)

... Respondents

For Appellants	:	Mr. P.K. Tulsyan, Advocate.
For Respondent No.3	:	Mr. Dashrath Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/10/2017

1. The present is a claimants' appeal under Section 173 of the Motor Vehicles Act, 1988, seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal, South Bastar Dantewada, vide award dated 11.2.2013 passed in Claim Case No. 92/2009.

2. Vide the impugned award, the learned Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, in a death case, has awarded a compensation of Rs. 5,36,040/- to the claimants with interest thereon at the rate of 6% per annum from the date of filing of the claim application.

3. Learned Counsel for the appellants-claimants submits that the Tribunal has wrongly assessed the compensation on the ground that the claimant no.3 has got compensation and is drawing a salary of around Rs.9000/- a month which was deducted from the monthly income of the deceased while quantifying the compensation, which is in contravention to the judgment of the Hon'ble Supreme Court in the case of **Vimal Kanwar & Ors.** v. **Kishore Dan & Ors.**, **2013 (7) SCC 476.** He further submits that the claimants would also be entitled for loss of income towards future prospects and other heads also.

4. Learned Counsel for respondent no.3-insurance company however opposing the appeal submits that the decision of the Tribunal is based upon the decision of the Hon'ble Supreme Court in the case of **Bhakra Beas Management Board** v. **Kanta Aggarwal (Smt.) & Ors.**, **2008 (11) SCC 366** therefore the same cannot be said to be bad in law and the appeal is liable to be rejected. He further submits that the claimants themselves in their appeal have claimed for a total compensation of Rs. 18,53,960/- therefore the compensation, if any, would not exceed beyond the amount claimed by the claimants.

5. Having considered the rival contentions put forth on either side and on perusal of the record, so far as the order of the Tribunal to the extent of deducting the amount of salary drawn by claimant no.3 for the purpose of quantifying the compensation is concerned, this Court is of the opinion that the decision of the Hon'ble Supreme Court in the case of **Vimal Kanwar** (supra) is very specific in this regard where in paragraphs 20 and 21 it has been 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 who 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.**"**

6. In the light of the aforesaid decision of the Hon'ble Supreme Court which is subsequent than that of the judgment relied upon by the Tribunal, it is the subsequent judgment which would prevail and the impugned finding of the Tribunal thus is bad in law and the same deserves to be and is accordingly set aside.

7. So far as the other issue as regards the claimants having claimed for a compensation of Rs.18,53,960/-, this Court is of the opinion that since the Motor Vehicles Act is a liberal legislation and the fact that the amount of compensation should always be just, fair and reasonable and even if the claimants have claimed a lesser amount of compensation, if the Court finds from the factual matrix of the case that the claimants are entitled for much more than the amount claimed by them, the same can be awarded while deciding the appeal under Section 173 of the Motor Vehicles Act.

8. While quantifying the compensation payable to the claimants, if we look into the salary certificate of the deceased which has been brought before the Tribunal, i.e., Exhibit P-9, the gross income of the deceased has been shown at Rs. 22,711/- of which there was a deduction towards GPF and GIS of Rs. 2,285/- and Rs. 150/- respectively, both of which however is the part of the income of the deceased as the same would had been accumulated for his superannuation. Thus, the same also has to be added as his income for the purpose of quantifying the compensation. This Court therefore is of the opinion that the gross income of Rs.22,711/- has to be accepted as the monthly income of the deceased. However, for the convenience and also taking note of the fact that there would be certain deduction of income tax on the income that the deceased was receiving, this Court takes the monthly income of the deceased at Rs.22,000/- instead of Rs. 22,711/- for the purpose of quantifying the compensation.

9. Accordingly, assessing the monthly income at Rs.22,000/-, the yearly income would come to Rs. 2,64,000/- of which if 30% i.e. Rs.79,200/- is added towards the future prospects, the total figure would come to Rs. 3,43,200/- to which if 1/3rd i.e. Rs.1,14,400/- is deducted towards the personal expenses, the remainder would come to Rs. 2,28,800/- which if multiplied by applying the multiplier of 13, the amount would become Rs. 29,74,400/-. It is thus held that the claimants shall be entitled to get an amount of Rs. 29,74,400/- towards the loss of dependency. Further, considering the total facts and circumstances of the case, this Court is of the opinion that the claimants shall also be entitled for an amount of Rs. 25,600/- towards the conventional heads and it is ordered accordingly. The claimants thus shall be entitled for a total compensation of Rs.30,00,000/- instead of Rs. 5,36,040/- as has been awarded by the learned Tribunal.

10. As a result, the appeal is allowed and the impugned award stands modified to the extent that the appellants-claimants shall be entitled to receive a total compensation of Rs.30,00,000/- with interest thereon at the same rate as has been awarded by the Tribunal. Rest of the award remains intact.

Sd/-
(P. Sam Koshy)
Judge

/sharad/