NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 675 of 2013

1. Banato @ Balwant S/o Late Son Singh Mourya Aged About 24 Years
2. Falguni S/o Late Son Singh Mourya Aged About 14 Years Minor, Thru- Mother Smt. Jayanti Mourya,

   All are residence of Village & Post- Chokar, Tahsil and Distt. Bastar C.G.

---- Appellants (Claimants)

Versus

1. Ashok Kumar Shrivastava S/o Radheshyam Shrivastava Aged About 28 Years R/o House No. 128, Ganjpara, Durg, Distt. Durg C.G. (Driver)
2. Dalbeer Singh S/o Niranjan Singh Aged About 45 Years R/o Telibandha, Sandabi Nagar, Raipur C.G. (Owner)
3. The National Insurance Co. Ltd. Through Branch Manager, Above Central Bank Jagdalpur, Distt. Bastar C.G. (Insurer)

---- Respondents

For Appellants	:	Shri A.L.Singraul, Advocate
For Respondent No.1 & 2	:	None
For Respondent No.3	:	Shri B.N. Nande, Advocate

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement

Per P. Diwaker, J

19/07/2017

1. The claimants/appellants have challenged the award dated 27.4.2013 passed by the Motor Accident Claims Tribunal, Bastar at Jagdalpur in Claim Case No.231/2001 thereby partly allowing the claim application of the claimants herein and awarding compensation of Rs.2,25,324/- together with interest at the rate of 6% p.a. for the accidental death of

deceased Son Singh Mourya.

2. Facts of the case, in brief are that on 8.5.2011 while deceased Son Singh Mourya was waiting for the conveyance to go to his home by standing at the side of road, the offending vehicle i.e. Truck bearing registration number CG04-G-8155 being driven by respondent No.1 herein in a rash and negligent manner, gave dash to him as a result of which he received grievous injuries on various parts of his body. He was immediately taken to the hospital where he succumbed to his injuries during the course of treatment. Report of the accident was lodged in the Police Station Bhanpuri. A claim case was filed by the claimants/appellants seeking compensation to the tune of Rs.22,81,340/- under various heads, *inter alia,* pleading that at the time of accident the deceased was 45 years of age, he was earning Rs.10,723/- per month and that they were dependent on him and on account of his untimely death a loss of income has occasioned to them, therefore, they are entitled to the compensation as claimed by them.

3. Respondent No.3-Insurance Company contested the claim case and denied its liability on the ground that the deceased himself was responsible for such accident and there was breach of insurance policy also as the offending vehicle was being plied without any valid documents like driving license, permit, fitness certificate.

4. The Claims Tribunal by the impugned award has awarded a compensation of Rs.1,75,324/- to the appellants under various heads such as loss of consortium, loss of estate, loss of love & affection, loss of income and funeral expenses. It is this award which has been challenged by the appellants in this appeal.

5. Counsel for the appellant submits that;-

    - benefits of compassionate appointment are not liable for deduction for determining the compensation under the Motor Vehicles Act, 1988 (henceforth 'the Act of 1988') and therefore the Claims Tribunal while determining the compensation has erred in deducting the salary received by the son of deceased on compassionate appointment.
    - the sum awarded under the conventional heads are also on the lower side.

- the rate of interest awarded at the rate of 6% per annum from the date of application till payment is also very low and it requires upward revision and enhancement.

6. On the other hand, it has been argued on behalf of the counsel for respondent No.3 that the compensation awarded by the Claims Tribunal is just and proper and as such, the same is not required to be enhanced at all.

7. Heard counsel for the parties and perused the material available on record.

8. As regards the deduction of salary of drawn by son of deceased on account of compassionate appointment while computing the dependency, the grant of compassionate appointment to maintain family of the employee who died in harness i.e. while in service leaving behind the dependants, cannot be said 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. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependants may be entitled for compassionate appointment but that cannot be termed as "Pecuniary Advantage" that comes under the periphery of the Act of 1988 and therefore any amount received on such appointment is not liable for deduction for determination of compensation under the Act of 1988. In **Vimal Kumar & ors v. Kishore Dan & ors** reported in **(2013) 7 SCC 476** the Supreme Court while dealing almost similar issue has held in Para-20 thus:-

> "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 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 dependants, one of the dependants 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 dependants 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."

9. Thus, we are of the considered opinion, the salary or any part thereof which may be payable to the son for the employment given to her on compassionate grounds on account of his father's death cannot be deducted from the compensation payable to her under the Act of 1988. Therefore, the Claims Tribunal has erred in deducting Rs.1,14,000/- from the annual income of the deceased on account of compassionate appointment given to appellant No.1 herein. Accordingly, we propose to recompute the amount of compensation by taking into consideration the gross salary of the deceased i.e.1,48,746/- p.a.

10. After deducting 1/3rd from the income of the deceased towards his personal expenditure, the annual loss of dependency would come to Rs.98,984/ and after applying multiplier of 11 to it, the total amount of compensation towards loss of dependency would come to Rs.10,88,824/- (98984x11). Besides this amount, the claimants are also entitled to get Rs.50,000/- each towards the love & affection i.e. Rs.1,00,000/-, Rs.50,000/- for loss of estate and Rs.25,000/- on account of funeral expenses. Therefore, the total amount comes to Rs.12,63,824/- (10,88,824 + 1,75,000). The Claims Tribunal has already awarded Rs.2,25,324/- to the claimants, after deducting the said amount the

claimant/ appellants are entitled for enhanced amount of Rs.8,03,000/- (1263824 - 2,25,324). This additional amount of compensation shall carry interest @ 9% p.a. from the date of filing of claim application till realization.

11. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-	Sd/-
(P. Diwaker)	(RP Sharma)
Judge	Judge

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