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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 490 of 2016

Divisional Manager, the New India Insurance (Assurance) Company Limited Mobin Mahal Jail Road Raipur through: Authorized Signatory for Divisional Office, (460500) the New India Assurance Company Limited Divisional Office opposite Rajiv Plaza old bus stand Bilaspur, Chhattisgarh ....(Insurer N. A. No.3)

---- Appellant

Versus

1. Smt. Jyoti Bibiyana, aged about 48 years, Caste Minz R/o Sorid Nagar Dhamtari, District Dhamtari, Chhattisgarh
2. Jigyasa D/o late Basant S. Minz, aged about 19 years, Caste Minz R/o Sorid Nagar Dhamtari, District Dhamtari, Chhattisgarh
3. Barish aged about 15 years, minor through guardian mother Smt. Jyoti Bibiyana, Caste Minz R/o Sorid Nagar Dhamtari, District Dhamtari, Chhattisgarh .... (Claimants)
4. Dinesh Kumar Sudeswar S/o late Rajesh Kumar, aged about 33 years, R/o Transport Nagar Ravabhata Pragati Chouk House of Pilaram Sao, P.S. Khamtarai Raipur, Tehsil and District Raipur, Chhattisgarh, C/o Kanker Roadways Civil Line Raipur, Tehsil and District Raipur, Chhattisgarh ....(Driver)
5. Kanker Roadways Civil Line Raipur, Tehsil & District Raipur, Chhattisgarh ....(Owner)

---- Respondents

For Appellant	:	Shri B. N. Nande, Advocate
For Respondents 1 to 3	:	Shri Kunal Das, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

10/07/2017

The present appeal is by the Insurance Company assailing the award dated 31.10.2015 passed by the Additional Motor Accident Claims Tribunal (FTC), Dhamtari in Claim Case No. 07/2014. Vide the said award the Tribunal in a proceeding under Section 166 of the Motor Vehicles Act has granted Rs.43,84,928/- as compensation to the claimants.

2. The solitary ground of challenge by the Insurance Company in the present appeal is that the Tribunal while calculating the award has not deducted the income tax payable by the deceased while quantifying the compensation amount. According to the counsel for the appellant, the admitted fact as it stood from the pleadings itself was that the deceased was getting an amount of Rs.2,000/- deducted from his monthly salary towards Income Tax. According to the counsel for the appellant, taking into consideration the fact that the deceased fell in the category of the slab of payment of 10% as income tax on the salary that he was drawing, he was liable to pay an amount of Rs.25,050/- as income tax annually. This amount ought to have been deducted from the yearly income of the deceased. According to the counsel for the appellant, the yearly income of the deceased was shown as Rs.5,93,172/- from which the Tribunal ought to have deducted an amount of Rs.25,050/- towards income tax and the remaining amount of Rs.5,68,122/- would have been his annual income for the purpose of quantifying the compensation. If this amount is multiplied by applying the multiplier of 11, it would reach to Rs.62,49,342/- from which after deduction of 1/3 towards personal expenses, the net amount would be Rs.41,66,228/-.

3. This argument of the appellant is supported by the decision of the Supreme Court in the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** wherein in paragraph-24 it has been held that where the annual income is in the taxable range, the actual salary should be the annual income less the tax.

4. In the given facts and circumstances of the case, this Court is of the opinion that the finding of the Tribunal to the extent of not deducting the tax component from the salary of the deceased for the purpose of calculating compensation was not proper. Accordingly, the amount awarded by the Tribunal stands modified and the net loss of income would reach to Rs.41,66,228/- in stead of Rs.43,84,928/-. All the other award which has been granted by the Tribunal including the interest part shall remain intact.

5. Accordingly, the present appeal stands partly allowed in terms of the modification made in the preceding paragraph. It is ordered that the Insurance Company would be entitled for refund of this excess amount of Rs.1,83,700/- which has been deposited by it. The remaining amount whatsoever, if it has not been disbursed, the same can be disbursed to the claimants.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola