

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 90 of 2012**

Nand Kumar Soni S/o Shri Bhoj Ram Soni Aged about 61 years R/o Bandhwapara Way Of Pahaldawa Talab Raipur P.S. Purani Basti Raipur District Raipur Chhattisgarh, At Present Supervisor Zeela Sahkari Central Bank, Branch Chhura, District Raipur Chhattisgarh

---- Appellant**Versus**

1. Gauri Devi Chauhan Wd/o Gopal Singh, Aged about 47 years,
2. Narsingh Chouhan S/o Late Gopal Singh Chouhan, Aged about 27 years,
3. Pradip Chouhan S/o Late Gopal Chouhan, Aged about 23 years,
4. Ku. Priti Chouhan D/o Late Gopal Singh Chouhan, Aged about 19 years,
5. Pankaj Chouhan S/o Late Gopal Singh Chouhan, Aged about 16 years, A minor through guardian mother Smt. Gauri Devi Chouhan, Wd/o. Gopal Singh Chouhan

All are R/o Shankernagar, Ward No. 1 , Near Bawali, Mahasamund, Tahsil Mahasamund, District Mahasamund Chhattisgarh

---- Respondents

For Appellant	:	Mr. Malay Kumar Bhaduri, Advocate
For Claimants	:	Mr. Shivendu Pandya, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****20/02/2018**

1. The present is an appeal by the Owner under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 16.12.2011, passed by the 2nd Additional Motor Accident Claims Tribunal, Mahasamund, Chhattisgarh, in Claim Case No. 67/2006.
2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.3,00,000/- with interest @ 6% per annum from the date of application.

3. The only ground of challenge by the appellant is the compensation awarded towards loss of dependency. The contention of the counsel for the appellant is that the son of the deceased namely Pradeep Singh Chouhan i.e. the respondent No.3 was granted compassionate appointment and therefore the loss of dependency which has been incurred on the death of the deceased has been suitably compensated by granting compassionate appointment to the son and therefore the Tribunal ought not have awarded any compensation towards loss of dependency and the claim should have been restricted only granting of compensation towards the loss of estate, loss of consortium and loss of love & affection.
4. This Court is of the opinion that the ground so raised by the appellant is not sustainable any further in the light of the judgment of the Hon'ble Supreme Court in the case of **"Vimal Kanwar & Others vs. Kishore Dan & Others"** (2013) 7 SCC 476, wherein the Hon'ble Supreme Court in paragraphs No. 20 & 21 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.”

5. A similar view has also been taken by this Court in MAC No. 481/2011, decided on 16.11.2017 (Smt. Jana Bai Tandan & Others vs. Mohan Yadav & Others).
6. In the light of the aforesaid judgment of the Hon'ble Supreme Court and this Court referred to herein above, this Court is of the opinion that merely because the son of the deceased has been granted compassionate appointment by itself would not be a ground for denying compensation towards loss of dependency to the Claimants.
7. The appeal thus being totally devoid of merits deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge