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HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 897 OF 2013**Judgment reserved on: 05/09/2018Judgment delivered on: 08/10/2018

Branch Manager, the Oriental Insurance Co. Ltd. Branch Office, Rama Trade Center, In front of Rajeev Plaza, Bus Stand, Bilaspur, District Bilaspur (C.G.).

(Insurance Company of Vehicle Tevera Car No. CG-11-B.A.-7100).

.....Appellant**Versus**

1. Rajobai Dhruw Age 44 Years, W/o Late Mohan Singh Dhruw.
2. Jitesh Dhruw, Age 15 Years, S/o Late Mohan Singh Dhruw,
For Minor Applicant No. 2, through Guardian Mother Rajobai Dhruw Age 44 Years, W/o Late Mohan Singh Dhruw, Both Resident Sirgitti, Thana Tarbahar, Tehsil & District Bilaspur (C.G.).
3. Rajesh Sahu, Age 35 Years, S/o Jagdeesh Sahu Resident Akash Nagar, (Rajeev Gandhi Ward No. 33) in front of Gupta Bhavan, Thana Bodhghat, Tehsil Jagdalpur, District Jagdalpur Bastar, (C.G.).
(Driver of Vehicle Tevera Car No. CG-11-B.A.-7100)
4. Kavita Sahu, Age 32 years W/o Rajesh Sahu, Resident Akash Nagar (Rajeev Gandhi Ward No. 33) in front of Gupta Bhavan, Thana Bodhghat, Tehsil Jagdalpur, District Jagdalpur Bastar, (C.G.).
Possible Address Vardhman Car, Bansant Marbal, Pachpedhi Naka Laxmi Nagar, Raipur, Tehsil & District -Raipur (C.G.).
(Owner of Vehicle Tevera Car No. CG-11-B.A.-7100).

.....Respondents

For Appellant	:	Mr. Sudhir Agrawal, Advocate
For Respondents No.1 & 2	:	Mr. Keshav Dewangan, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
C A V Judgment

1. By this instant appeal, the appellant/Insurance Company has challenged the legality, validity and propriety of the impugned award dated 08/07/2013 passed

by Third Additional Member of First Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No. 43/2012, whereby the learned Claims Tribunal partly allowed the claim application of respondents No.1 and 2/claimants.

2. Brief facts for disposal of this appeal, are that, on 30/05/2012, when Mohan Singh Dhruv and Vishnu Kashyap were travelling on motorcycle from Bacheli to Kirandul, at that relevant time, when they reached near Dhurli Patelpara, one Tavera Vehicle bearing registration No. CG 11/BA/7100 (offending vehicle) driven by respondent No. 3, dashed motorcycle of Mohan Singh Dhruv. On account of the said accident, both the persons travelling on motorcycle succumbed to injuries sustained by them on the spot. Thereafter, the matter was reported to the concerned Police Station and offences under Sections 279 and 304(A) of IPC was registered against respondent No. 3/driver.
3. For the reasons stated with respect to death of Mohan Singh Dhruv, respondents No.1 and 2/claimants have filed claim application before the competent Claims Tribunal claiming Rs.43,30,000/- stating therein that on the date of accident, Mohan Singh Dhruv was working on the post of Patwari and posted at Tahsil Office, Dantewada and drawing salary of Rs.23,360/- per month. They have further stated that both of them were fully dependent upon the deceased, but after death of Mohan Singh Dhruv, who was husband of respondent No. 1 and father of respondent No. 2, they were deprived of their monthly dependency.
4. Respondents No. 3 and 4/non-applicants No. 1 & 2 who are driver and owner remained *ex parte* and non-applicant No. 3 and appellant herein has submitted reply to the claim application, in which, Insurance Company denied all the adverse allegations made against it. It has been further stated that the accident

occurred due to negligence of deceased Mohan Singh Dhruv and there was violation of conditions of insurance policy. Insurance Company of motorcycle was not arrayed as party and there is no proof that applicants are legal heirs of deceased. It has been lastly stated that there was contributory negligence on the part of the deceased i.e. driver of the motorcycle.

5. The Claims Tribunal after appreciating the pleadings and evidence available on record partly allowed claim application filed by respondents No.1 and 2/claimants and awarded Rs.21,40,024/- towards compensation.
6. Aggrieved by aforementioned award passed by learned Claims Tribunal, the appellant/Insurance Company has filed this appeal on the ground that the learned Claims Tribunal has committed illegality in partly allowing the claim application of the respondents No.1 and 2/claimants in the facts and circumstances of the case and grounds mentioned therein.
7. Learned counsel appearing for the appellant/Insurance Company argued that the accident occurred due to sole negligence of driver of motorcycle i.e. Mohan Singh Dhruv and immediately after the accident, name of driver of offending vehicle was not disclosed by the claimants before the concerned Police Station at the time of lodging of First Information Report. He further argued that respondent No. 3 was not actual driver, who was driving the offending vehicle at the time of accident and the name of respondent No. 3 has been subsequently disclosed afterthought. He lastly argued that the learned Claims Tribunal has not considered that there was contributory negligence on the part of the deceased i.e. driver of motorcycle as the accident took place between the two vehicles.
8. Per contra, learned counsel appearing for respondents No. 1 and 2/claimants while supporting the findings recorded with respect to rash and negligent driving

of respondent No. 3, driver of offending vehicle, fixing liability for payment of compensation upon the Insurance Company, has argued that the learned Claims Tribunal has awarded meager amount towards compensation. He further argued that the learned Claims Tribunal committed an error in assessing the monthly income of deceased by deducting amount towards General Provident Fund, House Rent Allowance and General Insurance Scheme. He lastly argued that the learned Claims Tribunal has also not awarded any amount towards future prospects and therefore, respondents No.1 and 2/claimants have also filed cross-appeal under the provisions of Order 41 Rule 22 of CPC for enhancement of compensation.

9. I have heard learned counsel appearing for the parties and perused the record carefully.
10. Firstly, I am dealing with the grounds raised in the appeal filed by the appellant/Insurance Company.
11. The first ground as raised by learned counsel for the appellant/Insurance Company is that so far as considering the argument with respect to the negligence on the part of the deceased Mohan Singh Dhruv, the records would show that spot-map has been produced before the learned Claims Tribunal and marked as Ex. P-9, in which, it has been mentioned that the main road is between Bhansi to Dantewada and the place of incident has been shown towards left side of the main road from Dantewada to Bhansi. The deceased was on his motorcycle travelling from Bacheli to Kirandool, which is towards Bhansi as per the spot-map. Therefore, from perusal of the spot-map (Ex. P-9), it *prima facie* shows that it is the Tavera vehicle bearing registration No. CG11/BA/7100

came from opposite side on wrong side and dashed the motorcycle of the deceased.

12. The fact and manner of accident was stated by Palturam Thakur (AW-1), who fortunately at the time of accident was travelling on his own motorcycle on same road. His evidence with respect to the occurrence in front of him remain uncontroverted in his cross-examination. From the aforementioned documentary and oral evidence of witness Palturam Thakur (AW-1), it is proved that the accident took place due to rash and negligent driving of respondent No. 3/ driver of Tavera vehicle and the argument raised by the learned counsel for the appellant/Insurance Company to this effect is contrary to material available on record and is without substance.
13. The another ground raised by the learned counsel for the appellant/Insurance Company is that respondents No.1 and 2/claimants have not disclosed the name of driver of offending vehicle immediately after the incident at the time of lodging of First Information Report before the concerned Police Station and also stated that the driver was changed. From the record, it is evident that after the accident, driver of Tavera vehicle, left the vehicle on the spot and ran away. First Information Report (Exhibit P-3) as well as Merg intimation report (Exhibit P-4) clearly bears the number of offending vehicle as CG 11/BA/7100.
14. The other factor emerging from the record is that respondent No.3/driver of the offending vehicle is no other person but the husband of the registered owner. Learned counsel for the appellant/Insurance Company has also failed to show from the records that there was any material and evidence produced before the learned Claims Tribunal that at the time of accident, any other person except respondent No.3/driver of the offending vehicle was driving the said vehicle.

15. It is settled law that when any fact pleaded or ground raised by any of the parties to the litigation, it has to be proved by producing cogent and reliable piece of evidence by the said party. Mere pleading of any fact do not take place of evidence. Even otherwise, the appellant/Insurance Company has not taken the aforementioned ground as defence in its reply to the claim application filed by it before the learned Claims Tribunal. For the reason as mentioned above, the ground raised by the appellant has no force.
16. The appellant/Insurance Company has raised another ground that the learned Claims Tribunal has erroneously not considered the fact of contributory negligence on the part of the deceased i.e. driver of the motorcycle.
17. From perusal of the spot-map (Ex. P-9) and the statement of eyewitness Palturam Thakur (AW-1), it is the Tavera vehicle who dashed the motorcycle of deceased by going towards wrong side. Contributory negligence is a plea to be proved by the parties by producing cogent evidence and material before the learned Claims Tribunal in their support.
18. The Hon'ble Supreme Court while dealing with the issue of contributory negligence in the matter of ***Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors., 2013 AIR SCW 5375***, dealt with the plea of contributory negligence taken by Insurance Company where neither the driver nor any independent witness was examined to prove the allegation of contributory negligence. The Supreme Court, while setting aside the finding of contributory negligence, held as under :-

“12.-----The Tribunal ought to have seen that non production of FIR has no consequence for the reason that charge sheet was filed against the truck

driver for the offences punishable under Sections 279 read with Section 302 of IPC read with the provisions of the M.V. Act. The Insurance Company, though claimed permission under Section 170 (b) of the Motor Vehicles Act, 1988 from the Tribunal to contest the proceedings by availing the defence of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eye witness to prove the allegation of contributory negligence on the part of the deceased Susil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner. In the absence of rebuttal evidence adduced on record by the Tribunal, the Tribunal should not have placed reliance on the charge-sheet- Exh. 1 in which the deceased driver was mentioned as an accused and on his death; his name was deleted from the charge sheet. The Tribunal has referred to certain stray answers elicited from the evidence of PW.2 and PW3 in their cross-examination and placed reliance on them to record the finding on issue No. 1. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious issue No. 1 holding that there is contributory negligence on the part of the deceased driver in the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that accident did not take place on account of rash and negligent driving of the truck driver is erroneous in law.”

19. In the case in hand, the appellant/Insurance Company has not brought any evidence before the learned Claims Tribunal to show that the deceased who was driving the motorcycle was contributory negligent in any manner. The said

ground raised by the appellant/Insurance Company is without any merit substance and does not call for any interference.

20. Now, I will consider the cross-appeal filed by respondents No.1 and 2/claimants for enhancement of compensation.
21. Learned counsel for respondents No.1 and 2/claimants submits that the learned Claims Tribunal has assessed the income of the deceased on the lower side by deducting the amount from the monthly salary which is not available for deduction. From perusal of the salary slip (Exhibit P-17) of the deceased Mohan Singh Dhruv for the month of May 2012, his gross salary has been shown as Rs.23,360/- including Grade Pay, Dearness Allowance, Tribal Region Allowance, House Rent Allowance, Travelling Allowance, Stationary Allowance and Medical Allowance. In the salary slip, deductions have been shown towards General Provident Fund, House Rent Allowance and General Insurance Scheme and net salary has been shown as Rs.21,090/-. The learned Claims Tribunal had taken the net salary after deductions as shown in the salary slip.
22. The deductions towards General Provident Fund and General Insurance Scheme are the investments/savings of the Government employee, which is for the benefit of the employee and his family members in future. Therefore, the said amount cannot be deducted from the income while calculating the monthly income of any of the employee. The monthly income would include the amount of General Provident Fund and General Insurance Scheme as the income. The employee deposits the amount mentioned in aforesaid two heads to some scheme and the said amount is refundable with interest. The amount of House Rent Allowance and other allowances except Stationary Allowance shown in the

salary slip are also enjoyed by the family members, therefore, the said amounts are also to be treated as the part of income of the deceased.

23. The Supreme Court in the matter of ***National Insurance Co. Ltd. v. Indira Srivastava and others*** reported in ***(2008) 2 SCC 763*** has considered the income of the deceased for the purposes of awarding compensation and held as under :-

“9. The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay-packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.

10. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of

compensation payable for the death of the kith and kin of the applicants is required to be determined.....

17. This Court in *Asha v. United India Insurance Co. Ltd.*, (2008) 2 SCC 774 did not address itself the questions raised before us. It does not appear that any precedent was noticed nor the term 'just compensation' was considered in the light of the changing societal condition as also the perks which are paid to the employee which may or may not attract income tax or any other tax. What would be 'just compensation' must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay-package is what the dependents have lost due to death of the deceased. It is in the nature of compensation for future loss towards the family income.

19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.”

24. Further, in the matter of ***Vimal Kanwar and others v. Kishore Dan and others*** reported in (2013) 7 SCC 476, the Supreme Court has held as under :-

“19. The aforesaid issue fell for consideration before this Court in *Helen C. Rebello v. Maharashtra SRTC*, (1999) 1 SCC 90. In the said case, this Court held that Provident Fund, Pension, Insurance and

similarly any cash, bank balance, shares, fixed deposits, etc. are all a “pecuniary advantage” receivable by the heirs on account of one’s death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as “pecuniary advantage” liable for deduction. The following was the observation and finding of this Court: (SCC pp. 111-12, para 35).

“(35). 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 correlation between the two. Similarly, life insurance policy amount 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, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly, any cash, bank balance, shares, fixed deposits, etc. though all are pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation 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 a similar and same plane having nexus, *inter se*, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the 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 receivable under the life insurance policy is contractual.”

25. Reverting to the case in hand, the salary slip (Exhibit P-17) shows the allowances, in which, only Stationary Allowance cannot be treated as part of income of the deceased as the same cannot be for the benefit of the family members, and therefore, from the gross salary of Rs.23,360/-, the amount of Rs.250/- towards Stationary Allowance is to be deducted. The monthly income, by which, the family is being benefited, therefore comes to Rs.23,110/-.
26. In view of the aforementioned discussions and in the light of judgments rendered by the Hon'ble Supreme Court in aforementioned cases, learned Claims Tribunal has committed gross illegality in deducting the amount of General Provident Fund, House Rent Allowance and General Insurance Scheme from the monthly income of the deceased. The deceased was a Government employee and having fixed income. By the passage of time, the deceased could have also benefited in his monthly income by way of promotion or revision of pay.
27. Looking to the future prospects available for any of the persons died in accident on account of raising their income for one or the other reason, the Hon'ble Supreme Court in the latest decision between ***National Insurance Company Limited v. Pranay Sethi and others***, AIR 2017 SC 5157, has held that the dependents of the deceased will also be entitled for the benefit of such increase of amount of monthly income as future prospects, which reads as follows:-

“61. (iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the

age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.”

28. In view of the facts and circumstances of the case, on the date of accident, the deceased was aged about 49 years and 10 months as per the date of birth mentioned in the driving licence and PAN card available on record, therefore, in view of the law laid down by the Hon'ble Supreme Court in the matter of **Pranay Sethi** (*supra*), respondents No.1 and 2/claimants are also entitled for the additional amount of 30% of the last drawn salary towards future prospects.
29. The other ground raised by the claimants/respondents No. 1 and 2 in their cross-appeal with respect to awarding of meager amount towards conventional heads, it appears that learned Claims Tribunal has awarded only Rs. 10,000/- towards conventional heads. The amount towards conventional heads is also fixed by the Hon'ble Supreme Court in the matter of **Pranay Sethi** (*supra*). Therefore, in view of the law laid down in aforementioned case, respondents No.1 and 2/ claimants are also entitled for the amount of Rs.70,000/- towards conventional heads in total, in addition to the amount of compensation.
30. In view of the aforementioned discussions and law laid down by Hon'ble Supreme Court, in the considered opinion of this Court, the appropriate compensation is to be awarded to the claimants. For the reasons stated herein-above, the amount of compensation to be awarded to respondents No.1 and 2/claimants by the learned Claims Tribunal is recalculated as under:

The claimants are entitled for the compensation by assessing the monthly income of the deceased after deduction of other deductible amount as Rs.23,110/- i.e. Rs.2,77,320/- ($23,110 \times 12$) per annum and by adding 30% towards future prospects i.e. 30% of 2,77,320/- is Rs.83,196/-. Total annual income comes to Rs.2,77,320 + 83,196 = Rs.3,60,516/-. The exempted income from tax under the Income Tax Act is Rs.2,50,000/- and therefore, taxable income would be Rs.3,60,516 – 2,50,000 = Rs.1,10,516/-. On the taxable income, 10% tax is to be deducted which comes to Rs.11,051.6 (rounded off Rs.11,051/- only). After deduction of tax, the amount receivable comes to Rs.3,60,516 – 11,051 = Rs.3,49,465/-. From the annual income, 1/3rd amount is to be deducted towards personal expenses of the deceased, which comes to Rs.3,49,465 $\times$ 1/3 = Rs.1,16,488.33 (rounded off Rs.1,16,488/-). Total amount left for the claimants towards dependency is Rs.3,49,465 – 1,16,488 = Rs.2,32,977/-. At the time of accident, the deceased was aged about less than 50 years, therefore, multiplier of 13 would be applicable in the present case. After applying the multiplier of 13, the total dependency comes to Rs.30,28,701/- ($2,32,977 \times 13$). In addition to the aforesaid amount of compensation, respondents No.1 and 2/claimants are also entitled for Rs.70,000/- towards conventional heads.

31. On the basis of the above calculation, award passed by the learned Claims Tribunal is modified accordingly and now respondents No.1 and 2/claimants will be entitled for total compensation of Rs.30,98,701/- ($30,28,701 + 70,000$) along with interest at the rate of 6% per annum from the date of filing of claim application till the date of its realization instead of Rs.21,40,024/- as awarded by the Claims Tribunal. The other conditions imposed by the learned Claims Tribunal shall remain intact.

32. In the result, the appeal filed by the appellant/Insurance Company is liable to be and is hereby dismissed and the cross-appeal filed by respondents No.1 and 2/claimants is allowed in part.
33. No order as to costs.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh