NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 813 of 2014

1. Prabha Tigga W/o Late Julias Tigga Aged About 40 Years
2. Arti Tigga D/o Late Julias Tigga Aged About 15 Years Minor, Thru- Guardian- Prabha Tigga.
3. Pooja Tigga D/o Late Julias Tigga Aged About 16 Years Minor, Thru- Guardian- Prabha Tigga,
4. Pawan Tigga S/o Late Julias Tigga Aged About 17 Years Minor, Thru- Guardian- Prabha Tigga,
5. Beronica Tigga W/o Late Marshal Tigga Aged About 70 Years

All are R/o Rajkishore Nagar, P.S. Sarkanda, Distt. Bilaspur C.G.

---- Appellants
Claimants

Versus

1. Santosh Kumar Jayaswal S/o Harihar Sao R/o Namnakala, P.S. Ambikapur, Distt. Surguja C.G. (driver of truck No. CG 15 AC 4555)
2. Rakesh Kumar Gupta S/o Late Umesh Chand Gupta R/o D.C. Road, Mahaveer Ward, Distt. Surguja C.G. (owner of truck No. CG 15AC 4555)
3. Branch Manager S/o United India Insu.Co.Ltd., Rajendra Nagar Chowk, Bilaspur C.G. (Insurer of truck No. CG 15AC 4555).

---- Respondents

For Appellants	:	Ms. Bhagwati Kashyap, Advocate.
For Respondent No.3	:	Mr. Dashrath Gupta, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

05/12/2018

This appeal is by the claimants against the award 11.7.2014 passed by III Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.54/2012 awarding total compensation of Rs.23,11,760/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severely.

02. As per claim petition, on 3.11.2011 while deceased Julias Tigga, aged 44 years, earning Rs.20,107/- per month by working as Handpump Mechanic in PHE, Latori, Ambikapur, was riding his motorcycle, his vehicle was dashed by truck bearing No. CG 15AC

4555, driven by non-applicant No.1 in a rash and negligent manner, as a result of which Julias Tigga suffered grievous injuries and died on the spot.

03. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellants/claimants submits that there are five dependents on the deceased, therefore, as per decision of the Hon'ble Supreme Court in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, deduction towards personal and living expenses of the deceased should have been 1/4th whereas the Tribunal has deducted 1/3rd. Further, no amount towards future prospect has been given and in view of decision in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, there should be 30% addition in the annual income of the deceased under this head because he was in permanent job and below 50 years.

05. On the other hand, learned counsel for the respondent/insurance company submits that the Tribunal in para-19 has specifically observed that after death of the deceased, compassionate appointment has been given to his son Pawan Tigga and therefore, no amount towards future prospect can be granted in this case. He submits that there is no deduction towards income tax and other allowances from the salary of the deceased and therefore, the same are liable to be deducted and compensation be re-assessed accordingly.

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

07. In this case, the Tribunal considered the salary of the deceased as per Ex.P/8 at Rs.20,105/- and no any allowance is deductible from it under the law. Therefore, the income of the deceased has rightly been considered by the Tribunal. There is nothing on record to show that there was any deduction by the concerned department towards TDS from the salary of the deceased and as such, no amount is deductible

under this head also. Hence, keeping in view the decision in *Sarla Verma* and *Pranay Sethi* (supra), considering the age of the deceased, his nature of job and the number of dependents, the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs.20,105/- per month.	2,41,260/- per annum
02.	30% of (i) above to be added towards future prospects	2,41,260 + 72,378 = 3,13,638/-
03.	1/4th deduction towards personal and living expenses of the deceased	3,13,638 – 78,409 = 2,35,229/-
04.	Multiplier of 14 to be applied	32,93,206/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total compensation	**Rs.33,63,206/-**

Since the Tribunal has already awarded Rs.23,11,760/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.10,51,446/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

08. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/

(Gautam Chourdiya)

Judge

Khan