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# HIGH COURT OF CHHATTISGARH, BILASPUR

## Miscellaneous Appeal (Civil) No. 1052 of 2014

1. Incharge Officer, Geological Survey of India, Unit No. 369, Wadraf Nagar, District Sarguja (C.G.)

2. Director, Drilling Coal Office, OK-6, Sector-11, GSI Complex, Karunamayee Salt Lake City, Calcutta 700091

**---- Appellants**

**Versus**

1. Meena Devi W/o Late Baron Mahto, Aged about 40 years

2. Brajesh Kumar Mahto S/o Late Baron Mahto, Aged about 23 years

3. Bablu Kumar Mahto S/0 Late Baron Mahto, Aged about 20 years

4. Pintu Kumar Mahto S/o Late Baron Mahto, Aged about 16 years, Through Natural guardian Mother, Meena Devi

5. Kumari Rakhi D/o Baron Mahto, Aged about 18 years

Respondent No. 1 to 5 resident of Village Injani (Baheradaand) P.S. Chalgali, Tahsil Wadrafnagar, District Surguja (C.G.)

**---- Respondents/Claimants**

| | | |
|---|---|---|
| For Appellants | : | None |
| For Respondents/Claimants | : | Shri Sunil Tripathi, Advocate |

**Hon'ble Shri Justice Gautam Chourdiya, J**

**Judgment on Board**

**09.10.2018**

**1.** This appeal arises out of the award dated 31.07.2014 passed by the Additional Motor Accident Claims Tribunal, Pratappur, District Surajpur (C.G.) in Motor Accident Claim Case No. 32 of 2008 awarding a compensation of Rs.9,07,960/- in favour of the Respondents/Claimants, wife and children of deceased- Baron Mahto. The Appellants are the employer/owner of the vehicle.

**2.** Facts of the case, in brief, are that deceased-Baron Mahto was working as

Driver with the Appellants. Further, facts of the case are that on 28.07.2001 at about 04:00 PM the deceased with Incharge officer was going in vehicle Jeep bearing registration No. WNW-8163 from Wadraf Nagar to Budhar, as soon as they reached near City Hotel Kotma, suddenly one dog came in front of the Jeep and the Jeep got unbalanced and turned turtle. The deceased sustained grievous injuries and he was hospitalized in District Hospital, Shadol. During treatment, the deceased died on 29.07.2001.

**3.** The Claimants, wife and children of deceased- Baron Mahto, aged 49 years, filed a claim petition before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 for the death of deceased in the motor accident.

**4.** The learned Tribunal by the impugned award after considering the evidence available before it, has awarded a compensation of Rs.9,07,960/- in favour of the Claimants/Respondent with interest @ 07.05% per annum from the date of application till realization. It is also directed that the Appellants are jointly and severally liable for payment to the Claimants.

**5.** A cross-appeal has also been preferred by the Claimants/Respondents under Order XLI, Rule 22 of the Code of Civil Procedure seeking enhancement of the compensation.

**6.** In the memo of appeal, the Appellants have stated that on account of unfortunate death of the deceased in course of employment, Rs.5,00,000/- has been paid as ex-gratia for the death of deceased-Baron Mahto to the Claimants, but the learned Tribunal has not adjusted amount of ex-gratia in the amount of compensation. The learned Tribunal passed the award without application of mind, therefore, it is illegal and liable to be quashed.

**7.** On the other hand, learned counsel for the Claimants/Respondents argued in his cross-appeal that the Tribunal has only awarded compensation of

Rs.9,07,960/-. He submits that as per the age of the deceased i.e. 49 years, the learned Tribunal has not considered the future prospects in this case. He further submits that only Rs.25,000/- towards loss of consortium, love and affection from Claimants 2 to 5, funeral expenses and loss of estate awarded by the Tribunal, but it should be Rs.70,000/- as per ***National Insurance Company Limited* Vs. *Pranay Sethi and Others, (2017) 16 SCC 680***.

**8.** I have heard the learned counsel appearing for the Claimants/Respondents, perused the impugned award including the records of the Claims Tribunal also the cross-appeal.

**9.** Considering the pleadings in the memo of appeal, adjustment of ex-gratia amount of Rs.5,00,000/- cannot be accepted. Ex-gratia is social scheme for the employee by the Government or Authority. "Where a certain amount of ex-gratia payment was made to the claimant by the State, the Insurance Company could not claim deduction of this amount from the award of compensation. The amount paid to the dependent of the deceased under the Motor Vehicles Act is statutory while the amount paid to the claimant by the State as ex-gratia is obligatory and was paid under public welfare and social security scheme of the Government and as such the ex-gratia payment could not be deducted from the amount of compensation awarded by the Motor Accidents Claims Tribunal." *(In reference – United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan, AIR 2002 SC 2607)*. Therefore, ex-gratia provided to the family member of the deceased is not adjustable on the amount of compensation and the appeal on this ground is not sustainable. Therefore, appeal filed by the Appellants deserves to be dismissed.

**10.** As regards the cross-appeal for enhancement of compensation filed by the Claimants/Respondents, considering the age of the deceased i.e. 49 years which was not disputed in this case, the Tribunal has rightly applied the multiplier of 13 for the age group of 46-50. As far as argument advanced by the learned counsel for the Claimants/Respondent with regard to non-grant of future prospects and meagre amount of Rs.12,000 towards conventional heads by the Tribunal is concerned, in the facts and circumstances of the case, this Court is of the view that an amount of Rs.25,000/- towards loss of consortium, love and affection from Claimants 2 to 5, funeral expenses and loss of estate can be enhanced to Rs.70,000/- and 30% towards future prospects can also be given to the Claimants. In view of the *Pranay Sethi* (supra), the compensation is calculated as under:-

| **Sl.No.** | **Head** | **Calculation** |
|---|---|---|
| 1 | Income of the deceased | Rs.8,490/- per month i.e. Rs.1,01,880/- per annum |
| 2 | 30% towards future prospects added to annual income | (Rs.1,01,880/- + Rs.30,564/-) Rs.1,32,444/- per annum |
| 3 | 1/3rd deduction towards personal and living expenses of Deceased | (Rs.1,32,444/- – Rs.44,148/-) Rs.88,296/- |
| 4 | Multiplier of 13 applied | Rs.88,296/- x 13 = Rs.11,47,848/- |
| 5 | Loss of consortium, love and affection from Claimants 2 to 5, funeral expenses and loss of estate | Rs.70,000/- |
| | **Total Compensation** | **Rs.12,,17,848/-** |

Since the Tribunal has already awarded Rs.9,07,960/-, after deducting the same from the above amount, the Claimants/Respondents is held entitled for additional compensation of Rs.3,09,888/-.

**11.** Resultantly, the cross-appeal filed by the Claimants/Respondents is allowed in part and the impugned award is modified to the extent that the Claimants shall be entitled to a total enhanced amount of compensation of Rs.3,09,888/- with further direction of payment of interest on the enhanced amount of compensation @ 7.5% per annum from the date of filing of the claim petition till the date of actual payment.

However, rest of the conditions of the impugned award shall remain intact.

**12.** The appeal filed by the Appellants- Employer/Owner of the offending vehicle is dismissed.

**13.** Consequently, stay order granted on 17.10.2014 stands vacated.

**14.** Copy of this judgment be sent to the concerned Tribunal.

**15.** No order as to costs.

Sd/-

**(Gautam Chourdiya)**
Judge

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