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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 935 of 2012**

1. Smt. Hemadevi, W/o Late Shri Nagendra Singh, Aged About 38 Years, R/o Urdana, Tahsil Raigarh, Dist. Raigarh (C.G.)
2. Minor Ku. Pammi Singh, D/o Late Nagendra Singh, Aged About 16 Years, Through natural guardian Mother Smt. Hemadevi, W/o Late Shri Nagendra Singh, R/o Urdana, Tahsil – Raigarh, District Raigarh (C.G.)
3. Minor Bittu Kumar Singh, S/o Late Shri Nagendra Singh, Aged About 11 Years, Through natural guardian Mother Smt. Hemadevi, W/o Late Shri Nagendra Singh, R/o Urdana, Tahsil – Raigarh, District Raigarh (C.G.)
4. Minor Manisha Kumari, D/o Late Shri Nagendra Singh, Aged About 10 Years, Through natural guardian Mother Smt. Hemadevi, W/o Late Shri Nagendra Singh, R/o Urdana, Tahsil – Raigarh, District Raigarh (C.G.)
5. Minor Sonu Singh, S/o Late Shri Nagendra Singh, Aged About 7 Years, Through natural guardian Mother Smt. Hemadevi, W/o Late Shri Nagendra Singh, R/o Urdana, Tahsil – Raigarh, District Raigarh (C.G.)
6. Minor Monu Singh, S/o Late Shri Nagendra Singh, Aged About 7 Years, Through natural guardian Mother Smt. Hemadevi, W/o Late Shri Nagendra Singh, R/o Urdana, Tahsil – Raigarh, District Raigarh (C.G.)

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1. Sanjeev Gupta @ Sanju, S/o Ramdev Gupta, Aged About 31 Years, Occupation – Driver, R/o Village Kandiya, P.S. Chalgali, Tahsil – Wadrafnagar, District Sarguja (C.G.), at present – Ring Road, Uttari Kedarpur Chowk, Ambikapur, District Sarguja (C.G.)
2. Roopsai, S/o Kewalram, Age – not known, Occupation – Vehicle Owner, R/o Bauripara, Ambikapur, District Sarguja (C.G.)
3. United India Insurance Company Pvt. Ltd., Through Branch Manager, R/o Branch Office, Ambikapur, District Sarguja (C.G.), Branch Office – Chakradharnagar, Raigarh, Tahsil & District Raigarh (C.G.)

---- Respondents

For Appellants	:	Shri Amit Sharma, Advocate.
For Respondent No. 3	:	Smt. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**Judgment on Board****25/06/2018**

1. By the instant appeal, the appellants/claimants are challenging the legality and validity of the impugned award dated 19/07/2012 passed by the First Additional Motor Accident Claims Tribunal, Raigarh (in short 'Claims Tribunal') in Claim Case No.109 of 2011, whereby the learned Claims Tribunal awarded total compensation of Rs.6,56,000/- against the claim of Rs.55,31,816/-.

2. The appellants/claimants have filed this appeal seeking enhancement of amount under award as well as challenging the finding of contributory negligence recorded by learned Claims Tribunal.
3. The brief facts of the case, are that the deceased who was an employee of Chhattisgarh Armed Forces and on 10.12.2009 was traveling on Motorcycle bearing registration no. CG 15 CD 0735 and was going to Police Line, Ambikapur for office work on the instruction and direction of his superior officer. When they reached near Village Ghatgao at the relevant time the truck bearing registration no. CG 15 ZC 0316 driven by the Respondent No.1 dashed the Motorcycle due to which both the persons traveling on Motorcycle i.e. deceased Nagendra Sing and other co-employee Krishna died on spot.
4. The family members/appellants have filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'M.V. Act'), for grant of compensation on account of death of the husband of Appellant No.1 and father of Appellant Nos.2 to 6 on the ground that they were dependent on the income of the deceased who was aged about 43 years and earning about Rs.17,754/- per month. On that account they have claimed Rs.55,31,816/- as total compensation.
5. The Respondent Nos.1 and 2 who are driver and owner remained ex-parte and they have also not submitted their reply to the claim petition. The Respondent No.3/Insurance Company after service of notice submitted its reply and denied all the adverse facts against them and further stated that the driver of the truck was not having valid and effective driving licence on the date of accident. Further that at the time of accident the driver of Motorcycle was also not having licence to drive the

Motorcycle and further the deceased himself was responsible for accident.

6. The Appellants as well as the Respondent No.3 have produced witnesses to prove their pleadings and the learned Claims Tribunal after considering the pleadings, evidence and other material available on record passed impugned award of Rs.6,56,000/- in total after deducting the amount of monthly family pension received by the family members of the deceased from monthly income of deceased.
7. It is this award which is under challenged before this Court. Learned counsel appearing for the Appellants have raised the ground that the calculation with respect to loss of income based on salary certificate is erroneous, deduction made by the learned Claims Tribunal towards the personal expenses would be $\frac{1}{5}^{\text{th}}$ instead of $\frac{1}{3}^{\text{rd}}$, multiplier used is towards the lower side, no amount towards future prospects has been awarded by the learned Claims Tribunal. He further submits that the amount of conventional heads awarded by learned Claims Tribunal is also very meager.
8. Per contra, the learned counsel appearing for Respondent No.3/Insurance Company support the award and have argued that the learned Claims Tribunal passed the impugned award in accordance with law and have already given reasonable compensation to appellants/claimants in the facts and circumstances of the case.
9. I have heard the learned respective counsel appearing for the parties perused the records.
10. On perusal of the records it reveals that the appellants/claimants have examined PW-2 claimant Lakda Head Clerk of Chhattisgarh Armed

Forces, Raigarh who in his statement stated that the deceased Nagendra Singh was employed during his lifetime as Head Constable in the department and was earning Rs.17,754/- per month. He also stated, as per service record date of birth of the deceased was 16.03.1966. The learned Claims Tribunal while assessing the monthly income of the deceased on the date of accident deducted the family pension received by the claimants to the tune of Rs.11,754/- per month from the monthly income of the deceased and the monthly income was assessed to Rs.6,000/- per month i.e. Rs.72,000/- per year for purpose of computing compensation. The learned counsel appearing for the Appellants submits that the learned Claims Tribunal committed illegality in deducting family pension received by the claimants from the monthly salary of the deceased and places his reliance on the judgment rendered by Hon'ble Supreme Court in the matter of **Helen C. Rebello Vs. Maharashtra SRTC, (1999) 1 SCC 90** wherein one of the issue is with regard to whether the pension receivable by the claimants come within the M.V. Act to be termed as 'pecuniary advantage' and is liable of deduction. The Hon'ble Supreme Court dealing with issue held as under:-

“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 co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the 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 and cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation 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 to 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 co-relation. The insured (the deceased) contributes his own money for which he receives the amount which has no co-relation 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 Vehicle 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."

The issue with regard to pecuniary advantage have further been considered by the Hon'ble Apex Court in the matter of “**Reliance General Insurance Company Limited Vs. Shashi Sharma & Others**”. Their Lordships considering the judgment of Helen C. Rebello have held as under:

“Similarly, other benefits extended to the dependents of the deceased government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 including family pension, life insurance, provident fund, etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependents of the deceased government employee, applying the principle expounded in Helen C. Rebello and Patricia Jean Mahajan cases.”

In the light of the aforementioned law laid down by the Hon'ble Supreme Court in the matter of **Helen C. Rebello Vs. Maharashtra SRTC and Reliance General Insurance Company Limited Vs. Shashi Sharma & Others** (supra) learned Claims Tribunal have committed illegality in deducting the amount of pension from the salary of deceased for calculating the compensation towards loss of income which is not in

accordance with the dictum of Hon'ble Apex Court. Therefore, the loss of income assessed in favour of claimants requires modification.

11. The learned Claims Tribunal committed illegality in deducting 1/3rd towards the personal expenses instead of 1/5th and the multiplier as applied by learned Claims Tribunal is towards the lower side and instead of multiplier of 13, multiplier of 14 will be applicable as per the law laid down by the Hon'ble Supreme Court in **Sarla Verma Vs. Delhi Transportation Corporation reported in (2009) 6 SCC 121**. The learned counsel appearing for the Appellant would refer para 30 of the aforementioned judgment in which the Hon'ble Supreme Court considered the deduction towards personal expenses which is reproduced herein below:

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.”

12. From perusal of the judgment of Sarla Verma (supra) it is evident that the Hon'ble Supreme Court has clearly laid down that the deduction to be made towards personal expenses will be based on number of family members/dependents of the deceased only, and in case in hand the number of claimants/dependents who are widow and children are six. Therefore, the appropriate deduction towards personal expenses would be 1/5th instead of 1/3rd. The deceased on the date of accident was below 45 years of age, therefore, multiplier applicable in the case in hand would be 14 instead of 13 as applied by the learned Claims Tribunal. For

reasons as stated above the finding record by the learned Claims Tribunal with respect of deduction of personal expenses and multiplier requires modification.

13. The learned counsel appearing for the appellants/claimants further argues that the deceased was a government servant aged about 45 years and therefore, the claimants are also entitled for income towards future prospects. The learned Claims Tribunal failed to consider this aspect also. The appellants places reliance on the judgment rendered by Hon'ble Supreme Court and would argue that the claimants are also entitled for 30% of the proved salary of the deceased towards future prospects. Considering the law laid down by the Hon'ble Supreme Court in the matter of **National Insurance Company Ltd. Vs. Pranay Sethi & Others** the claimants would be entitled for 30% of proved salary towards the income for future prospects. The last submission which has been made by learned counsel for the appellants that learned Claims Tribunal had awarded the amount towards conventional heads to are on lower side. The Hon'ble Apex Court in its judgment rendered in Pranay Sethi (supra) have fixed the conventional heads to Rs.70,000/- in the cases of fatal accident and also the heads on which it is to be awarded for which the Appellants are also entitled.
14. The calculation made by the learned Claims Tribunal while assessing total compensation of Rs.6,56,000/- to the appellants/claimants are contrary to law laid down by the Hon'ble Supreme Court as mentioned in aforequoted paragraphs and therefore, the award is liable to be set aside and requires recalculation and modification.
15. Considering the observations made herein above and also considering the facts and circumstances of the case, I hold the income of the

deceased on the date of accident to Rs.17,754/- on the basis of salary slip Ex.P-7 and Ex.P-8 proved by AW-2. By adding 30% of the income for future prospects, the monthly salary of deceased would be Rs.23,080/- i.e. Rs.2,76,960/- per annum looking to the numbers of claimants, 1/5th is to be deducted towards his personal expenses from the income of the deceased, which comes to Rs.55,392/- and after deducting the personal expenses from the yearly income, the loss of income suffered by the claimants would be Rs.2,21,568/-. The learned Claims Tribunal committed an error in applying the multiplier of 13, which is erroneous in the facts and circumstances of the case and multiplier of 14 would be applicable, therefore, by applying multiplier of 14, to loss of yearly income i.e. Rs.2,21,568/- the total loss of income comes to Rs.31,01,952/-. Apart from the loss of income, the claimants are also entitled for Rs.70,000/- towards other conventional heads.

16. On the basis of the above calculation, award passed by the Learned Claims Tribunal is modified accordingly and now the claimants are held entitled for total compensation of Rs.31,71,952/- instead of Rs.6,56,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest @ 6% per annum as awarded by the Claims Tribunal from the date of filing of the claim petition till its realization. The other conditions imposed by the learned Claims Tribunal shall remain intact.
17. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated hereinabove.
18. No order as to costs.

Sd/-
(Parth Prateem Sahu)
Judge