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HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 327 of 2011**

1. Sukhdev Wd/o Late Desha, Aged about 70 years,
2. Ravi Pyari Wd/o Late Ramprasad, Aged about 40 years,
3. Manoj S/o Late Ramprasad, Aged about 21 years,
4. Ku. Manisha D/o Late Ramprasad, Aged about 19 years,
5. Ku. Maheshwari D/o Late Ramprasad, Aged about 17 years,
6. Virendra S/o Late Ramprasad, Aged about 12 years,

Appellant No. 5 & 6 are Minors Through Natural Guardian Mother Ravi Pyari, Appellant No.2.

All are R/o Village Pondikala (Chhiropara), P.S. Darima, Tahsil Ambikapur, Dist. Surguja Chhattisgarh

---- Appellants**Versus**

1. Bhajan Ram S/o. Sumar Sai, Aged about 43 years, R/o. Village Saraidih, P.S. Dhaurpur, District Surguja, Chhattisgarh
2. Mohd. Ziyaa-ul-Haque S/o Late Mohd. Sajjak, R/o Rajdhani Transport, Kharsiya Naka Ambikapur, P.S. City Kotwali, Ambikapur, District Surguja Chhattisgarh
3. Branch Manager, The Oriental Insurance Company Ltd., Mandal Office, Bus Stand Road, Bilaspur, Chhattisgarh, Branch Office, MDGR Road, Ambedkar Chowk, Ambikapur.

---- Respondents

For Appellants	:	Mr. A.N. Pandey, Advocate Mr. Atanu Ghose, Advocate (Amicus appointed by the Court)
For Insurance Company	:	Mr. R.N. Pusty, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****15/02/2018**

1. None for the appellants. Mr. Atanu Ghose, Advocate present in the Court was directed to assist the Court for disposal of the appeal considering the fact that it was an appeal of 2011.
2. The present is an appeal by the Claimants under Section 173 of the Motor Vehicles Act seeking enhancement of the compensation. Challenge is to the award dated 08.11.2010, passed by the 4th Additional Motor Accident Claims Tribunal (F.T.C.), Ambikapur,

District Surguja, Chhattisgarh, in Motor Accident Claim Case No. 40/2010 (Old number 87/2009).

3. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.4,77,628/- with interest @ 9% per annum from the date of application.
4. The brief fact of the case is that the deceased Ramprasad, who was traveling on a motorcycle bearing registration No. CG/15/3820 was hit by a bus bearing registration No. CG/15/A/5250, which was being driven by respondent no.1 and owned by respondent no.2. The vehicle was duly insured with the Oriental Insurance Company Limited-respondent No.3.
5. Present is an appeal by the Claimants seeking for enhance of the compensation. The Insurance Company also has preferred a Cross-objection opposing the liability part. So far as the Cross-objection by the Insurance Company is concerned, the ground of challenge is that one of the Claimants i.e. Manoj, the son of the deceased had been granted compassionate appointed after the accident and as such the Claimants have been suitably provided with sufficient income to sustain therefore the compensation awarded should have been suitably quantified.
6. The second ground is that the pleading of the factual matrix of the case shows that there is an element of contributory negligence on the part of the deceased and therefore on this ground also the Tribunal should have assessed the contributory negligence to some extent upon the deceased and the compensation awarded should had been suitable apportioned.

7. So far as compassionate appointment part is concerned, the issue is no longer *res integra* in the light of judgment of the Hon'ble Supreme Court in the case of "**Vimal Kanwar & Others vs. Kishore Dan & Others**" (2013) 7 SCC 476, wherein it has been categorically held by the Hon'ble Supreme Court that granting of pension or compassionate appointment would not affect the quantification of compensation under the provisions of Motor Vehicles Act. Thus the said ground of Insurance Company stands rejected.
8. So far as the contributory negligence part also is concerned, it is the finding of the Tribunal on the basis of the statement of the Driver of the vehicle who has stated that when he was traveling on the road, certain cattle came on the road, in order to save those cattle, he had shifted the vehicle a little back, which resulted in the accident when the deceased coming from the opposite direction was hit. This evidence of the Driver by itself is sufficient to show that the deceased while driving the motorcycle was not at fault.
9. There is also no evidence brought on record to show that the deceased had crossed over the wrong side of the road at the time of accident. Under the circumstances, the plea of the contributory negligence alleged by the Insurance Company also is not sustainable and thus the Cross-objection stands rejected.
10. So far as the appeal by the Claimants is concerned, the income which has been assessed by the Tribunal after all deductions from the salary of the deceased was Rs.3429/-. The counsel for the appellants that this assessment of the amount of Rs.3429/- is erroneous as the deductions which have been made from the

monthly salary of the deceased was not proper, legal and justified and the same were also required to be added as part of the income of the deceased.

11. If we peruse paragraph No. 28 of the impugned award, it would reveal that all those deductions, which have been made by the Tribunal while assessing the monthly income are all otherwise part of the income of the deceased, and thus This Court has no hesitation in assessing the income of the deceased at Rs.17,144/-.
12. Taking into consideration the recent judgment of the Hon'ble Supreme Court in the case of ***“National Insurance Company Limited vs. Pranay Setthy and Others” decided on 31.10.2017, in Civil Appeal No. 25590/2014*** , the Claimants would also be entitled for 30% of the said income towards future prospects, which comes to Rs.5143/-, which if added with the monthly income of Rs.17,144/-, it comes to Rs.22,287/- which would bring the yearly income to Rs.2,67,444/-. Of the said amount, if 1/4th is deducted towards personal expenses, the amount would left would be Rs.2,00,583/-, which if multiplied applying the multiplier of 14, the amount would come to Rs.28,08,162/-. It is ordered accordingly that the Claimants shall be entitled for an amount of Rs.28,08,162/- towards loss of dependency. In addition, the Claimants would also be entitled for an additional amount of Rs.70,000/- towards conventional head, which would bring the amount to Rs.28,78,162/-. Thus the total compensation payable to the Claimants would be Rs.28,78,162/- instead of Rs.4,77,628/-.
13. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

14. This Court extends a word of appreciation to Mr. Atanu Ghosh, Advocate for rendering the assistance in the disposal of the case.
15. The appeal thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved