NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 316 of 2012

1. Smt. Shantilata, aged 41 years wife of Late Shri Leeladhar Yadav,
2. Kumari Pushpadevi, aged 23 years, daughter of Late Shri Leeladhar Yadav,
3. Ku. Damini, aged 21 years, daughter of Late Shri Leeladhar Yadav,
4. Balram, aged 20 years, Son of Late Shri Leeladhar Yadav,
5. Ku. Rupa, aged 18 years, daughter of Late Shri Leeladhar Yadav,

All are residents of village Dundera, Bazar – Chowk, P.S. Utai, District – Durg, (C.G.)

---- Appellants

Versus

1. Bhuneshwar Kumar, aged 23 years, son of Ashok Kumar Kashyap (Driver),
2. Ashok Kumar, aged about 50 years, son of Salikram Kashyap, (Owner),

Both are resident of Sector- 7, cross road No. 30, Q.No. 2/A, Bhilai Nagar, District Durg (C.G.)

3. The New India Insurance Company Limited, through the Branch Manager, Branch Office Paras Complex, Santarabari, Durg (C.G.)

---- Respondents

For Appellants	:	Shri Ritesh Verma, Advocate
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

05/03/2018

The present is a claimants' appeal under Section 173 of Motor Vehicles Act seeking for enhancement of compensation. The challenge is to the award dated 13.01.2012 passed by the 1st Additional Motor Accident Claims Tribunal, Durg (CG) in Claim Case No.94/2011. Vide the impugned award, the Tribunal has awarded compensation of Rs.1,79,120/- with interest @ 6% per annum from the date of application.

2. Counsel for the appellants submits that the Tribunal has committed an error in as much as deducting the wages received by the deceased who had got an employment under compassionate appointment while assessing the income of the deceased. He submits that this analogy adopted by the Tribunal per se erroneous in the light of the judgment of the Supreme Court in the case of ***Vimal Kanwar & Others vs. Kishore Dan & Others" (2013) 7 SCC 476***. He submits that the claimants would also be entitled for future prospects in the light of the judgment of the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Ors.** decided on 31st October, 2017. Likewise, the claimants would be entitled for enhanced amount under the conventional head than what has been awarded by the Tribunal. Thus, prayed for the award to be suitably enhanced.

3. Counsel for the insurance company opposing the appeal submits that the Tribunal was justified in passing the said award in the light of the then prevailing judgments of the Supreme Court. He submits that the award being fair and reasonable does not warrant any interference and prayed for rejection of the appeal.

4. Heaving heard the contentions put forth on either side and on perusal of the record, it would be relevant at this juncture to refer to the case of the Hon'ble Supreme Court in the case of ***"Vimal Kanwar & Others vs. Kishore Dan & Others" (2013) 7 SCC 476***, wherein in paragraphs No. 20 & 21, the Hon'ble Supreme Court has held as under:-

> "20. The second issue is "whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction."
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> 21. "Compassionate appointment" can be one of the conditions of service of an employee, if a scheme to that effect is framed

> by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as "Pecuniary Advantage" that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act."

5. In the light of the aforesaid judicial pronouncement of the Hon'ble Supreme Court, the analogy adopted by the Tribunal while quantifying the compensation does not seem to be just and reasonable and the same deserves to be and is accordingly set aside.

6. From the evidence which have come on record particularly the statement of the widow of the deceased it clearly reflects that the deceased was a permanent employee working as a carpenter in Municipal Corporation, Bhilai. He was drawing a salary of Rs.11,236/- a month. This statement of the widow of the deceased stood further corroborated from the witness of the Municipal Corporation, Bhilai namely Sanat Kumar who was examined on behalf of the claimants who had proved the employment so also the salary part.

7. Thus, this Court does not have any hesitation in assessing the monthly income of the deceased as Rs.11,236/- in stead of Rs.1020/- as assessed by the Tribunal. The claimants would be entitled for 30% of the said income towards future prospects while quantifying the compensation which comes to Rs.3,371/- making the monthly income at Rs.14,607/- and the yearly income at Rs.1,75,284/-. Considering the fact that there are total six claimants, the deductions made would be 1/4th towards personal expenses which would bring the yearly income to Rs.1,31,463/-. If the said amount is multiplied applying the multiplier of 13, it comes to Rs.17,09,019/- which would be the compensation towards loss of dependency. It is ordered accordingly. The claimants would also be entitled for a lump sum compensation of Rs.70,000/- under the conventional head. Thus, the total compensation payable to the claimants would be Rs.17,79,019/- in stead of Rs.1,79,120/- as assessed by the Tribunal. The enhanced amount shall also carry interest at the same rate as assessed by the Tribunal.

8. The appeal thus stands allowed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola