NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A.(C) No. 166 OF 2013

1. Birjaniya Bai, aged about 43 years, widow of Late Dashrath,
2. Shama Kumari, aged about 17 years, daughter of late Dashrath, Minor through her natural guardian mother Birjaniyan Bai.

Both are resident of village Marwahi, P.S. Marwahi, Distt. Bilaspur (C.G.)

---- Appellants

Versus

1. Ganga Prasad, aged about 34 years, son of Shri Gajroop Prasad, resident of village Kutin Dafai, Rajnagar Colony, Rajnandga, Distt. Anuppur (M.P.) (Owner of Pick-up No. MP 18 H/4534).
2. Santosh Kumar aged about 30 years, son of Shri Babalu Lal, resident of village Pakariya, P.S. Pendra Road, Distt. Bilaspur (C.G.) (Driver of Pick-up No. MP 18 H/4534).
3. The Branch Manager, United India Insurance Company Limited, Ambikapur, through the Branch Manager United India Insurance Company Limited, Rajendra Nagar Chowk, Bilaspur (C.G.) (Insurer of Pick-up No. MP 18 H/4534).

---- Respondents

For Appellants	:	Mr. N. P. Chandravanshi and Ms. Bhagwati Kashyap, Advocates
For Respondent No. 3	:	Mr. H. B. Agrawal, Senior Advocate with Ms. Itu Rani Mukherjee, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

07/09/2018

1. By the instant appeal, the appellants/claimants are challenging the legality, validity and propriety of the impugned award dated 04/12/2012 passed by the Additional Motor Accident Claims Tribunal, Pendra Road District Bilaspur (C.G.) (hereinafter referred to as the 'Claims Tribunal') in Motor Accident Claim Case

No. 48/2009 whereby the learned Claims Tribunal has partly allowed the claim application filed by the appellants/claimants.

2. Brief facts of the case, are that, on 22/06/2009 Dashrath was travelling on his motorcycle and going to village Dola from village Bijuri, at that relevant time, when he reached near Nandgaon, the Pick-up (offending vehicle) bearing registration No. MP-18 H/4534 driven by respondent No. 2, rashly and negligently dashed the motorcycle of Dashrath. In aforementioned accident, Dashrath sustained grievous injury over his body and he was immediately taken to the Central Hospital Amakherwa, Manendragarh, where during the course of treatment, he succumbed to the accidental injuries. Thereafter, the matter was reported to the concerned Police Station.

3. For the reasons stated above, the appellants/claimants who are widow and daughter of late Dashrath filed claim application before the competent Claims Tribunal stating therein that on the date of accident, the deceased was employed in South Eastern Coal Field Limited on the post of Driller and was drawing Rs.23,559/- per month as his salary. They further pleaded that the deceased was also receiving quarterly and yearly bonus from the employer and also pleaded that as they were fully dependent upon the deceased, and therefore, they may be awarded compensation to the extent of Rs. 42,27,000/- in total on all heads.

4. Respondents No. 1 and 2, who are owner and driver of the offending vehicle have stated in their reply that the driver was having valid and effective driving licence to drive the offending vehicle and on the date of accident, the offending vehicle was insured with the Insurance Company, and therefore, liability for payment of compensation, if any, would be upon the Insurance Company.

5. Respondent No. 3/Insurance Company submitted its reply to the claim application separately and pleaded that the driver was not possessing valid and effective driving licence to drive the offending vehicle and therefore, there is

violation of the conditions of Insurance Policy. It was further pleaded that the deceased himself was not having valid and effective driving licence to drive the motorcycle, therefore, the accident took place due to his own rash and negligent driving and in alternative pleaded that the deceased himself was also contributory negligent in the accident. In view of the above pleadings, the Insurance Company has prayed for its exoneration from the liability, if any.

6. The learned Claims Tribunal on the basis of pleadings and evidence brought on record by respective parties has partly allowed the claim application and awarded only Rs.9,51,000/- in total on all heads to the claimants.

7. Being dissatisfied with the aforementioned award passed by the learned Claims Tribunal, the appellants/claimants have filed this instant appeal for enhancement of compensation.

8. Learned counsel appearing for the appellants submits that the learned Claims Tribunal committed error in wrongly deducting the amount from his monthly income on the heads of PPF, MPF and LIC. He further submits that the learned Claims Tribunal has not awarded future prospects ignoring that the deceased was in permanent employment. He also submits that the learned Claims Tribunal has awarded interest from the date of passing of award and not from the date of application. He lastly submits that the amount awarded towards other conventional heads is on lower side and it needs to be enhanced suitably.

9. Per contra, learned counsel appearing for respondent No. 3/Insurance Company supports the award and submits that the learned Claims Tribunal has rightly passed the award in accordance with law by taking into consideration the amount of net income shown in the last salary slip, which need not required any interference.

10. I have heard learned counsel appearing for the parties and perused the record carefully.

11. Looking to the grounds raised by the appellants/claimants on specific heads claiming enhancement of the award, I have perused Salary Slip (Exhibit P-24) which is a salary slip of the month of May 2009, wherein the total earning has been made as Rs.15,225/-, to which, learned Claims Tribunal has rightly taken into consideration and also added quarterly bonus, for which, the deceased was entitled towards his income and thereafter, calculated total annual income of the deceased as Rs.1,86,032/-. But, the learned Claims Tribunal in Paragraph-20 has erroneously deducted the amount towards PPF, MPF and LIC from the total income of the deceased, which is not permissible in law.

12. The aforesaid issue was decided by the Hon'ble Supreme Court in the matter of ***Vimal Kanwar and others v. Kishore Dan and others*** reported in ***(2013) 7SCC 476***, in which, the Supreme Court has held as under :-

> "18. The first issue is "whether provident fund, pension and insurance receivable by claimants come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction."
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> 19. The aforesaid issue fell for consideration before this Court in *Helen C. Rebello v. Maharashtra SRTC, (1999) 1 SCC 90*. In the said case, this Court held that Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and finding of this Court: (SCC pp. 111-12, para 35).

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

13. In another judgment rendered by Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. v. Indira Srivastava and others*** reported in ***(2008) 2 SCC 763*** has also considered income of the deceased for the purpose of awarding compensation and held as under :-

> "19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted."

14. Reverting to the facts of the present case, the learned Claims Tribunal has assessed the total income of the deceased as Rs.1,86,032/- per annum but, the learned Claims Tribunal wrongly deducted the amount towards PPF, MPF and

LIC to the tune of Rs.57,276/-, which is not permissible in law. The amount of PPF, MPF and LIC are the amounts of savings of the deceased employee which is for the benefit of all family members. It is not the amount receivable only on account of accidental death. In view of the wrong deductions, the annual income of the deceased assessed as Rs.1,28,756/-, which deserves to be and is hereby set aside. Now the annual income of the deceased would be assessed as Rs.1,86,032/-.

15. Learned Claims Tribunal has also not computed the future prospects of the deceased more so, when he is under permanent employment and therefore, as per law laid down by Hon'ble Supreme Court in the matter of ***National Insurance Company Limited v. Pranay Sethi and others*** reported in ***AIR 2017 SC 5157***, he would also be entitled for 15% of his annual income towards future prospects.

16. The learned Claims Tribunal further committed error in awarding only Rs.25,000/- towards other conventional heads, which is on the lower side. To avoid the controversies, the Hon'ble Supreme Court consolidated the amount of other conventional heads to Rs. 70,000/- in total in the matter of ***Pranay Sethi*** (supra).

17. Looking to the facts of the present case where the appellants/claimants have lost the bread earner and deprived from the regular income on the date of accident itself, therefore, the appellants/claimants would be entitled for the interest from the date of application instead of from the date of passing of award.

18. In view of the aforementioned discussions, in the considered opinion of this Court, the appropriate compensation is to be awarded to the appellant. For the reasons stated above, the amount of compensation to be awarded to appellants/claimants is recalculated as under :-

The annual income of the deceased is assessed as Rs.1,86,032/- and by adding 15% (Rs.27,905/-) towards loss of future prospects, the annual income of the deceased comes to Rs.2,13,937/-. After deducting 1/3rd towards his personal expenses, i.e. Rs.71,312/- and total dependency of the appellants/claimants comes to Rs.1,42,625/- (2,13,937 – 71,312). At the time of accident, the deceased was aged about more than 51 years, therefore, the multiplier of 11 would be applicable in the present case. After applying the multiplier of 11, the total dependency comes to Rs.15,68,875/- (1,42,625 x 11). In addition to the aforesaid amount of compensation, the appellants/claimants are also entitled for Rs.70,000/- towards conventional heads.

19. On the basis of the above calculation, award passed by the learned Claims Tribunal is modified accordingly and now the appellants/claimants will be entitled for total compensation of Rs.16,38,875/- along with interest at the rate of 6% per annum from the date of filing claim application till the date of its realization instead of Rs. 9,51,000/- as awarded by learned Claims Tribunal. The other conditions imposed by the learned Claims Tribunal shall remain intact.

20. In the result, the appeal is allowed in part.

21. No order as to costs.

Sd/-

(Parth Prateem Sahu))
Judge

Yogesh