

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 674 of 2015**

- Branch Manager, Royal Sundaram Alliance Insurance Co. Ltd., Branch Office- Link Road, Bilaspur District- Bilaspur. Through Branch Office- Raj Chamber, Near Over Bridge Vidhan Sabha Road, Mova, P.S. Pandri, Civil and Revenue Dist- Raipur (C.G.)

---- Appellant**Versus**

1. Madhuri Shrivastava W/o Late Manoj Shrivastava, aged about 45 years,
2. Ku. Natasha Shrivastava D/o Late Manoj Shrivastava, aged about 20 years.
3. Ku. Pavel Shrivastava D/o Late Manoj Shrivastava, aged about 20 years,

All R/o Sattipara, (Kailash- Mod) P.S. and Tahsil, Ambikapur, Dist. Sarguja, Civil and Revenue Dist.- Sarguja (C.G.).

4. Rajesh Prasad S/o Veeru Sao aged about 37 Years, Profession- Vehicle Owner, R/o Vill. Sirma, Post Patan, Dist. Palamu, (Medninagar) Thana Palamu- Civil and Revenue Dist.- Palamu (Jharkhand). (owner).
5. Rohit Singh S/o Santosh Kumar Singh aged about 23 years, Profession- Driver, R/o Raghunathpur, Thana and Tahsil Lundra, Dist.- Sarguja, Civil and Revenue Dist.- Sarguja (C.G.) (Driver).

---- Respondents

For Appellant	:Shri Rohitashav Singh, Advocate
For Respondent	: Ms. Sharmila Singhai, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

13.12.2018

1. This appeal has been filed by the appellant/Insurance Company against the award dated 27.03.2015 passed by learned 5th Additional Motor Accident Claims Tribunal, Ambikapur, District- Surguja (C.G.) in claim Case No. 157/2014 only on the ground of quantum of compensation awarded to the claimants and liability fastened upon it to pay compensation to the claimants. It has also been pleaded by the appellant/Insurance Company that as appellant/Insurance Company was impleaded in compliance of under Section 170 of the Motor Vehicles Act, 1988, the Insurance Company is entitled to raise all defences available to it.

2. Facts of case, as per claim petition, are that on 21.8.2013, at about 9.30 AM, when the deceased was going in a motorcycle bearing registration No. MP-27-E-5395, the respondent No. 5- Rohit Singh, while driving the offending vehicle bearing registration No. J.H. 01 A.M./6476 rashly & negligently, dashed deceased- Monoj Kumar Shrivastava, on account of which, he sustained grievous injuries and succumbed to those injuries.

3. As against the compensation of Rs. 91,17,715/- claimed by the unfortunate widow, children of deceased Manoj Kumar Shrivastava by filing claim petition under Section 166 of Motor Vehicles Act, 1988 (for short 'MV Act') for his death in the motor accident on 21.08.2013, the Tribunal awarded a total sum of Rs. 53,83,351- as compensation along with interest @ 6 percent per annum from the date of passing of award till its realization.

4. The Tribunal, on a close scrutiny of evidence led, material placed and submissions made by the parties, held : the accident had occurred due to rash and negligent driving of Tata Manza Car bearing registration No. J.H.01 A.N./6476 by its driver Rohit Singh/respondent No. 5; Manoj Kumar Shrivastava, aged about 49 years, died on account of injuries sustained by him in the said accident. Learned Tribunal, after considering the material available on record fastened the liability to pay compensation upon the appellant & respondents No. 4 & 5 jointly and severally and assessed & awarded aforesaid sum as compensation to the claimants.

5. Learned counsel for the appellant/Insurance Company submits that no deduction of the allowances has been made by the learned Tribunal while calculating the amount of compensation payable to the claimants as per pay-slip (Ex.P-15) of the deceased/employee, who was working as Clerk-cum-Cashier in the Sarguja Kshetriya Gramin Bank. He further argues that the Claims Tribunal ought to have deducted the amount on account of Income Tax & HRA and also ought to have taken the amount of basic salary in place of gross salary while calculating the amount compensation payable to the claimants. He also argues that the Tribunal has further erred in adding 30% amount towards future prospect on the monthly salary i.e. Rs.39,632.73/-.

6. Learned counsel for the respondents No. 1 to 3/claimants, while opposing the contention made by the learned counsel for the appellant/Insurance Company, submits that there is no specific plea was taken by the non-applicant/Insurance Company before the Tribunal re-

garding the aforesaid deduction therefore, Insurance Company has no right to raise the question regarding deduction before this Court.

7. Heard both the parties and perused the record and the award impugned.

8. So far as assessment of the income of the deceased by the Tribunal is concerned, the same has been determined on the basis of pay slip Ex.P/15 of the deceased which has been duly proved by the claimants. Keeping in view the judgment of the Hon'ble Apex Court in the matter of **Insurance Co. Ltd. Vs. Pranay Sethi reported in (2017) 16 SCC 680 & Sarla Verma (Smt.) & Others V. Delhi Transport Corporation and anr. reported in 2009 (6) SCC121**, this Court finds that the Tribunal has erred in not deducting any amount towards income tax and therefore considering the income tax slab on the relevant time, 10% should have been deducted of the annual income towards income tax. As for deduction of HRA, HRA being part of the salary is not deductible and therefore, the Tribunal was justified in not deducting the HRA for the purpose of calculating income of the deceased.

9. As regard grant of future prospect @ 30% by the Tribunal, considering the age of the deceased i.e. 49 Years and the nature of his job i.e. permanent job, in view of decision of the Hon'ble Apex Court in Pranay Sethi (Supra) the Tribunal was fully justified in adding 30% of the annual income thereto towards future prospect.

10. Further considering the fact that deceased died at the age of 49 years leaving behind his wife and children, who were fully dependent upon him, they were deprived from spousal, parental and filial

consortium, keeping in view the decision rendered by Supreme Court in the matter of **Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram & Ors. In civil appeal No. 9581 of 2018 arising out of SLP[Civil] No. 3192 of 2018** wherein the Hon'ble Supreme Court has granted amount for loss of filial, apart from awarding towards other conventional heads, in my considered opinion, Rs. 30,000/- should be granted towards loss of filial. Therefore, I propose to re-compute the amount of compensation in following manner:-

Sl. No.	Heads	Calculation
01.	Annual Income of the deceased	Rs. 39,633x12 = Rs 4,75596/-
02.	10% would be deducted towards income tax of the deceased/ employee	Rs.475596-47560= Rs. 428036/-
03.	30% of above to be added towards future prospects	Rs. 428036+128411= Rs. 5,56447/-
04.	After1/3rd deduction towards personal and living expenses of the deceased as deducted by the Tribunal	Rs. 3,70,965/-
05	Multiplier of 13 would be applied, as applied by the Tribunal	Rs3,70965 x 13 = Rs.48,22545/-
06	Total incidental heads + Towards filial consortium	Rs.70,000 +Rs.30,000/- =Rs.1,00,000/-
07	Total compensation	Rs.49,22,545/-

11. The Tribunal was also not justified in granting interest on the

awarded the same from the date of award whereas the same is to be granted from the date of claim petition till its realization.

12. For the reasons mentioned hereinabove, the appeal filed by the appellant/Insurance Company is allowed in part. The amount of compensation awarded by the Tribunal i.e. Rs. 53,83,351/- is reduced to Rs. 49,22,545/-. The amount of compensation 49,22,545/- shall carry interest @ 6 percent per annum from the date of application till its actual payment. Rest of all the conditions mentioned in the award shall remain intact. The award stands modified to the above extent.

13. The appellant/The Royal Sundaram Alliance Insurance Company Limited is granted two months' time to deposit above reduced amount of compensation of Rs. 49,22,545/- along with interest before the concerned Tribunal. Needless to say that the amount, if any deposited by the insurance Company with the Tribunal shall be adjusted in the aforesaid amount. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge