<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY</u>

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.986 OF 2015
<u>ALONG WITH</u>
CIVIL APPLICATION NO.1345 OF 2018

Sindhu Ramesh Jagtap and Ors. .... Appellants-Applicants
V/s.
Mukund Bhaskar Chitale and Ors. .... Respondents

Mr. Purushottam G. Chavan for the Appellants-Applicants.

Mr. Ketan Joshi for Respondent No.3.

CORAM : <u>DR. SHALINI PHANSALKAR-JOSHI, J.</u>

DATE : <u>2ND NOVEMBER, 2018.</u>

<u>P.C.</u> :

1. Heard Mr. Chavan, learned counsel for the Appellants-Applicants, and Mr. Joshi, learned counsel for Respondent No.3.

2. Civil Application No.1345 of 2018 is filed for restoration of the First Appeal, with a request for condonation of delay in preferring the same.

3. The First Appeal came to be dismissed for non-removal of office objection, namely, filing of private paper-book. Learned counsel for the Appellants-Applicants submits that, the Appeal itself can be disposed off, even without filing of private paper-book.

4. In view thereof, Civil Application No.1345 of 2018 is allowed. The delay is condoned. First Appeal is restored to its original file.

5. By consent, the Appeal is taken up for final hearing forthwith.

6. This Appeal is preferred by the Original Claimants, whose Motor Accident Claim Petition No.1164 of 2004 came to be dismissed by the Motor Accident Claims Tribunal, Pune, vide its 'Judgment and Award' dated 14th September 2010.

7. The only ground on which the Tribunal has dismissed the Claim Petition is that, Appellant No.1-the widow was appointed on compassionate ground and, therefore, by placing reliance on the Judgment of the Hon'ble Apex Court in the case of *Bhakra Beas Management Board Vs. Kanta Aggarwal and Others, 2008 ACJ 2372*, it was held that,

> *"As the 'Dependent' gets compassionate appointment on account of the death of the 'Deceased', the compensation shall have to be reduced to the extent the 'Dependent' gets benefit from the compassionate appointment."*

8. It was observed by the Tribunal in paragraph No.20 of its 'Judgment' that,

> *"Since the Petitioner No.1, admittedly, gets a gross salary of Rs.14,000/- per month, the same will have to be computed at the same rate, as Petitioner No.1 being a woman, the slab of income exempt from the Income Tax would be higher, there would be no deduction towards the Income Tax. The yearly income would, thus, come to Rs.1,68,000/-. By applying the same*

> *'Multiplier' of "13", total amount comes to Rs.21,84,000/-."*

9. It was held that, as the amount, which Appellant No.1 is getting on account of her appointment on compassionate ground, would be more from the amount of compensation, which she is entitled to, her Claim Petition needs to be dismissed.

10. However, in this respect, learned counsel for the Appellants-Claimants places reliance on the Judgment of the Hon'ble Apex Court in the case of *Vimal Kanwar and Others Vs. Kishore Dan and Others, (2013) 7 SCC 476*, wherein the similar issue was raised before the Hon'ble Apex Court as to, *'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?'* While deciding this issue, the Hon'ble Supreme Court has observed as follows :-

> *"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, who dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no co-relation 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 co-relation 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 the Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act."

11. The same Judgment was followed by the Hon'ble Apex Court in the latest decision of *National Insurance Company Limited Vs. Rekhaben and Others, (2017) 13 SCC 547*, wherein the similar contention was raised, that the amount of salary receivable by the Claimant appointed on compassionate ground was deductible from the amount of compensation, which the Claimant was entitled to receive under Section 168 of the Motor Vehicles Act, 1988, and by following the Judgment in the case of *Vimal Kanwar and Ors. Vs. Kishore Dan and Ors. (Supra)*, it was held that, such contention cannot be accepted.

12. In the facts and circumstances of the present case also, therefore, as the Tribunal has held that, the Appellants are not entitled for the compensation, only on the ground that Appellant No.1 has got the job on compassionate ground and getting salary from the same, the 'Judgment

and Award' passed by the Tribunal is required to be quashed and set aside, in the light of the law laid down by the Hon'ble Apex Court.

13. At the same time, there is some slight correction, which is required to be done in the amount of compensation, which is calculated by the Tribunal. The Tribunal has awarded the amount of Rs.15,000/- only towards the loss of consortium and funeral expenses. Now, as per the Judgment of the Hon'ble Apex Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and Others, 2017 ACJ 2700*, the amount of compensation towards the conventional heads is Rs.70,000/-. Therefore, the Appellants become entitled to the amount of Rs.55,000/-, in addition, towards the loss of consortium and funeral expenses. Thus, the total amount of compensation, to which the Appellants are entitled, comes to Rs.16,15,000/-.

14. Accordingly, the Appeal is allowed. The impugned 'Judgment and Award' passed by the Tribunal is set aside. The Appellants are held entitled to the compensation of Rs.16,15,000/-, with interest @ 7.5% p.a. from the date of the application, i.e. 24th November 2004, till the recovery of the entire amount.

15. As regards the apportionment of amount amongst the Claimants, the Tribunal to do it in the course of execution of the 'Award'.

[DR. SHALINI PHANSALKAR-JOSHI, J.]