

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (C) No.349 of 2013****Reserved on 02.12.2019****Pronounced on 06.12.2019**

1. Ku. Ayushi Gupta, D/o Late Prem Shankar Gupta, Aged About 12 Years, Minor Through Legal Guardian Uncle Pradeep Kumar Gupta, R/o Pragati Nagar, Lakhe Nagar, P.O. Raipur, Police Station Purani Basti, Raipur, Tahsil & District Raipur, Chhattisgarh (Claimant).
2. Anshuman Gupta, S/o Late Prem Shankar Gupta, Aged About 4 Years, Minor Through Legal Guardian Uncle Pradeep Kumar Gupta, R/o Pragati Nagar, Lakhe Nagar, P.O. Raipur, Police Station Purani Basti, Raipur, Tahsil & District Raipur, Chhattisgarh (Claimant).
3. Pradeep Kumar Gupta, S/o Late Onkar Prasad Gupta, Aged About 43 Years, R/o Pragati Nagar, Lakhe Nagar, P.O. Raipur, Police Station Purani Basti, Raipur, Tahsil & District Raipur, Chhattisgarh (Claimant).

---- Appellants**Versus**

1. Santosh Kumar Ganda, S/o Ramsharan @ Mayaram Ganda, R/o Village Otgan, Post Office & Police Station Bilha, District Bilaspur, Chhattisgarh (Driver of vehicle Truck bearing Registration No.CG 10/A/9451).
2. Ashish Bansal, S/o Meghraj Bansal, R/o Village Otgan, Post Office & Police Station Bilha, District Bilaspur, Chhattisgarh (Registered Owner of vehicle Truck bearing Registration No.CG 10/A/9451).
3. The Oriental Insurance Company Limited, Through Divisional Manager, Divisional Office, Kutchery Chowk, Post Office Raipur,

Police Station Gol Bazar, Raipur, Tahsil & District Raipur, Chhattisgarh (Insurer of vehicle Truck bearing Registration No.CG 10/A/9451).

---- Respondents

For Appellants	:	Shri Shivendu Pandya, Advocate.
For Respondent No.1	:	None, though served.
For Respondent No.2	:	Shri K. P. S. Gandhi, Advocate.
For Respondent No.3	:	Shri Hanuman Prasad Agrawal, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal

CAV Award/Order

03.12.2019

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') questioning the legality and validity of the award dated 02.05.2012 passed by the 1st Additional Motor Accident Claims Tribunal, Raipur, District Raipur (C.G.) (for short 'the Claims Tribunal') in Claim Case No.125/2010, whereby, the learned Claims Tribunal while allowing the claim in part has awarded the total amount of compensation to the tune of Rs.4,05,000/- with 6% interest per annum from the date of filing of the claim petition till its realization while fastening the liability upon the Insurance Company. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.
2. Briefly stated the facts of the case are that on 14.08.2010 at about 09:45 PM near village Bhumiya under Police Station Simga, District Raipur, Non-Applicant No.1/Santosh Kumar Ganda by driving

'Truck' bearing Registration No.CG 10 A 9451 owned by Non-Applicant No.2/Ashish Bansal and insured with Non-Applicant No.3/The Oriental Insurance Company Limited, rashly and negligently dashed the Santo Car bearing Registration No.CG 04 HB 0547. As a result of which, deceased Prem Shankar Gupta and his wife Veena Gupta both sustained grievous injuries and expired. Report regarding the alleged accident was lodged in Police Station Simga, while registering the offence against the driver of the offending vehicle 'Truck'.

3. On account of the aforesaid accident, the claimants being minors through their guardian Pradeep Kumar Gupta, instituted a claim petition enumerated under Section 166 of the Act of 1988, claiming amount of compensation to the tune of Rs.25,00,000/- under various heads by submitting *inter alia* that their father Prem Shankar Gupta, a 40 years old was a Regional Sales Officer in Everest Ply and Venires Private Limited Company and used to earn Rs.12,500/- per month.
4. The Non-Applicants have contested the aforesaid claim and the Claims Tribunal while considering the evidence led by the parties, arrived at a conclusion that the alleged accident occurred due to rash and negligent driving of the driver of the offending vehicle 'Truck', resulting the sad demise of father and mother of the minors on the spot. It held further that the alleged vehicle was not being used in violation of the insurance policy and that by considering the monthly income of the deceased Prem Shankar Gupta to the tune of Rs.3,000/- per month awarded total amount of compensation to

the tune of Rs.4,05,000/- with 6% interest per annum from the date of filing of claim petition till its realization while fastening the liability upon the insurance company.

5. Being aggrieved, the Claimants have preferred this appeal. Shri Shivendu Pandya counsel for the Appellants submits that the monthly income of the deceased as assessed to the tune of Rs.3,000/- instead of Rs.12,500/- while disbelieving the Certificate (Ex.P-12) issued under the Income Tax Act, 1961 (hereinafter referred to as the Act of 1961) is apparently contrary of law. It contended further that while awarding the amount of compensation, the Claims Tribunal ought to have considered not only the future prospects of the income of the deceased but ought to have provided proper amount of compensation towards conventional heads. Having failed so, the Claims Tribunal has erred in not providing just and proper compensation payable to the claimants. In support he placed his reliance upon the decisions rendered in the matters of **National Insurance Company Limited Versus Pranay Sethi and Others** reported in (2017) 16 SCC 680 and **Magma General Insurance Company Limited Versus Nanu Ram ALIAS CHUHRU and Others** reported in (2018) 18 SCC 130.
6. On the other hand, learned counsel for the Respondents, while supporting the award impugned submits that in absence of the pay certificate, the alleged Certificate (Ex.P-12) has rightly been turned down by the Claims Tribunal in passing the award impugned.
7. I have heard learned counsel for the parties and perused the entire record carefully.

8. From perusal of the record, it appears that the alleged Certificate (Ex.P-12), issued in Form-16 under Section 203 of the Act of 1961 showing the annual gross salary of the deceased to the tune of Rs.1,50,000/- has been disbelieved improperly by the Claims Tribunal. However, it was duly established by the claimants through their witness Mritunjay Patel (AW-1), the Sales Executive of the said Pvt. Ltd. Co. According to him, deceased Prem Shankar Gupta was working as a Regional Sales Manager for about last 6 years and from where he used to earn Rs.1,48,800/- per annum after deduction of the tax. The evidence of this witness could not have been rebutted in his cross examination. Thus, the issuance of the said Certificate (Ex.P-12) by the Competent Authority could not have been disbelieved by the Claims Tribunal merely on the ground that the said witness did not come with relevant papers like Pay Certificate of the deceased. Disbelieving the said certificate by the Claims Tribunal while adopting such a hyper technical view even in absence of its rebuttal cannot be upheld.
9. A bare perusal of the said Certificate (Ex.P-12), it is evident that the gross salary of the deceased was Rs.1,50,000/- per annum and a sum of Rs.1,200/- has been shown to be deducted towards tax. As such, the actual salary of the deceased after such deduction would, thus, be Rs.1,48,800/- per annum. Since the deceased was a fixed salaried paid employee, therefore, an addition of 25% of it has to be taken into consideration towards future prospects of his income, in the light of decision rendered by the Supreme Court in the matter of **National Insurance Company Limited** (*supra*).

10. Considering the annual income of the deceased as Rs.1,48,800/- based upon the aforesaid Certificate (Ex.P-12) and that by adding 25% of it i.e., Rs.37,200/- towards future prospects of his income, it would then be worked out at Rs.1,86,000/- (Rs.1,48,800 + Rs.37,200) and by deducting one third of it i.e., Rs.62,000/- towards his personal expenses, the yearly dependency would be at Rs.1,24,000/- (Rs.1,86,000 – Rs.62,000). As the age of the deceased at the time of the accident was 40, the multiplier applicable would be 15. Thus, by applying the multiplier of 15 total dependency would, thus, be Rs.18,60,000/-. In addition to this, the claimants would be entitled to a sum of Rs.1,30,000/- towards conventional heads in the light of decision rendered in the matter of **Magma General Insurance Company Limited** (*supra*) as under:-

S.No.	Heads of Modes	Amount
1.	Loss of funeral expenses	Rs.15,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection to two minor children @ of Rs.50,000/- each	Rs.1,00,000/-
	Total	Rs.1,30,000/-

11. The claimants would, thus, be entitled to a total sum of Rs.19,90,000/- instead of Rs.4,05,000/- as awarded by the Claims Tribunal along with 6% interest per annum from the date of filing of claim petition till its realisation.
12. The appeal is accordingly allowed in part to the extent indicated

hereinabove. As far as, the other conditions as observed by the Claims Tribunal are concerned, they shall remain intact. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge

Deepti Jha

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 1122 of 2019**

1. Ku. Ayushi Gupta D/o Late Prem Shankar Gupta Aged About 12 Years Minor Through Legal Guardian Uncle Pradeep Kumar Gupta, R/o Pragati Nagar, Lakhe Nagar, Post Office Raipur, Police Station Purani Basti, Raipur, Tahsil And District Raipur Chhattisgarh. (Claimant),
2. Anshuman Gupta S/o Late Prem Shankar Gupta Aged About 4 Years Minor Through Legal Guardian Uncle Pradeep Kumar Gupta, R/o Pragati Nagar, Lakhe Nagar, Post Office Raipur, Police Station Purani Basti, Raipur, Tahsil And District Raipur, Chhattisgarh. (Claimant),
3. Pradeep Kumar Gupta S/o Late Onkar Prasad Gupta Aged About 43 Years R/o Pragati Nagar, Lakhe Nagar, Post Office Raipur Police Station Purani Basti, Raipur Tahsil And District Raipur, Chhattisgarh. (Claimant),

---- Appellants**Versus**

1. Santosh Kumar Ganda S/o Ramsharan @ Mayaram Ganda R/o Village Otgan, Post Office And Police Station Bilha, District Bilaspur, Chhattisgarh. (Driver Of Vehicle Truck Bearing Registration No. CG 10/A/9451),
2. Ashish Bansal S/o Meghraj Bansal R/o Village Otgan, Post Office And Police Station Bilha, District Bilaspur, Chhattisgarh (Registered Owner Of Vehicle Truck Bearing Registration No. CG 10/A/9451),
3. The Oriental Insurance Company Limited Through Divisional Manager, Divisional Office, Kutchery, Chowk, Post Office Raipur, Police Station Gol Bazar, Raipur, Tahsil And District Raipur, Chhattisgarh. (Insurer Of Vehicle Truck Bearing Registration No. CG 10/A/9451),

---- Respondents

Office Reference.

Hon'ble Shri Justice Sanjay S. Agrawal**Order On Board****10.12.2019**

1. Heard on M.C.C. for modification / correction in the order passed in MAC No.349 of 2013 wherein due to inadvertence, the date "03.12.2019" has wrongly been mentioned in the second page.

2. The aforesaid error occurred in the date is apparent on the face of the record, and therefore, needs to be corrected. It is made clear that the date “03.12.2019” appearing in the second page of the Award be treated as redundant and shall not be considered as part of the Award as pronouncement date “06.12.2019” has already appeared at the top of the first page of the Award.

3. The M.C.C. stands disposed of with modification / correction in the order to the above extent. A copy of this order be supplied to the parties along with copy of the order passed in MAC No.349 of 2013.

Sd/-

(Sanjay S. Agrawal)
Judge