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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 750 of 2013

1. Smt. Anita Tandiya Wd/o Late Johan Das Tandiya, aged about 50 years
2. Pentar Das Tandiya S/o Late Johan Das Tandiya, aged about 22 years
3. Prakash Das Tandiya S/o Late Johan Das Tandiya, aged about 18 years
4. Saket Das Tandiya S/o Late Johan Das Tandiya, aged about 12 years
5. Smt. Sumrit Bai Tandiya Wd/o Late Sudarshan Das Tandiya, aged about 80 years
6. Kailash Das Tandiya S/o Late Johan Das Tandiya, aged about 28 years

No. 4 Minor through natural guardian mother Smt. Anita Tandiya Wd/o Late Johan Das Tandiya

All R/o Village Bhothali, Tahsil and District- Dhamtari (C.G.)

---- Appellants/Claimants

Versus

1. Milap Ram Sahu S/o Shri Gendlal Sahu, aged about 45 years, R/o Village Limtara, Tahsil and District- Dhamtari (C.G.)
(Driver of the alleged vehicle bearing registration No. C.G. 05-F-3900)
2. Proprietor Shri Shyam Sunder Agrawal, Shri Balaji Rice Mill Industrial Area, Dhamtari, District- Dhamtari (C.G.)
(Owner of the alleged vehicle bearing registration No. C.G. 05-F-3900)
3. H.D.F.C. Argo General Insurance Company Limited, Branch Office, 03, Floor Chawla Complex Sai Nagar, Devendra Nagar, Raipur, District- Raipur (C.G.)
(Insurer of the alleged vehicle bearing registration No. C.G. 05-F-3900)

---- Respondents/Non-applicants

For Appellants	:	Shri Pravin Ku. Tulsyan and Shri Anil Gulati, Advocates
For Respondents 1 & 2	:	Shri Anoop Panda, Advocate appears on behalf Shri B.D. Guru, Advocate
For Respondent No.3	:	Shri Sachin Singh Rajput, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

18.06.2019

1. This appeal is by the Claimants, unfortunate wife, children and monther of deceased- Johan Das Tandiya, against the award dated 07.03.2013 passed by the Chief Motor Accident Claims Tribunal, Dhamtari (C.G.) in Claim Case No. 99 of 2010 awarding total compensation of Rs.6,96,160/- with interest @ 6% per annum from the date of application till realization, fastening liability on non-applicants jointly and severally.

2. Facts of the case, in brief, are that on 07.02.2010 deceased- Johan Das Tandiya was coming by his motorcycle bearing registration No. CG-12/B/8838 to his house at Bhothali from his office situated at Shihava-Chowk, in the meantime, the offending vehicle Hundai Motor Indica bearing registration No. CG-05/F/3900 came from front side which was being driven by non-applicant No. 1 in a rash and negligent manner, dashed the motorcycle of Johan Das Tandiya. As a result thereof, Johan Das Tandiya fell down on the road and sustained grievous injuries and he was shifted to District Hospital, Dhamtari, where the Doctor has declared that Johan Das Tandiya has died on account of such accident. At the time of accident, the offending vehicle Hundai Motor Indica bearing registration No. CG-05/F/3900 was owned by non-applicant No.2 and was insured with non-applicant No.3.

3. As submitted by counsel for the parties, no counter appeal has been filed by the Respondents/non-applicants.

4. Learned counsel for the Appellants/Claimants submit that in this case deceased was aged about 58 years, but the Tribunal has wrongly applied the multiplier of 8 whereas it should have been 9. They further submit that the income of the deceased has wrongly been considered by the Tribunal as Rs.7,210/- after deduction of GPF, GIS and Rs.6,000/- towards the salary of Claimant No.3 who has got the compassionate appointment in place of his father. They also submit that no amount towards future prospect has been granted by the Tribunal, therefore, looking to the age of the deceased i.e. 58 years and he was salary paid employee, Claimants are entitled to 15% towards future prospect. They further submit that the amount awarded under the conventional heads is also on the lower side.

5. Learned counsel for Respondents 1 and 2 opposes the contention made by learned counsel for the Appellants and supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

6. Learned counsel for Respondent No.3/Insurance Company submits that as per pleading of the Claimants in claim petition, the deceased was aged about 55 years at the time of accident, but the Tribunal has considered the age of the deceased as 58 years. He further submits that if the deceased was aged about 58 years and after two years, he was to be retired, therefore, considering all aspects, there is no need to consider future prospects because compassionate appointment has also been given to Claimant No.3 namely Prakash Das Tandiya and the Claimants are also getting pension on account of death of the deceased. He also submits that no amount has been deducted by the Tribunal towards personal and living expenses of the deceased, therefore, looking to the dependency upon the deceased, 1/4th should have been deducted.

7. Heard learned counsel for the parties and perused the material available on record.

8. It is not disputed that no counter appeal has been filed by the Respondents as submitted by the parties and the deceased has died due to rash and negligent driving of the offending vehicle by its driver/non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3. There is no breach of policy condition in this case. So far as the age of the deceased is concerned, it was considered by the Tribunal as 58 years. In the postmortem report, age of the deceased has been mentioned as 58 years, therefore, the Tribunal was justified in considering the age of the deceased as 58 years, but wrongly applied the multiplier of 8 and in view of the decision of the Hon'ble Supreme Court in the matter of ***Smt. Sarla Verma and others*** Vs. ***Delhi Transport Corporation and another, (2009) 6 SCC 121*** in between age group of 56-60 years, it should have been 9.

9. So far as deduction of salary being received by Claimant No.3 on account of compassionate appointment from the income of the deceased is concerned, the Tribunal was not justified in doing so.

10. In the matter of ***National Insurance Company Ltd.*** Vs. ***Rekhaben & Others, AIR 2017 SC 2580***, the Hon'ble Court while considering the issue whether any amount being received by the claimant from the compassionate appointment against the death of deceased is liable to be deducted for computation of compensation, observed as under:-

> “18. In the present cases, the claimants were offered compassionate employment. The claimants were not offered any sum of money equal to the income of the deceased. In fact, they were not offered any sum of money at all. They were offered employment and the money they receive in the form of their salary, would be earned from such employment. The loss of income in such cases cannot be said to be set off because the claimants would be earning their living. Therefore, we are of the view that the amount earned by the claimants from compassionate appointments cannot be deducted from the quantum of compensation receivable by them under the Act.
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> 19. In the cases before us, compensation is claimed from the owner of the offending vehicle who is different from the employer who has offered employment on compassionate grounds to the dependents of the deceased/injured. The source from which compensation on account of the accident is claimed and the source from which the compassionate employment is offered, are completely separate and there is no co-relation between these two sources. Since the tort feasor has not offered the compassionate appointment, we are of the view that an amount which a claimant earns by his labour or by offering his services, whether by reason of compassionate appointment or otherwise is not liable to be deducted from the compensation which the claimant is entitled to receive from a tort feasor under the Act. In such a situation, we are of the view that the financial benefit of the compassionate employment is not liable to be deducted at all from the compensation amount which is liable to be paid either by the owner/the driver of the offending vehicle or the insurer.”

11. As regards income of the deceased, as per Ex.-P/12 (Income-certificate) and Ex.-P/13 (Salary-slip), the deceased was getting net salary as Rs.13,210/- per month after deducting GPF as Rs.1,800/- and GIS as Rs.150/-. Therefore, looking to Ex.-P/12 and Ex.-P/13, the income of the deceased is considered as Rs.15,160/- per month including the GPF and GIS as per settled law. Further, considering the age of the deceased i.e. 58 years and he was salary paid employee which is not disputed by the parties, the dependency, the nature of his job, in view of the decisions in the matters of ***National Insurance Co. Ltd.*** Vs. ***Pranay Sethi, (2017) 16 SCC 680*** and *Smt. Sarla Verma* (supra), the Claimants/Appellants are held entitled for compensation in the following manner:

Sl.No.	**Heads**	**Calculation (In rupees)**
1.	Income of the deceased	Rs.15,160/- per month Rs.1,81,920/- per annum

2.	15% towards future prospects added to annual income	(Rs.1,81,920/- + Rs.27,288/-) Rs.2,09,208/-
3.	1/4th deduction towards personal and living expenses of Deceased	(Rs.2,09,208/- – Rs.52,302/-) Rs.1,56,906/-
4.	Multiplier of 9 to be applied	Rs.1,56,906/- x 9 = Rs.14,12,154/-
5.	Conventional heads: Funeral expenses; loss of estate and loss of consortium	Rs.70,000/-
	Total Compensation	**Rs.14,82,154/-**

12. Since the Tribunal has already awarded Rs.6,96,160/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.7,85,994/- with interest @ 6% per annum from the date of application till its realization. However, rest of the conditions of the impugned award shall remain intact.

13. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

14. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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