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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1020 of 2014

- Shriram General Insurance Company Ltd. Through Branch Manager, Shriram General Insurance Company Ltd., Branch Office, Maruti Heights, Mohba Bazar, G.E. Road, Raipur C.G.

---- Appellant

Versus

1. Smt.Kumari Bai Yadav W/o Late Chaitram Yadav Aged About 47 Years
2. Bhuneshwar Prasad S/o Late Chaitram Yadav Aged About 33 Years
3. Bhuwan Kumar S/o Late Chaitram Yadav Aged About 27 Years
4. Deepak Kumar S/o Late Chaitram Yadav Aged About 20 Years

Respondent Nos. 1 to 4 are R/o Village And Post- Kaneri, P.S. And Tahsil Gurur, Distt. Balod C.G.

5. Dhaniram Korram S/o Jagatram Korram R/o Taragaon Patelpara, P.S. And Tah. Bhanpuri, Distt. Bastar Jagdalpur C.G.
6. Mrinal Rai S/o Kalidas Rai R/o Village And Post- 4 Ring Road, Kirandul, 494556, Distt. Dantewada C.G.

---- Respondents

For Appellant	Shri S.S. Rajput, Advocate.
For Respondent Nos. 1 to 3	Shri Anil Gulati, Advocate.
For Respondent Nos. 5 & 6	Shri Vedant Bhelonde, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

11/02/2019

1. This appeal is by the Insurance Company/non-applicant no.3 against the award dated 10.07.2014 passed by the 2nd Additional Motor Accident Claims Tribunal, Balod, District Balod, C.G. in Claim Case No.38/13 awarding total compensation of Rs.19,48,576/- with interest @ 6% per annum from the date of

application till realization, fastening liability on the Insurance Company/non-applicant no.3.

2. As per claim petition, on 01.06.2013, deceased Chaitram Yadav, aged about 52 years, earning Rs.24,062/- per month as Peon in District Cooperative Central Bank, Branch Dhamtari, died in the motor vehicular accident caused due to rash and negligent driving of Truck bearing no.CG18-H-6111 by non-applicant No.1/respondent no.1. At the time of accident, offending vehicle was owned by non-applicant no.2/respondent no.2 and insured with non-applicant no.3/respondent no.3.

3. On claim petition being filed by the claimants i.e. wife and children of deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.42,50,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

4. Learned counsel for the appellant submits that the Tribunal has wrongly assessed the income of the deceased and also erred in by not deducting the amount being received by son of the deceased from the compassionate appointment from the income of the deceased for determining the compensation. This apart, the Tribunal has also erred in making ¼ deduction towards personal and living expenses of the deceased whereas the son of the deceased being major cannot be treated as dependents and there has to be 50% deduction in this head.

5. On the other hand, learned counsel for the respondent nos. 1 to 3 supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

6. Counsel for the respondent nos. 5 & 6 has duly assisted the Court.

7. No counter appeal has been filed by the respondents as submitted by the parties.

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

9. So far as income of the deceased is concerned, looking to the Ex.P-10 i.e. Salary Certificate which has been duly proved by the claimants, the Tribunal has rightly considered the same for the purpose of assessing the income of the deceased. So far as the argument regarding deduction from the income of the deceased on account of compassionate appointment to his son is concerned, the said issue has already been dealt with in detail by the Hon'ble Supreme court in the matter of ***Vimal Kanwar and others vs. Kishore Dan and others,*** reported in ***(2013) 7 SCC 476.*** In view of the above, the Tribunal has not committed any illegality in assessing the income of the deceased on the basis of salary certificate Ex.P-10 and not deducting any amount on account of compassionate appointment to his son. So far as

other argument of counsel for the appellant regarding deduction towards personal and living expenses of the deceased is concerned, considering the fact that there are four dependents upon the deceased, the pleadings of the claimants and the evidence adduced by them, the fact that no evidence to the contrary has been adduced by the non-applicants, in view of decision of Hon'ble Supreme Court in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, this Court is of the opinion that the Tribunal was justified in making ¼ deduction towards personal and living expenses of the deceased.

10. On the basis of aforesaid discussion, no substance in the appeal filed by the Insurance Company, the same is liable to be dismissed and is, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh