NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 93 of 2014

1. Chandresh Kumar Rai S/o Late Ramsingh Rai Aged About 27 Years
2. Satish Rai S/o Late Ramsingh Rai Aged About 25 Years
3. Sandeep Rai S/o Late Ramsingh Rai Aged About 23 Years
4. Smt. Rameshwari Rai W/o Late Ramsingh Rai Aged About 45 Years

All R/o Ward No. 01, Civil Line, Khairagarh, P.S. And Tah. Khairagarh, Distt. Rajnandgaon, Chhattisgarh **---- Appellants**

Versus

1. Pitambar Kumar Dewangan, S/o Aged About 30 Years
2. Ramkumar Dewangan S/o Moti Ram Dewangan Aged About 50 Years

Both R/o Ward No. 10, Dauchaura, Khairagarh, P.S. And Tah. Khairagarh, Distt. Rajnandgaon, Chhattisgarh

3. Bajaj General Insurance Company Ltd. Infront of Rajkumar College, Near I.C.I.C.I. Bank, Raipur, Distt. Raipur, Chhattisgarh

---- Respondents

For Appellants	:	Shri Abhishek Sharma, Advocate
For Respondents-1 & 2	:	Shri Abhishek Pandey, Advocate on behalf of Shri Rakesh Pandey, Advocate
For Respondent- 3/Insurance Company	:	Shri Sachin Singh Rajput, Advocate

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Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

07.05.2019

1. Appellants/claimants have filed this appeal challenging impugned award dated 31.10.2013 passed by learned Additional Motor Accident Claims Tribunal, Khairagarh (for short, 'Claims Tribunal') in Claim Case No.77 of 2009 whereby learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.6,40,971/- in a death case.

2. Brief facts for disposal of this appeal are that on 04.09.2009 at about 10-11 pm Ramsingh Rai was going as pedestrian to see procession of Ganesh Visarjan to be held at Khairagarh-Rajnandgaon main road. At

that relevant time, one Tata 207 bearing No.CG 08 B-1892 (offending vehicle) driven by respondent- 1 dashed Ramsingh Rai due to which he suffered injuries on his head and other parts of body. He was immediately taken to Primary Health Centre, Khairagarh from where he was referred to District Hospital, Rajnandgaon. Looking to his critical condition, he was again referred to Jawahar Lal Nehru Hospital, Sector-9, Bhilai where, during his treatment, he succumbed to injuries on 09.09.2009.

3. Claimants, who are widow and children of deceased- Ramsingh Rai filed claim application before competent Claims Tribunal claiming total sum of Rs.32,28,996/- as compensation on different heads.

4. Respondents- 1 and 2 who are driver and owner respectively of offending vehicle submitted reply to claim application that on the date of accident driver of offending vehicle was possessing a valid and effective driving license and vehicle was insured with respondent- 3, Insurance Company, therefore, they prayed for dismissal of claim against them.

5. Respondent- 3 Insurance Company submitted its separate reply and questioned maintainability of claim application on the ground that it was deceased himself who was negligent in the accident. Insurance Company also took ground that on the date of accident there was no valid fitness and permit available with offending vehicle and further taken ground that driver of offending vehicle was not possessing a valid and effective driving license therefore, there is violation of conditions of Insurance Policy.

6. Learned Claims Tribunal while appreciating pleadings available on record, held that death of deceased- Ramsingh Rai took place due to rash

and negligent driving by respondent- 1, driver of offending vehicle. Further it was held that as one son namely, Sandeep Rai of deceased got compassionate appointment in the Police Department, salary received by him to be deducted from salary of deceased for calculating amount of compensation. After recording aforementioned finding, Tribunal deducted Rs.10,000/- from monthly salary (Rs.16,053/-) of deceased and awarded total sum of Rs.6,40,971/- as compensation, which is under challenge before this Court.

7. Learned counsel for the appellant submits that learned Claims Tribunal committed an error in deducting monthly salary of Sandeep Rai, son of deceased who got compassionate appointment after death of deceased. He further submits that for calculating amount of compensation, entire salary of deceased is to be taken into consideration, not part of it. In support of his argument, reliance has been placed in the matter of **Vimal Kanwar and others Vs Kishore Dan and others** reported in 2013 (3) TAC 6 (SC). He further argued that learned Claims Tribunal erred in not awarding any amount towards future prospects of deceased who was working as Head Constable in Police Department on the date of accident.

8. Per contra, learned counsel for respondents- 1 and 2, driver and owner of offending vehicle argued that learned Claims Tribunal not committed any error in holding Insurance Company liable for payment of amount of compensation as on the date of accident offending vehicle was insured with it.

9. Respondent- 3, learned counsel appearing for Insurance Company submits that learned Claims Tribunal while considering entire facts and circumstances of claim application, rightly assessed amount of compensation which need not require any interference. He further argued that learned Claims Tribunal committed error in deducting 1/4th amount of salary towards personal expenses of deceased as on the date of accident all children of deceased impleaded as claimants are majors and one son of deceased got compassionate appointment and therefore, he submits that deduction should be 1/3rd.

10. I have heard learned counsel for the parties and perused records. The accident, death of deceased Ramsingh Rai who was working in Police Department and his salary per month are not disputed by any of the parties. Only question which arises for consideration before this Court is whether learned Claims Tribunal committed error in deducting amount of salary of Sandeep Rai, son of deceased who was offered compassionate appointment as Constable in Police Department after death of his father- Ramsingh Rai. The issue with respect to deduction of salary amount which the claimant received as benefit of service has been considered in the matter of **Vimal Kanwar** (supra) and held as under:

> "20. The second issue is "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."
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> "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 dependants, one of the dependants may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation 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 correlation 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 dependants may be entitled for compassionate appointment but that cannot be termed as "Pecuniary Advantage" that comes under the periphery of 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. In view of aforementioned law laid down by Hon'ble Supreme Court and facts and circumstances of case at hand, learned Claims Tribunal committed error in deducting Rs.10,000/- from assessed salary of deceased for calculating amount of compensation and therefore, said finding of Claims Tribunal is set aside and the amount of compensation is to be calculated on the basis of income/salary of the appellant without deduction of salary receiving by compassionate appointee.

12. Next question which was argued by learned counsel for the appellant is that learned Claims Tribunal committed error in not awarding any amount towards future prospects. Hon'ble Supreme Court in the matter of **National Insurance Company Limited Vs Pranay Sethi and others** reported in 2017 16 SCC 680, held that where the deceased had a permanent job and was between 50-60 years, he would be entitled for

addition of 15% of the established income for future prospects. Therefore, the claimants are entitled for addition of 15% of assessed salary towards future prospects of deceased.

13. Next issue for consideration is based on argument raised by learned counsel for respondent- 3 that learned Claims Tribunal erred in deducting 1/4th of deceased salary towards his personal expenses, whereas it should be 1/3rd in the facts and circumstances of case.

14. Looking to the fact that one son got compassionate appointment and is earning member, it cannot be said that son who got compassionate appointment to be treated as dependant, therefore, number of claimants to be treated as dependants will be less than four. In view of judgment rendered by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt) and Others Vs Delhi Transport Corporation and Another** reported in (2009) 6 Supreme Court Cases 121, the deduction towards personal expenses of deceased would be 1/3rd instead of 1/4th.

15. In view of above discussion, amount awarded by learned Claims Tribunal requires reconsideration and recalculation.

16. Income of deceased as per salary slip (Ex.P/23) is shown as Rs.16,053/- (gross) after deduction of special allowances, his salary for calculating dependency comes to Rs.15,900/-. Yearly income of deceased comes to Rs.1,90,800/- (15900 x 12). By adding 15% of yearly income of deceased toward future prospects, total income comes to Rs.2,19,420/- {190800 + (190800 x 15/100)}. After deduction of 1/3rd towards living and personal expenses, yearly dependency of claimants comes to

Rs.1,46,280/- {219420 – (219420 x 1/3)}. On the date of accident, age of deceased was 54 years and therefore, multiplier of 11 is applicable to yearly loss of dependency which makes total loss of dependency as Rs.16,09,080/- (146280 x 11). Apart from total loss of dependency, claimants will also be entitled for a sum of Rs.70,000/- towards other conventional heads which makes the amount as Rs.16,79,080/-. Apart from above, the appellant/claimant will also be entitled for the amount awarded by learned Claims Tribunal, a sum of Rs.28,871/- as medical expenses, Rs.2,000/- towards conveyance and Rs.6,000/- towards attendant. Now claimants will be entitled for a total sum of Rs.17,15,951/- (Rupees seventeen lakh fifteen thousand nine hundred fifty-one) (1679080 + 28871 + 2000 + 6000) as compensation instead Rs.6,40,971/-.

17. The amount of compensation will carry interest @ 6% per annum from date of application till its realisation. Rest of the conditions of impugned award shall remain intact.

18. Appeal is allowed in part.

19. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma