NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 959 of 2014

1. Lokeshwari W/o Late Induram Kunjam Aged About 26 Years,

2. Nolesh Kumar S/o Late Induram Kunjam Aged About 2 Years,

3. Manish Kumar S/o Late Induram Kunjam Aged About 10 Months,

   Appellant No. 2 & 3 being minor, through natural guardian Mother Smt. Lokeshwari, aged about 26 years, W/o Late Induran Kunjam, All are R/o Kohlakasa, Thana Chichola, Tah. Dongargarh, Distt. Rajnandgaon (C.G.)

---- Appellants/Claimants

Versus

1. Sevakram S/o Ramu Sahu Aged About 46 Years R/o Ghogre, Thana-Churiya, Tah. Churiya, Distt. Rajnandgaon C.G. (Driver)

2. Ramuram Sahu S/o Phool Singh Sahu R/ovillage Ghoghre, Thana And Tah. Churiya, Distt. Rajnandgaon (C.G.).

3. Branch Manager S/o The National Insurance Co. Ltd., Local Branch Office, Kamtee Line, Rajnandgaon District Rajnandgaon (C.G.).

4. Johatri Bai W/o Late Bisnath Aged About 60 Years R/o village Kohlakasa, Thana Chichola, Tahsil Dongargarh, Distt. Rajnandgaon (C.G.).

---- Respondents

For Appellants	:	Shri Shalvik Tiwari, Advocate on behalf of Shri Parag Kotecha, Advocate.
For Respondent No. 3	:	Shri Anil Gulati, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

08/04/2019

1) This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 11/09/2014 passed by the Additional Motor Accident Claims Tribunal Link Court,

Dongargarh, District Rajnandgaon (C.G.) in Claim Case No. 49/2012 awarding the total compensation of Rs. 4,28,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non applicants jointly and severally.

2) As per claim petition, on 05/09/2012 at around 4:30 PM deceased Induram Kunjam, 30 years of age earning Rs. 12,000/- per month as a Teacher (Shiksha Karmi Grade-II), was returning from his duty riding his motorcycle bearing No. CG08 F 1931 with a moderate speed. However, from the opposite side on the way non-applicant No. 1 Sevakram Sahu by driving vehicle Tractor bearing No. CG05 ZG 3725 (offending vehicle) in a rash and negligent manner dashed the motorcycle of the deceased. As a result of this accident Induram Kunjam died on the spot. At the time of accident the offending vehicle was owned by non-applicant No. 2 and insured with non-applicant No. 3.

3) On the claim petition being filed by the claimants wife, children & mother under section 166 of Motor Vehicles Act, 1988, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

4) Learned counsel for the appellants/claimants submits as under:-

i. that the income of the deceased has wrongly been considered by the Tribunal as Rs. 3,000/- per month; whereas he was earning Rs. 9817/- per month as Teacher (Shiksha Karmi Grade-II) being a permanent Govt. employee, vide pay slip of deceased (Ex.- P-13).

ii. that the Tribunal was not justified in deducting the final benefit of the compassionate appointment of claimant No. 1 while determining the quantum of compensation payable to the claimants.

iii. that 1/3 deduction towards personal and living is also against the law and it should have been 1/4th, looking to the four persons dependent upon deceased.

iv. that no future prospect has been granted to the claimants.

v. that the amount awarded towards other heads also being on the lower side deserves to be enhanced suitably.

In support of above contentions, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of **Smt. Sarla Verma and Others V/s Delhi Transport Corporation and another, (2009) 6 SCC 121, National Insurance Co. Ltd. V/s. Pranay Sethi, (2017) 16 SCC 680 and** ***Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal No.9581/2018 arising out of SLP (Civil) No.3192/2018.***

5) On the other hand, learned counsel for the respondent/ Insurance Company 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) No counter appeal has been filed by the respondents as submitted by counsel for the parties.

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

8) As regards income of the deceased, as per Pay Slip (Ex. P-13) deceased was drawing salary or Rs. 9817 per month. However, Tribunal considering the fact that wife of deceased i.e. claimant No. 1 Lokeshwari has got compassionate appointment after the death of deceased in the pay scale as Rs. 3000-100-5800, assessed the monthly loss of dependency as Rs. 3000/-.e. Rs. 36000/- per annum.

9) In the mater of ***National Insurance Company Ltd. Versus 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.

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.”

10) In view of the above decisions, the Tribunal was not justifying in assessing the monthly income of deceased as Rs. 3000 for the purpose of determining the compensation, income of the

deceased as per Pay Slip (Ex. P-13) has to be taken into consideration which comes to Rs. 9817 per month. Further considering the age of the deceased i.e. 33 years and 6 months, the nature of his job, dependency, keeping in view the decision of the Hon'ble Supreme Court in Sarla Verma, Pranay Sethi and Magma (Supra), the claimants are held entitled for compensation in the following manner :-

Sl. No.	Heads	Calculation (In rupees)
01	Income of the deceased @ Rs. 9,817 per month	Rs. 117804 /- (Per annum)
02	50% of (1) above to be added towards future prospect	(Rs. 117804 + Rs. 58902) = Rs. 1,76,706/-
03	1/4th deduction towards personal and living expenses of the deceased	(Rs 176706 – Rs. 44176) = Rs. 1,32,530 /-
04	Multiplier of 16 to be applied.	Rs. 21,20,480/-
05	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
06	Towards loss of parental consortium for claimants No. 2 & 3.	Rs. 10,000/-
	Total compensation	**Rs. 22,00,480/-**

Since the Tribunal has already awarded Rs. 4,28,000/- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 17,72,480/- with interest @6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant