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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 708 of 2013

1. Smt. Savitri @ Sabina Kispotta W/o Late Paitrus Kispotta Aged About 37 Years, Occupation – House Wife.
2. Arpan Kispotta S/o Late Paitrus Kispotta Aged About 18 Years, Occupation – Student.
3. Ku. Asthanjali Kispotta D/o Late Paitrus Kispotta Aged About 16 Years (presently aged about 18 years), Occupation –Student.
4. Ku. Arpana Kispotta D/o Late Paitrus Kispotta Aged About 13 Years, Occupation – Student.

   Appellant No.4 is Minor, Thru- Mother Smt. Savitri @ Sabina Kispotta, W/o. Late Paitrus Kispotta.

   All are R/o Navagarh Nagar, Ambikapur, P.S. Ambikapur, Civil and Revene Distt. Surguja C.G.

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Versus

1. Pradeep Kumar Paswan S/o Ramji Ram Paswan Aged About 27 Years, Occupation – Driver, R/o Latdag, P.S. Meral, Distt. Garhwa Jharkhand, Thru- Shailesh Kumar Gupta, Nagar Ramanujganj, P.S. Ramanujganj, Distt. Surguja C.G.
2. Shailesh Kumar Gupta S/o Amirchand Gupta Aged About 42 Years, Occupation – Business and Owner of Truck, R/o Near State Bank, Nagar Ramanujganj, P.S. Ramanujganj, Distt. Surguja C.G (Now Distt. Balrampur) C.G.
3. Branch Manager The New India Insu. Co. Ltd., Branch Office, Daltonganj, Distt. Palamu, Jharkhand, Thru- Branch Manager, The New India Insu .Co. Ltd., Transport Nagar, Korba, P.S. And Distt. Korba C.G.

---- Respondents

For Appellants	:	Shri A. N. Pandey Advocate.
For Respondent Nos.1 & 2	:	None.
For Respondent No.3	:	Shri Raj Awasthi, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

28/06/2019

1 Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the

legality and validity of award dated 15.04.2013 passed by learned Second Additional Motor Accident Claims Tribunal, Ambikapur, District Surguja, C.G (for short 'the Tribunal') in Claim Case No.136/2011 whereby the Tribunal allowed claim application in part, awarded total sum of Rs.11,83,180/- as compensation in a death case alongwith interest @ 6% p.a. and fastened liability upon non-applicant no.3- insurance company to pay amount of compensation to claimants.

2 Brief facts relevant for disposal of this appeal are that on 07.02.2011, deceased -Paitrus Kispotta along with one Rajkumar Gupta was returning to village Balrampur from the office of Block Education Officer, Balrampur on motorcycle bearing registration No.CG15/C/248, (hereinafter shall be referred to as ‘offending vehicle'). Said Rajkumar Gupta was driving motorcycle whereas deceased Paitrus Kispotta was travelling as pillion rider. When they reached near Forest Barrier, village Dumrahi, one Truck bearing registration No.CG15-A-0516, (hereinafter shall be referred to as “the offending vehicle”), driven by non-applicant no.1/respondent No.1 -herein dashed against their motorcycle, as a result they fell down and suffered grievous injuries over their person. They were taken to the District Hospital, Ambikapur where deceased succumbed to injuries during the course of treatment.

3 Claimants, who are widow & children of deceased, filed claim application under Section 166 of the Act of 1988 before competent

Claims Tribunal claiming Rs.45,15,600/- as compensation on the ground that on the date of accident deceased was working as 'Upper Division Teacher' at Middle School, Lurgikala and getting gross salary of **Rs.23,815/-** per month.

4 Non-applicants No.1 & 2 / respondent nos. 1 & 2 -herein driver & owner submitted reply to claim application stated that on the date of accident driver of offending vehicle was having valid and effective driving license having its validity upto 26.06.2011 and vehicle was also having valid permit to run on road. They further pleaded that as on the date of accident offending vehicle was insured with non-applicant-3-insurance company, therefore, liability if any for payment of compensation would be on insurance company.

5 Non-appicant no.3/respondent no.3-Insurance Company -herein also submitted reply to claim application and contended that there is violation of condition of insurance policy as on the date of accident neither driver of offending vehicle was possessing valid and effective driving license nor offending vehicle was having valid permit to run on road. It has been further pleaded that driver, owner & insurer of motorcycle were also necessary parties, but they have not been impleaded and therefore on account of non-joinder of necessary party claim application is not maintainable. It was also pleaded that on the date of accident driver of motorcycle was not possessing valid and effective driving license and driving his

motorcycle rashly and negligently due to which he met with an accident.

6 Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties held that there is no violation of condition of insurance policy and accident took-place due to rash and negligent driving of driver of offending vehicle in which deceased succumbed to injuries. The Tribunal allowed application in part and awarded total sum of **Rs.11,83,180/-** as compensation.

7 Learned counsel for appellants submits that the Tribunal committed error in deducting amount o**f Rs.7,000/-** on the ground that his son got compassionate appointment and getting monthly salary of **Rs.7000/-,** which is erroneous and liable to be set aside**.** He further submits that the Tribunal also erred in not awarding any amount towards future prospects and the amount awarded under other conventional heads is also meager.

8 Per contra, learned counsel appearing for respondent No.3-insurance company supported impugned award and submitted that the Tribunal has rightly assessed loss of dependency of claimants and awarded suitable amount of compensation and as the amount of compensation awarded to claimants is just and proper, therefore, it does not call for any interference.

9 I have heard learned counsel for the parties and perused the records.

10 Only question arises for consideration of this Court is whether the Tribunal has awarded just compensation to claimants in the facts and circumstances of case.

11 Employment of deceased as 'Government Servant' is not in dispute. Salary slip (Ex. P-6) issued by B.D.O, Balrampur, Surguja is also not in dispute. Ex. P-6 shows that on the date of accident deceased was receiving gross salary of **Rs.23,815/-** per month and after total deduction of Rs7,050/- (Rs.22,00/- for GPF, Rs.150/-for FBF, Rs.4200/- for advanced return & Rs.500/- towards income tax) as detailed in Ex.P-6, deceased was getting net salary of **Rs.16,765/-.** Thus, except the deduction towards income tax, all other deductions made are savings of deceased and therefore, other deductions made from salary of deceased cannot be excluded for the purpose of calculating income of deceased. In view of above, the Tribunal committed error in holding income of deceased as **Rs.16,765/-,** instead **of Rs.23,315/- (23,815-500).**

12 So far as, deduction of Rs.7,000/- by the Tribunal on the ground that after death of deceased his elder son got compassionate appointment in 'Government Department' and getting monthly salary of Rs.7000/- is concerned, salary of any of dependants of deceased cannot be deducted from income of deceased. In the case of **Vimal Kanwar and others v. Kishore Dan & others** reported in **(2013) 7 SCC 476** Hon'ble Supreme Court has dealt with this aspect of the matter and observed as under :-

> "20. The 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."
>
> 21. "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 who 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."

13 Hon'ble Supreme Court in the aforesaid judgment categorically held that any amount/salary received by any of dependants on compassionate appointment cannot be treated as pecuniary advantage under the Act of 1988 and such amount is not liable for deduction for the purpose of assessment of compensation.

14 In the light of aforementioned pronouncement of the hon'ble Supreme Court, the Tribunal committed error in deducting Rs.7,000/- from monthly salary of deceased towards pecuniary advantage which claimants are receiving on account of compassionate appointment, and therefore the same is liable to be set aside and is hereby set aside.

15 In view of aforementioned discussion, now salary of deceased for the purpose of calculating amount of compensation would be **Rs.23,315/- in**stead of **Rs.9,765/-** as held by the Tribunal.

16 Ground raised by learned counsel for the appellants that Tribunal committed error in not awarding any amount towards future prospects. Issue with respect of award of future prospects has been dealt with and decided in the matter of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** wherein Hon'ble Supreme Court has held that in case deceased, victim of motor accident was between the age of 40 to 50 years and in a permanent employment, an addition of 30% of actual income of deceased towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads thus :-

> 59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."

17 For the aforementioned reasons, impugned award requires reconsideration and recalculation which this Court proposes as under.

18 Accordingly, monthly income of deceased is taken as Rs. 23,315/-. Since, on the date of accident deceased was aged about 40 years and working as 'Upper Division Teacher' in government department and, therefore, this Court is of the considered opinion that claimants

are entitled for an addition of 30% of assessed income i.e. Rs.23,315/-. By adding 30% to establish income of deceased, which would be to Rs.**6,694-50** paise (rounded off to **Rs.6995/-**) (23,315 X 30/100)**,** total monthly income of deceased comes be **Rs.30,310/- (23,315 + 6,995)** and yearly income of deceased comes to **Rs.3,36,720/- (30,310x12).** After deducting one-third towards personal & living expenses from income of deceased i.e **Rs.1,21,240/- (1/3 of 3,36,720),** yearly dependency would come to **Rs.2,15,480/- (336720-121240)**.As on the date of accident deceased was aged about 40 years, therefore, appropriate multiplier applicable would be 15. By applying multiplier of 15, total loss of dependency/comes to **Rs.32,32,200/- (215480x15).** Claimants are also entitled for a lump sum amount towar**ds Rs,70,000/- u**nder other conventional heads.

19 Now claimants will be entitled for total sum of **Rs.33,02,200/-** instead **of Rs.11,83,180/-**as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rests of the conditions of impugned award shall remain intact.

20 In the result, appeal is allowed in part and impugned award stands modified to the extent as indicated herein-above.

Sd /-

(Parth Prateem Sahu)
Judge

Jamal