NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 339 of 2015

1. Smt. Bharti Devi W/o Late Satish Kumar Singh, aged about 28 years,

2. Harsh Kumar Singh S/o Late Satish Kumar Singh, Now aged about 21 years,

3. Anish Kumar Singh S/o Late Satish Kumar Singh, Now aged about 19 years,

4. Nilmani Singh S/o Ramgulab Singh, aged about 57 years,

5. Smt. Gayatri Devi W/o. Nilmani Singh, aged about 53 years,

All by Caste- Kshatriya, R/o- Village- Vishrampur, Polic Station- Vishrampur, Tahsil- Surajpur, District- Surguja (Now-Surajpur), Civil & Revenue District- Surajpur (C.G.).

---- Appellants/Claimants

Versus

1. S. E. C. L. Vishrampur, through Chief General Manager, S. E. C. L. Vishrampur, Tahsil- Surajpur, District- Surguja (Now- Surajpur) (C.G.).

2. Sub Area Manager, S. E. C. L. Vishrampur, Tahsil- Surajpur, District- Surguja (Now- Surajpur) (C.G.).

3. C. M. D., S. E. C. L., Seepat Road Bilaspur, District- Bilaspur (C.G.).

4. Director Technical, S. E. C. L. Bilaspur, District- Bilaspur (C.G.).

---- Respondents

For Appellants	:	Shri A. K. Prasad, Advocate.
For Respondents	:	Shri Vivek Chopda, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

10.05.2019

This appeal is by the claimants against the award dated 19.12.2014, passed by Motor Accident Claims Tribunal, Surajpur, District- Surajpur in Claim Case No.21/2003.

02. As per claim petition, when on 07.12.2002, at around 02.30 o'clock deceased - Satish Kumar, aged about 34 years, who was working as dumper driver in the SECL, was going to Pokhiriya Khadan by driving dumper No. 6735 himself, on the way the said dumper turned- turtle, as a result thereof Satish Kumar sustained multiple injuries and died on the spot.

03. Firstly, on a claim petition being filed by the appellants/claimants under Section 166 of the MV Act for the death of deceased- Satish Kumar in a motor accident occurred on 07.12.2002, the Tribunal, after considering the evidence led by both the parties, on 30.09.2004 awarded a sum of Rs.15,68,212/- along with interest @ 7% per annum from the date of filing of claim petition, till its actual payment, in favour of the claimants, fastening liability upon the respondents/SECL.

04. The respondents/SECL preferred miscellaneous appeal being MAC No. 1144/2004 there-against. This Court vide its award dated 19.04.2011, remanded back the matter to the Claims Tribunal only for the purpose of reassessment of the compensation after taking evidence with regard to the amount of salary, which the widow of the deceased was offered at the time of compassionate appointment in the SECL so that the same may be considered while assessing loss of dependency income and reassessing compensation thereafter.

05. Thereafter, on the basis of direction given by this Court in MAC No. 1144/2004, the Claims Tribunal, while re-assessing the amount of compensation, awarded a total sum of Rs. 10,22,288/- in favour of the claimants. It was further directed that since the appellants/claimants have already received an amount of Rs. 8,82,093/-, therefore, they are only entitled to get Rs.1,40,195/- with an interest @ 8% per annum from the date of filing claim petition i.e. 24.06.2003, till its actual payment, fastening the liability of payment of compensation upon the respondents/SECL.

06. Learned counsel appearing for the appellants/claimants submits that deceased was working as Dumper Driver in the SECL and was getting salary of Rs.11,480/- per month, however, the Tribunal has erred in taking into consideration salary of the deceased as Rs.6,752/- per month by deducting remaining amount on account of compassionate appointment given to appellant No. 1 i.e. widow of deceased and thereby in awarding a low amount of compensation of Rs. 10,22,288/- as in view of judgment rendered by the Supreme Court in the matter of ***Vimal Kanwar and others vs. Kishore Dan and others,*** reported in ***(2013) 7 SCC 476,*** compassionate appointment cannot be termed as “Pecuniary Advantage” that comes under the periphery of Motor Vehicles Act and any amount received on compassionate appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act, 1988 and, therefore, the total amount mentioned in the salary slip ought to have been considered for the purpose of assessing the income of the deceased for computation of compensation. He also submits that no

amount towards future prospect has been granted to the claimants and the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. No amount towards loss of filial and other consortium has been granted.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

07. On the other hand, learned counsel for respondents/SECL 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.

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

09. It is not disputed by both the parties that the deceased died on 07.12.2002 while he was driving the dumper belonging to the S.E. C. L. The award was passed by the Claims Tribunal on 09.12.2010 prior to passing the decision of the Supreme Court in the matter of ***Vimal Kanwar (supra),*** in which it has been settled by the Apex Court that salary received on compassionate appointment cannot be deducted at the time of assessing the income of the deceased for the purpose of computation of compensation.

10. As per Salary slip (Ex.A-2) of the deceased for the month of May,

2002, deceased was getting Rs. 11,480/-pm as salary at the time of accident, therefore, the whole salary of the deceased as Rs. 11,480/-pm ought to have been considered for assessing the income of the deceased; and the income of the wife of deceased by compassionate appointment can not be deducted while assessing the income of the deceased as per the judgment rendered by the Supreme Court in the Matter of **Vimal Kanwar (Supra).** Looking to the nature of job of the deceased as permanent employee 50% towards future prospect would be applicable. Towards loss of care & guidance as Rs. 25,000/- by the Tribunal is kept intact. Further, considering the age of the deceased i.e. 35 years, the dependency and the decisions of the Hon'ble Supreme Court in ***Sarla Verma*, *Pranay Sethi,* (supra),** therefore, the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs. 11480/-pm	Rs.11,480x12= Rs. 1,37,760/- pa
02.	50% of (1) above to be added towards future prospects.	Rs.137 760 +68880/- = Rs.2,06,640/-
03.	1/4th deduction towards personal and living expenses of the deceased	Rs. 2,06,640 - 51660/- = Rs. 1,54,980/-
04.	Multiplier of 16 to be applied	Rs.1,54,980 X 16 = Rs.24,79,680/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
06	For loss of care & guidance for minor	Rs.25,000/- (as awarded by the Tribunal)
07	Total compensation	**Rs. 25,74,680/-**

11. Since the Claims Tribunal has already awarded Rs.10,22,288/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.15,52,392/- with interest @ 8% per annum from the date of application till its realization. However, the amount already deposited by the respondents/SECL, shall be adjusted at the time of execution of award. Rest of the condition mentioned in the award shall remain intact.

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

Sd/-

(Gautam Chourdiya)

Judge

amita