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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 562 of 2013

- Bajaj Allianz General Insurance Company Ltd., VR Plaza, Link Road, Bilaspur, Name of PS not mentioned, through Branch Manager, Shiv Mohan Bhawan, Vidhan Sabha Road, Pandri, Raipur (CG)

---- Appellant

Versus

1. Smt.Gurubari Bai Sidar, W/o Late Hiralal Gond, aged about 38 years.
2. Rajesh Kumar, son of Late Hiralal Gond, aged about 16 years, Minor
3. Ku. Kanchan, d/o Late Hiralal Gond, aged about 09 years, Minor.
4. Ku. Kusum, d/o Late Hiralal Gond, aged about 04 years, Minor.
   No.2 to 4 are Minors, through their Mother Smt. Gurubari Bai Sidar, All residents of Vill. Ragja (Bhathapara), Ragja, PS Sakti, Janjgeer Champa, CG, at present Vill. Seepat, NTPC Colony, Seepat, Bilaspur CG (PS not mentioned)
5. Arman Khan, S/o Mohd. Ashfaque Khan, aged about 23 years, R/o Lahartara, PS Lahartara (UP) **Driver**
6. Sanjay Singh, S/o Amar Bahaddur Singh, R/o Yadunandan Nagar, Tifra, PS Civil Lines, Bilaspur (CG) **Owner**

---- Respondents

For Appellant	:	Mr. Raj Awasthi, Advocate
For Respondent No.1 to 4	:	Mr. R.S. Baghel, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

23/6/2020

1. Challenging the liability to pay total compensation of Rs.13,65,000/- with interest @ 7.5% p.a. as awarded by the 5th Additional Motor Accident Claims Tribunal, Bilaspur (henceforth 'the Claims Tribunal') to the claimants/respondents No.1 to 4 herein, vide award dated 20.2.2013 passed in Claim Case No.105/11, appellant Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for

short 'the Act of 1988') .

2. The facts giving rise to this appeal, in brief, are that on 24.8.2010 at about 7.25 p.m. Hiralal left village Suadera for Seepat on his motorcycle bearing registration number CG11-C-3638 and when said Hiralal reached village Pendri situated on a national highway, he met with an accident with stationary truck registration number CG04-CA-7111 (for short 'the offending vehicle), which was parked in front of a rice mill on road without switching on indicators or parking lights, by dashing the truck to its rear side resulting into instantaneous death of said Hiralal on the spot itself. Matter was reported to the police based on which crime bearing No.299/10 was registered in Police Station Masturi against non-applicant No.1 for commission of offence punishable under Section 304A of the Indian Penal Code.

3. The claimants/respondents No.1 to 4 being the legal heirs of deceased Hiralal, filed an application under Section 166 of the Act of 1988 before the Claims Tribunal claiming total compensation of Rs.19,69,926/- on account of death of deceased Hiralal in a motor accident.

4. Non-applicant No.1 & 2, driver & owner of offending vehicle, proceeded ex-parte before the Claims Tribunal and as such, no written statement was filed on their behalf.

5. Non-applicant No.3/appellant herein appeared before the Claims Tribunal and filed its written statement denying all adverse pleadings made against it in claim application. It was pleaded that there was no connection between the death of deceased and accident in question. He points out that the claimants have not come with clean hands and have suppressed the material facts from the Claims Tribunal, therefore, the claim application itself is not maintainable. The deceased himself was solely responsible for his death. Alleged accident is false. The Claims Tribunal has no jurisdiction to hear claim application. Offending vehicle was not involved in

alleged accident and at the time of accident, it was parked properly & safely and not in a negligent manner. By way of additional pleadings, it was pleaded by Insurance Company that owner & insurer of motorcycle involved in the accident have not been arrayed as party to claim application, therefore, it is liable to be dismissed as not maintainable. Since two vehicles were involved in the accident, the principle of contributory negligenence is applicable in the present case. Non-applicant No.1-Driver was not duly licensed to drive the offending vehicle.

6. Upon appreciation of pleadings and evidence brought on record by respective parties, the Claims Tribunal arrived at a conclusion that deceased died due to injuries suffered by him in motor accident dated 24.8.2010 which took place due to negligence and recklessness on the part of driver of offending vehicle who had parked it on a national highway road without any parking signal or switching on indicators, and as such, the driver of offending vehicle alone is responsible for the accident. Consequently, the Claims Tribunal partly allowed claim application of claimants, awarded a total compensation of Rs.13,65,000/- together with interest @ 7.5% p.a. and fastened liability to make payment of amount of compensation on the owner, driver & insurer of offending vehicle, jointly & severally.

7. Mr. Awasthi, learned counsel representing appellant Insurance Company submits that age of non-applicant No.1/respondent No.5-driver is mentioned as '23 years' on the driving license, which was issued in the year 1991. Even in the arrest memo (Ex.D-3) also, age of driver has been mentioned as 23 years. The aforesaid fact goes to show that driving license itself was fake as license could not be issued in favour of a person aged about 4 years. It is also argued that the Claims Tribunal has not conducted proper enquiry as contemplated under Sections 168 & 169 of the Act of 1988 and Rule 226 of the CG Motor Vehicles Rules, 1994 (for short 'the Rules of 1994'). He points out that the Claims Tribunal rejected application filed by appellant

Insurance Company for examining the Regional Transport Officer & other officials and thereby denied opportunity to prove driving license to be not valid. He also submits that the Claims Tribunal erred in holding that it is not a case of contributory negligence ignoring the fact that the deceased dashed the stationary truck from behind. When a vehicle collided from rear side of a stationary vehicle, the presumption of contributory negligence on the part of driver of other vehicle has to be drawn, but the Claims Tribunal failed to consider this aspect of matter and arrived at erroneous conclusion that driver of offending vehicle was only responsible for the accident.

8. Per contra, learned counsel for claimants/respondents No.1 to 4 submits that submissions of learned counsel for appellant that proper enquiry was not conducted by the Claims Tribunal and thereby denied proper opportunity to prove the defence taken in written statement, is not correct. The application filed on behalf of insurance company for examining the RTO on commission was allowed and a Commissioner was appointed by the Claims Tribunal, but it is the appellant, who after taking several adjournments for examining RTO on commission, failed to examine said witness to prove the license to be fake. It is also contended that the Commissioner submitted report that the appellant is not interested to examine said witness and in this circumstance, the right of insurance company to lead evidence was closed. He further contended that there was no negligence on the part of the deceased, but the cause of accident was rash and negligent act of the driver of offending vehicle, who had parked the offending vehicle on a national highway road in night without proper sign or signal of parking or without switching on indicators. Appellant failed to examine any witness to controvert the pleadings and evidence of claimants. The Claims Tribunal's finding of contributory negligence is on the basis of the evidence available on record. Lastly, he submits that the claimants have also filed cross-objection for enhancement of award on the ground that the Claims Tribunal has determined

less monthly income of deceased; not awarded any amount towards future prospects; wrongly deducted one-third towards personal & living expenses; and awarded meagre amount towards other conventional heads.

9. Opposing the submissions made by learned counsel for respondents No.1 to 4 / cross objectors, learned counsel for appellant Insurance Company submits that just and proper compensation has been calculated and awarded by the Claims Tribunal.

10. To appreciate submissions made by learned counsel for appellant that the Claims Tribunal has not conducted proper enquiry in terms of Section 168, 169 of the Act of 1988 & Rule 226 of the Rules of 1994, we have perused the order sheets recorded by the Claims Tribunal.

11. Perusal of order sheets demonstrates that on 30.4.2012 appellant Insurance Company filed an application under Sections 168, 169 of the Act of 1988 & Rule 226 of the Rules of 1994 read with Section 16 (1) of CPC praying for summoning of S.R. Jayaswal, Investigating Officer, along with documents of Crime No.229/2010 registered at Police Station Masturi, District Bilaspur, particularly the license of non-applicant No.1-driver and those documents in which age of non-applicant No.1 is mentioned as '23 years'. The aforesaid application came to be rejected by the Claims Tribunal vide order dated 17.7.2012 by observing that there is no propriety in summoning case diary of Crime No.229/10 because insurance company can obtain certified copies of relevant documents of case diary including license seized by the police in connection with Crime No.229/10 from the concerned Court and produce the same. There is nothing on record showing that appellant Insurance Company has preferred an appeal against the order dated 17.7.2012 and as such, the said order has attained its finality.

On 22.9.2012 appellant Insurance Company filed an application under Order 26 Rule 4 of CPC for examination of the RTO, Varanasi on commission, which came to be allowed vide order dated 24.9.2012. The Claims Tribunal vide order dated 28.9.2012 appointed Shri Bharat Sahu, Advocate as Commissioner at the cost of insurance company and ordered for issuance of writ of commission and the case was adjourned for report of Commissioner. Thereafter the case was fixed on 11.10.2012, 30.10.2012, 4.1.2013 & 30.1.2013 for the report of the Commissioner, but on the aforesaid dates the report could not be produced and the matter was adjourned. On 1.2.2013 the matter was fixed for evidence, but appellant Insurance Company sought time, which was vehemently opposed by claimants. The Claims Tribunal considering the report of Commissioner Shri Bharat Sahu, Advocate wherein it has been mentioned that insurance company is not taking interest in recording of evidence and further considering the fact that despite grant of several opportunities, the insurance company failed to adduce evidence, which shows that insurance company wants to drag on litigation, has arrived at a conclusion that it would be not proper to grant further opportunity to lead evidence and accordingly, closed the right of insurance company to lead evidence and fixed the matter on 4.2.2013 for final arguments.

12. From perusal of the above proceedings drawn by the Claims Tribunal, it is apparent that insurance company did not obtain certified copies of those documents of criminal case on which it wanted to place reliance and produced before the Claims Tribunal. This apart, after grant of permission to examine the Regional Transport Officer, Varanasi on commission and after granting sufficient opportunities in this regard, the insurance company failed to examine said witness on commission. In these circumstances, we do not find any force in the argument advanced on behalf of insurance company that the Claims Tribunal has not conducted proper enquiry as provided under Sections 168, 169 of the Act of 1988 and Rule 226 of the Rules

of 1994 and the same is hereby repelled. Thus, this Court is of the considered opinion that the Claims Tribunal has following the procedure prescribed, granted opportunity to appellant to prove its case and only thereafter appreciated the evidence available on record and not committed any legal error in holding that there was no breach of any of the conditions of insurance policy.

13. Coming to the next submission made by learned counsel for appellant Insurance Company that the Claims Tribunal ought to have held that that the deceased was contributory negligent to the accident.

14. The Central Government in exercise of powers conferred on it by Section 118 of the Act of 1988 has made the regulations for driving of motor vehicles, which is known as 'Rules of the Road Regulations, 1989' (for short 'the Regulations of 1989'). Regulation 15 of the Regulations of 1989 deals with parking of the vehicle, which reads as under:-

> “15.**Parking of the vehicle.**-—(1) Every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and the manner of parking is indicated by any sign board or markings on the road side, he shall park his vehicle in such manner.
>
> (2) A driver of a motor vehicle shall not park his vehicle;
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> (i) at or near a road crossing, a bend, top of a hill or a humpbacked bridge;
> (ii) on a foot-path;
> (iii) near a traffic light or pedestrian crossing;
> (iv) in a main road or one carrying fast traffic;
> (v) opposite another parked vehicle or as obstruction to other vehicle;
> (vi) alongside another parked vehicle;
> (vii) on roads or at places or roads where there is a continuous white line with or without a broken line;
> (viii) near a bus stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant;
> (ix) on the wrong side of the road;
> (x) where parking is prohibited;
> (xi) away from the edge of the footpath.”

15. Rule 109 of the Central Motor Vehicles Rules, 1989 mandates

for having parking light on motor vehicles, which reads as under:-

> "**109**.**Parking light**:- Every construction equipment vehicle and every motor vehicle other than motor cycles and three wheeled invalid carriages shall be provided with one white or amber parking light on each side in the front. In addition to the front lights, two red parking lights one on each side in the rear shall be provided. The front and rear parking lights shall remain lit even when the vehicle is kept stationary on the road.
>
> Provided that these rear lamps can be the same as the rear lamps referred to in rule 105 sub-rule (2):
>
> Provided also that construction equipment vehicles, which are installed with flood light lamps or sport lights at the front, rear or side of the vehicle for their off-highway or construction operations, shall have separate control for such lamps or lights and these shall be permanently switched off when the vehicle is travelling on the road."

16. From perusal of above quoted regulation it is clear that Regulation 15 (2) prohibits parking of a motor vehicle on the prescribed places mentioned therein which includes 'main road or one carrying fast traffic'. As per FIR placed on record, the offending vehicle was parked on a national highway road. There can be no denial of fact that not only movement of vehicles but also pressure of traffic on national highways is on higher side, therefore, it is an implicit duty of a driver of vehicle to see that he has parked or stationed his vehicle on highway road in such a manner that it does not violate the parking rules endangering any human life on the road. Rule 109 of the Rules of 1989 casts a duty that the parking lights of even stationary vehicle on road shall remain lit.

17. In Para-3 of claim application the claimants have specifically pleaded that offending vehicle was parked on a national highway road in a very reckless & negligent manner i.e. without putting on parking lights or indicators. In the FIR lodged within one hour of accident, the place of accident is mentioned as in front of a rice mill on national highway road. In Para-1 of written statement filed on behalf of insurance company, there is general

denial to the contents of Para 1 to 11 of claim application. Even in the additional submissions, no specific averment has been made by insurance company with regard to place of parking of truck. It is settled principle that denial of the pleadings of other party of a particular fact is to be clear and specific. In absence of specific denial with reference to a particular pleading, the same shall be treated to be admitted. In case at hand, since there is no specific and unambiguous denial on the part of insurance company with respect to position of parking of offending vehicle at the time of accident, the version of claimants that the offending vehicle was parked in front of a rice mill on a national highway road without any sign of parking or switching on the indicators, has to be treated as uncontroverted. Thus, it is clear that non-applicant No.1 has parked or stationed offending vehicle on a national highway road during night hours, where he was not supposed to park, that too without taking precautionary measures, as prescribed under Rule 109 of the Rules of 1989 and Regulation 15 of the Regulations of 1989, for on-coming vehicles, that is to say, without putting any sign of parking or switching on parking lights or indicators. If the non-applicant No.1 had taken little care and observed the road regulations and the rules, the accident could have been avoided, as such, non-applicant No.1 is the main architect of the accident.

18. In the matter of **Archit Saini & another Vs. Oriental Insurance Company Limited & ors** reported in **(2018) 3 SCC 365** one Maruti Car had dashed against a stationary truck parked on road and Hon'ble Supreme Court while considering the issue of contributory negligence has held as follows:-

> "7. In the present appeals, the moot question is whether the High Court committed manifest error in reversing the well considered decision of the Tribunal on issue No.1 answered against the respondents, instead concluding that it was a case of 50% contributory negligence on the part of the deceased driver of the Maruti Car.
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> 8. After having perused the evidence of PW-7, Site Map

(Ext.P-45) and the detailed analysis undertaken by the Tribunal, we have no hesitation in taking the view that the approach of the High Court in reversing the conclusion arrived at by the Tribunal on issue No.1 has been very casual, if not, cryptic and perverse. Indeed, the appeal before the High Court is required to be decided on fact and law. That, however, would not permit the High Court to casually overturn the finding of fact recorded by the Tribunal. As is evident from the analysis done by the Tribunal, it is a well considered opinion and a plausible view. The High Court has not adverted to any specific reason as to why the view taken by the Tribunal was incorrect or not supported by the evidence on record. It is well settled that the nature of proof required in cases concerning accident claims is qualitatively different from the one in criminal cases, which must be beyond reasonable doubts. The Tribunal applied the correct test in the analysis of the evidence before it. Notably, the High Court has not doubted the evidence of PW-7 as being unreliable nor has it discarded his version that the driver of the Maruti Car could not spot the parked Gas Tanker due to the flash lights of the oncoming traffic from the front side. Further, the Tribunal also adverted to the legal presumption against the driver of the Gas Tanker of having parked his vehicle in a negligent manner in the middle of the road. The site plan (Ext.P-45) reinforces the version of PW-7 that the truck (Gas Tanker) was parked in the middle of the road bin light of above decision if we examine facts of presentut the High Court opined to the contrary without assigning any reason whatsoever. In our view, the site plan (Ext.P-45) filed along with the charge sheet does not support the finding recorded by High Court that the Gas Tanker was not parked in the middle of the road. Notably, the High Court has also not doubted the claimant's plea that the Gas Tanker / offending vehicle was parked without any indicator or parking lights. The fact that PW-7 who was standing on the opposite side of the road at a distance of about 70 ft, could see the Gas Tanker parked on the other side of the road does not discredit his version that the Maruti car coming from the opposite side could not spot the Gas Tanker due to flash lights of the oncoming traffic from the front side. It is not in dispute that the road is a busy road. In the cross-examination, neither has any attempt been made to discredit the version of PW 7 nor has any suggestion been made that no vehicle with flash lights on was coming from the opposite direction of the parked Gas Tanker at the relevant time.

9. Suffice it to observe that the approach of the High Court in reversing the well considered finding recorded by the Tribunal on the material fact, which was supported by the evidence on record, cannot be countenanced.”

19. Hon'ble Supreme Court in its recent judgment in the matter of **Jumani Begum vs. Ram Narayan & ors** reported in **Manu/SC/1784/2019**, equivalent to **(2020) 1 SCJ 43**, has again considered the issue of contributory negligence in an accident of motor vehicle with stationary motor vehicle and held thus:-

> “9 The MACT then discussed the evidence of the driver of the truck trailer, NAW 1. After analysing the evidence of the driver, the MACT held that his evidence did not inspire confidence, when he stated that indicators on the truck trailer had been lit. On the contrary, the eye-witness, AW 2, in the course of his cross-examination, denied the existence of reflectors at the spot. The MACT noted that it did not appear that the truck trailer had been parked outside the area of the pakka road. In spite of its analysis in the above terms, the MACT surmised that if the lights of the motorcycle were lit, the deceased would have been able to avoid the accident. This part of the reasoning of the MACT is purely a matter of surmise. Once the substantive evidence before the MACT established that the truck trailer had been parked on the road at night without any reflectors, we are of the view that there was no reason or justification for the MACT to proceed on the basis of conjecture in arriving at a finding of contributory negligence. We find from the judgment of the High Court that this aspect has not been discussed at all and the High Court simply proceeded to confirm the finding of contributory negligence. Consequently, on the first limb of the submission, learned counsel appearing on behalf of the appellant is correct and the submission requires to be accepted.”

20. In the light of above decision of Hon'ble Supreme Court and in the given facts and circumstances of case, we have no hesitation in saying that the accident occurred due to negligent parking of offending vehicle by non-applicant No.1 and the deceased cannot be held negligent in the present facts of the case.

21. Now the question arises for consideration is whether the deceased can be held contributory negligent to any extent. As discussed in preceding paragraph that in absence of any specific denial of the position of offending vehicle to have been parked on road and the contents of FIR lodged promptly also

suggest the aforesaid fact, there is no doubt that the offending vehicle was parked on road. Merely the fact that a motorcycle dashed a stationary truck from its back will not itself be sufficient to hold the driver of motorcycle to be negligent without there being any other evidence about visibility of truck from a distance, particularly when the accident is said to be occurred in night and on a national highway road.

22. The Claims Tribunal had framed Issue No.2, which relates to 'contributory negligence'. For deciding the issue of contributory negligence in an accident like present case, several factors are required to be taken into consideration, like place or road on which accident took place, place of parking of vehicle on road or half on road and half of road side, road whether it is village road, State Highway, National Highway, traffic pressure on road, whether road safety measures were followed. Above-mentioned are some of the facts which can be relevant to decide whether other driver who dashed the vehicle from back of the stationary truck contributed to accident or not, and if yes, then upto what extent.

23. The driver of offending truck, who could be one of the best witness to controvert the pleadings and evidence, did not choose to appear in the proceeding before the Claims Tribunal. No steps were taken by appellant Insurance Company to examine any witness nor produced any witness in its defence. The driver of offending vehicle did not appear and driver of other vehicle involved in accident succumbed to the accidental injuries on spot. Looking to the contents of Ex.A-2, there appears to be no eyewitness to accident.

24. The cases under the Act of 1988 are to be decided on the touchstone of preponderance of probabilities, as held by Hon'ble Supreme Court in the catena of its decisions including in the cases of **Bimla Devi v. Himachal Road Transport Corporation & ors** reported in **(2009) 13 SCC 530**, relevant portion of which is reproduced below;-

> "11.While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a Tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post mortem report vis-`-vis the averments made in a claim petition."

25. The contributory negligence is a fact needs to be proved by party alleging. If facts of present case is concerned as it is, then what emerging from the records is that the road on which accident took place is a national highway road, truck was parked on road without switching on parking lights or indicators or without any sign or mark of stationary truck to have parked on road. Thus, the parking is in violation of the Regulations of 1989 and Rules of 1989. Looking to the road to be a national highway, traffic on road and crossing of vehicles with flash lights cannot be ignored.

26. For the foregoing reasons, we do not find any merit in the submission made by learned counsel for appellant- Insurance Company that it is a case of contributory negligence and the same is hereby repelled.

27. We shall now proceed to deal with the grounds urged in cross-objection filed by claimants/ respondents No.1 to 4 for enhancement of compensation.

28. To prove income of the deceased the claimants have produced salary slip (Ex.P-9) issued by employer and examined one S.N. Yadav (AW-2), an employee of CISF, NTPC, who has proved the employment and monthly income of deceased as Rs.15,990/- in his evidence. Perusal of salary slip of the deceased for the month of July, 2010 (Ex.P-9) reveals that

gross salary of the deceased was Rs.15,990/- which includes basic pay Rs.8,600/-, Grade Pay Rs.2,400/-, Dearness Allowance Rs.3,850/-, Washing Allowance Rs.60/- & Transport Allowance Rs.1,080/-. However, perusal of the impugned award reflects that the Claims Tribunal for computation of monthly income of deceased has not included amount paid towards Dearness Allowance (DA) and deductions made from salary towards GPF & GIS.

Transport Allowance (TPA) & Washing Allowance (WA) paid to the deceased cannot be treated as an income for benefit of the dependants, therefore, the same is required to be deducted to determine actual salary of deceased. Dearness Allowance (DA) is a calculation on inflation. It calculated as a percentage of basic pay and added in salary to be taken by an employee, therefore, it is a part of income/salary and the Claims Tribunal should have included the same while assessing monthly salary of the deceased.

29. In the light of above, we are of the considered view that the Claims Tribunal gravely erred in assessing monthly salary of the deceased to be Rs.11,000/- because dearness allowance, which is also an income, and other contributions voluntarily made by the deceased, which are in the nature of savings, cannot be deducted from monthly salary of the deceased to determine his net salary or take home salary. Hence, we assess take home salary of the deceased to be Rs.14,850/- (8600+2400+3850). Annual salary of the deceased comes to Rs.1,78,200/- (14850x12).

It is also settled that 'salary' means actual salary less income tax. In other words, income for determining compensation exclude tax component. Hon'ble Supreme Court in the matter of **Shyamwati Sharma & ors v. Karam Singh** reported in **(2010) 12 SCC 378** has held as under:-

> “9.......We, however, make it clear that while ascertaining the income of the deceased, any

> deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayment of loans etc., should not be excluded from the income. The deduction towards income tax / surcharge alone should be considered to arrive at the net income of the deceased."

30. As per income tax return filed by deceased for the Assessment Year 2009-10, tax of Rs.5,074/- was deducted from the salary of deceased. However, it is evident from the impugned award that no amount towards income tax has been deducted by the Claims Tribunal while assessing annual income of the deceased. Thus, income tax at the rate prevailing in the assessment year 2010-11 is to be deducted from the net income of the deceased.

31. Perusal of the impugned award further reveals that the Claims Tribunal has not awarded any amount towards future prospects. With regard to future prospects, the Apex Court in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi & ors** reported in **(2017) 16 SCC 680**, held as under:

> "**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."

In the case at hand, admittedly the deceased was employed as Constable in the Central Industrial Security Force, Ministry of Home Affairs, Govt. of India, New Delhi and at the relevant point of time posted in the CISF Unit, National Thermal Power Corporation, Seepat, Bilaspur (CG). In the post-mortem report of deceased, his age was mentioned as 42 years. Thus, it is clear that at the time of accident, deceased was between the age group of 40 to 50 years and was in permanent job. Therefore, as per the above judgment of the Apex Court, the claimants / respondents No.1 to 4 are entitled to be awarded 30% of the actual salary of deceased, towards 'future prospects'.

32. Now coming to deduction of one-third made by the Claims Tribunal towards personal & living expenses of deceased. The Hon'ble Supreme Court in the matter of **Sarla Verma & ors Vs. Delhi Transport Corporation & another** reported in **(2009) 6 SCC 121** has held that deduction towards personal and living expenses of the deceased should be at the rate of 1/4th, where the number of dependant family members are 4 to 6. In the present case, though the number of dependent family members is 4, but the Claims Tribunal has deducted one-third towards personal expenditure of the deceased in place of one-fourth.

33. As regards the multiplier, we have noticed that for the purpose of calculation of loss of dependency, the Claims Tribunal has applied multiplier of '15', which is wrong for the reason that in the judgment passed in Sarla Verma's case (supra), multiplier of '14' has been held to be proper, where the age of deceased is between 40 to 45 years. Accordingly, the multiplier of '14' is appropriate multiplier in the present case for calculating loss of dependency and not '15' as applied by the Claims Tribunal.

34. In view of above, this Court proposes to recalculate amount of compensation payable to claimants/respondents No.1 to 5.

35. Accordingly, annual income of deceased is taken as Rs.1,78,200/-, as assessed above, and since at the time of accident the deceased was between the age group of 40 to 50 years and was in permanent job, therefore, in view of law laid down in the matter of **Pranay Sethi's case** (supra), the actual income of deceased is required to be increased by 30% towards future prospects, which comes to Rs.2,31,660/-. Out of this, the income tax payable is to be deducted. Accident in question had taken place on 24.8.2010, therefore, income tax is to be computed as per rates prevailing in the assessment year 2010-11. In financial year 2010-11, income tax upto Rs.1,60,000/- was Nil and from Rs.1,60,001/- to Rs.5,00,000/- income tax payable was at the rate of 10%. Annual income of

deceased is Rs.2,31,660/-, as assessed above, and thus the net taxable income of deceased would be Rs.71,660/- (231660 - 160000), which would fall under 10% slab of income tax. As such, Rs.7,166/- (10% of 71,660) is to be deducted as income tax from the income of deceased and accordingly, net income of the deceased for the purpose of calculation of loss of dependency would come to Rs.2,24,494/- (231660-7166). Out of this amount, one-fourth is to be deducted towards personal & living expenses of the deceased and after deducting one-fourth, annual loss of dependency would come to Rs.1,68,371=50 paise, which is rounded off to Rs.1,68,372/-. By applying multiplier of 14, as held above, to annual loss of dependency, total loss of dependency would come to Rs.23,57,208/- (168372x14). Besides this, respondent No.1 is entitled for a sum of Rs.40,000/- for spousal consortium and respondent Nos.2 to 4, children of deceased, are entitled for a sum of Rs.40,000/- for parental consortium, as held by Hon'ble Supreme Court in the matters of Pranay Sethi (supra) and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130**. In addition to aforesaid amount, they are also entitled to get a sum of Rs.15,000/- for funeral expenses; Rs.15,000/- for loss of estate and Rs.10,000/- for pains & sufferings though the death was instantaneous. Thus, claimants/respondent No. 1 to 4 are entitled for a total sum of Rs.24,77,108/-, instead of Rs.13,65,000/- as awarded by the Claims Tribunal. This amount of compensation shall carry simple interest @ 7.5% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimants/ respondents No.1 to 5 as compensation shall be adjusted from the total amount of compensation as calculated above.

36. In the result;-

- appeal preferred by appellant Insurance Company is dismissed.

- cross-objection of respondents No.1 to 4 is allowed in part and impugned award of the Claims Tribunal is modified to the extent indicated above.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-