AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

REVP No. 76 of 2020

1. Branch Manager, The Oriental Insurance Co. Ltd. M.B Trade Centre, IInd Floor, Near Gadi Chowk, Dhamtari, Tahsil, Civil & Revenue District Dhamtari (C.G.) (*Respondent No.3*)

---- Applicant

Versus

1. Smt. Urvashi Chandrakar W/o Late Kamlesh Chandrakar, aged about 48 Years, R/o Village Dandesara, Tahsil Kurud, Civil & Revenue District Dhamtari (C.G.) (*Claimant*)

2. Rajesh Kumar S/o Chhedan Lal Yadav, aged about 38 Years R/o Kurud, Tahsil Kurud, Civil & Revenue District Dhamtari (C.G.) (Driver) (*Respondent No.1*)

3. Smt. Sunita Chandrakar W/o Parmanand Chandrakar, R/o Bajrang Chowk, Tahsil Kurud, Civil & Revenue District Dhamtari, (C.G.) (Owner) (*Respondent No.2*)

---- Respondents

For Applicant	:	Shri Hanuman Prasad Agrawal, Advocate.
For Respondents	:	None.

Hon'ble Justice Shri Gautam Chourdiya

Order on Board

21/05/2020

1) Heard on **I.A. No. 01/2020**, application for condonation of delay of 273 days in filing the review petition.

2) For the reasons mentioned in the application, which is duly supported by affidavit, application is allowed and delay in filing the review petition is hereby condoned.

3) Heard.

4) Learned counsel for the applicant/Insurance Company submits that the claimant did not file income tax return before the Tribunal for the purpose of determination of salary of the deceased, therefore, this Court has wrongly considered the

income of the deceased as per the salary slip. Since the claimant did not file and prove income tax return of the deceased, it was very difficult for the applicant/Insurance Company to rebut the contention of the claimant regarding income of the deceased mentioned in his pay slips.

5) He further submits that in view of the nature of job of the deceased i.e. self employed, 50% amount granted to future prospect is also not in accordance with law.

6) Heard counsel for the applicant and perused the material available on record.

7) It is not disputed by the counsel for the applicant that AW-02 Saurabh Kumar Sahu examined on behalf of the claimant, who was working as Human Resources Officer in Avinash Developers Pvt. Ltd, Raipur has duly proved the income of deceased. However, no income tax return of the deceased has been filed by the claimant. It is not the rule of law that while deciding the income of the deceased in claim cases, there has to be income tax return of the deceased. In this case apart from AW-02 Saurabh Kumar Sahu, the claimant AW-01 Urvashi Chandrakar has also proved the income of the deceased and categorically stated that the deceased was getting increment per year. She has proved the documents Ex. P-11 (Appointment letter), Ex. P-12 (increment letter) and Ex. P-13 (salary slip) of the deceased. The aforesaid evidences of AW-01 Urvashi Chandrakar and AW-02 Saurabh Kumar Sahu remained uncontroverted in cross-examination. Claim cases are to be decided on the basis of preponderance of probability and strict rule of evidence is not required in such cases. In the present case, considering the nature and quality of oral and documentary evidence adduced by the claimant, the deceased cannot be said to be self employed person but appeared to be a permanent employee and therefore, this Court considering the principle of law laid down in **Smt. Sarla Verma and others VS. Delhi Transport Corporation & another, (2009) 6 SCC 121** and **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16**

SCC 680 assessed the income of the deceased and accordingly 50% future prospect in favour of claimant.

8) This court finds no scope for review as contended by the applicant/Insurance Company and accordingly the review petition is dismissed.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant