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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.454 of 2014

1. Smt. Shyam Bai @ Shyama Bai W/o Late Beerbal Kujur Aged About 50 Years.
2. Iliseema Kujur D/o Late Beerbal Kujur Aged About 18 Years.
   Both are R/o village- Kota, Tah. Kota, Distt. Bilaspur C.G.

---- Appellants/claimants

Versus

1. Vikas Bek S/o Ponjush Bek Aged About 37 Years R/o Baikunthpur, Near Church, Mission Compound, Baikunthpur, Distt. Korea C.G.
2. Chief Medical Officer, Government Hospital, Baikunthpur, Distt. Korea C.G.
3. Director Department of Health and Family Welfare, State of Chhattisgarh, Raipur.

--- Respondents

For Appellants	:	Mr. Pushkar Sinha, Advocate.
For Respondent No.1 & 3	:	Mr. Chandresh Shrivatava, Dy AG.

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

Order on Board

Per Parth Prateem Sahu, J
29/09/2020

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of amount of compensation awarded by learned 6th Additional Motor Accident Claims Tribunal, Bilaspur, (CG) (for short, 'the Tribunal') vide award dated 02.04.2014 passed in Claim Case No.44/2011, whereby the Tribunal allowed application under Section 166 of the Act of 1988 in part and awarded total compensation Rs.18,72,344/- in a death case.

2. Facts relevant for disposal of this appeal are that on 04.02.2011, Beerbal Kujur was going to Baikuntpur from Charcha on his Luna moped, when he reached near Kharwat Chhinddand, one Swaraj Majda Ambulance bearing registration No.CG/02/2281, (for short, 'offending vehicle'), driven by non-applicant No.1 rashly and negligently dashed the Luna moped of deceased

from back side, as a result of which, deceased suffered grievous injuries over his face, head and leg. He was taken to District Hospital, Baikunthpur, where looking to the seriousness of injures, he was referred to Apollo Hospital, Bilaspur, however, on the way, he succumbed to the injuries. Accident was reported to Police Station- Charcha, based upon which crime bearing No.19/2011 for the offence under Section 304(A) of Indian Penal Code was registered against non-applicant No.1.

3. Claimants, who are widow & daughter of deceased, filed application under Section 166 of the Act of 1988 seeking compensation of Rs.40,83,384/- on the ground that on the date of accident, deceased was working as 'Belt Operator' in SECL, Charcha (East) Colliery and thereby getting Rs. Rs.34,882/- per month as salary.

4. Non-applicant Nos.1 & 2 driver and owner of offending vehicle submitted reply to application and denied the entire pleadings made therein against them. They have pleaded that on the date of accident, deceased was driving his Luna moped in rash and negligent manner on wrong side from Charcha to Baikunthpur, offending vehicle was also coming from Charcha to Baikinthpur and it is deceased himself who dashed with offending vehicle on account of his own negligence. They have further pleaded that amount of compensation claimed is highly exaggerated. It is also pointed out that applicant No.2 is working as 'Shiksha Karmi.

5. Non-applicant No.3 did not appear before the Tribunal, therefore, he was proceeded ex-parte.

6. On appreciation of pleadings and evidence placed on record by respective parties, the Tribunal held that non-applicant No.1 due to his rash and negligent driving of offending vehicle dashed the Luna moped of deceased from back

side and caused accident, in which, Beerbal Kujur died. Not only rash and negligent driving of deceased but also contributory negligence is found not to be proved. The Tribunal allowed application in part, awarded total compensation of Rs.18,72,344/- along with interest at the rate of 7.5% p.a and fastened liability to satisfy the amount of compensation upon non-applicants.

7. Learned counsel for the claimants/appellants submits that the Tribunal accepted salary slip ie Ex.P-1 & P-1(c) available on record mentioning gross salary as Rs.34,882:31 paise, but erroneously deducted Rs.9,155.31 paise towards PF, LIC, pension account & additional pension fund, reckoned income of deceased as Rs.25,727/- (net income) for the purpose of calculating amount of compensation. He submits that from salary of an employee, deduction towards provident fund, LIC, pension etc is not required to be deducted except the tax. He further submits that for the purpose of calculating the amount of income of deceased, gross salary is to be taken and only income tax is to be deducted. He further submits that the Tribunal erred in not awarding any amount towards future prospects even when the deceased was in permanent employment. The amount awarded towards other conventional heads is also on lower side, the Tribunal further erred in assessing the age of deceased between 56-60 years, ignoring the fact that age mentioned in post-mortem report is 55 years. He prays that amount of compensation awarded to appellants/claimants be enhanced suitably.

8. Per contra, learned counsel for respondent Nos.2 & 3/State supporting the impugned award and submits that the Tribunal after considering the evidence & materials available on record has awarded just and proper amount of compensation, which does not call for any interference. It is further submitted that the Sunday wages and OT wages are not the regular fixed income, hence,

could not be added in income for the purpose of calculating amount of compensation.

9. We have heard learned counsel for the parties and also perused the record.

10. Claimants in support of their claim application, placed on record salary slip of deceased ie Ex.P-1 & P-1(c), which is also taken into consideration by the Tribunal, where total monthly salary has been shown as Rs.34,882:31 paise. The amount which has been deducted by the Tribunal from the salary of deceased towards PF, LIC, pension account & additional pension fund and thereby deducted total Rs.9,155.31 paise and taken into consideration the net pay of Rs.25,727/-.

11. Issue with regard to deduction of provident fund, pension & insurance from the actual salary of a deceased/victim for the purpose of calculating the compensation has been considered by Hon'ble Supreme Court in the matter **of Vimal Kanwar & Ors V. Kishore Dan & Ors**[1] and it was observed as under :-

> "18. The first issue is "whether Provident Fund, Pension and Insurance receivable by claimants come within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction.
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> 19. The aforesaid issue fell for consideration before this Court in Helen C. Rebello (Mrs) and others vs. Maharashtra State Road Transport Corporation & Anr reported in (1999) 1 SCC 90. In the said case, this Court held that Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and finding of this Court:
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>> "35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of

[1] (2013) 7 SCC 476

> his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

12. In view of above decision of Hon'ble Supreme Court, we are of the view that Tribunal erred in making deduction of the aforementioned heads from the

monthly salary, because it is the income of deceased and those deductions are being deposited as deposit for the benefit of the family. Hence, deductions which have been made on the heads of provident fund, LIC, pension & additional pension fund, are to be treated as income of deceased for the purpose of calculating the amount of compensation. Therefore, we hold that income of deceased is to be taken as gross-salary less tax for computing the amount of compensation.

13. Deduction of tax from income has been considered by the Hon'ble Supreme Court in case of **National Insurance Company Limited vs Indira Shrivastava & Ors**[2] and held thus :-

> "19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contra-distinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted."

14. For better understanding, heads under which deceased was receiving the monthly salary, we find it appropriate to extract the salary slip of deceased placed on record as Ex.P-1(c) :-

Basic Pay : 14389.00	P-H Wages : 1829.05	PF dedn : 3717.00
S.d.a : 258.28	Sunday wages : 3658.10	Fpf. Dedn : 398.00
V.d.a. : 6417.25	Ot double pay : 5944.38	LIC dedn : 4535.00
U.g.a : 1798.63		
Night allw : 120.00		
Trans. Subsidy : 262.50	H.r.a : 150.00	Pension fund : 438.00
Addl Increment : 55.12		Addl Pen fund : 55.12

Pf gross : 34294.69 Employer pf : 4115.00 Total earning : 34882.31 Total ded. : 9155.31, Net pay : 25727.00

VTD-Gr. Inc.: 264596.49 PF : 26275.00 FPF : 810.00 Pension : 3021.00
I.Tax : P.Tax : LIC : 31745.00

[2] (2018) 2 SCC 763.

15. It is the bounden duty of the Courts and Tribunal to see that claimants be paid just amount of compensation and it should not be a bonanza. We are considering the appeal filed by appellants seeking enhancement of amount of compensation, hence, we find it appropriate to consider the income of deceased on the date of accident based on salary slip. Perusal of break-up mentioned in salary slip would show that deceased received salary in the month of September, 2010 towards P-H wages, Sunday wages & Ot -Double wages. Appellants has placed on record salary slip of deceased to prove his income on the date of accident. In salary slip there is clear mentioned of earning of deceased. Even if it is shown as Sunday wages or over time double wages, but it shows that deceased was working hard to earn more money for benefit of his family. True it is that Sunday wages & Over Time wages double pay wages is not fixed salary for which deceased can claim as matter of a right but at the same time it cannot lose sight of the fact that deceased was working as ‘belt operator’ with Churcha East Colliery at SECL, where there are always chance of having opportunity to work over time and on holidays like Sunday. Deceased was availing that opportunity for earing more money to provide better living standard and facilities to his family, hence, income of Sunday wages & Ot wages double pay wages cannot be ignored in its entirety, but taking into consideration the fact that said earning cannot be teated as fixed income towards his employment, we find it appropriate to award 50% of the amount of income towards Sunday wages & Ot wages double pay wages. Sunday wages in the month of September, 2010 has been shown as Rs.3,658.10 paise and Ot double pay wages has been shown as Rs.5,944.38 paise which makes the total sum of Rs.9,602.48 paise (Rs.3,658:10 + 5,944:38). By taking 50% of

said income for the purpose of calculating the amount of compensation on both heads comes to Rs.4,801.24 paise (50% of Rs.9,602:48).

16. Now earing of deceased can be taken as Rs.14,389/- as basic pay: Rs.258.28 as SDA; Rs.6,417.25 as VDA; Rs.1,798.63 as UGA; Rs.120/- for night allowances; Rs.55.12 as additional increment; Rs.1,829.05 as P-H Wages; Rs.262.50 for transport subsidy; Rs.150/- as HRA; Rs.4,801.24 towards Sunday and Ot double pay wages, which makes the gross income of deceased as Rs.30,081.07 paise (rounded off Rs.30,081/-).

17. Coming to the next submission made by learned counsel for appellants that the Tribunal erred in not awarding any amount towards future prospects. The Hon'ble Supreme Court in case **of National Insurance Company Ltd. vs. Pranay Sethi**[3] has held that in case the deceased/victim of motor accident, was above 50 years and less than 60 years and in a permanent employment, an addition of 15% of the established income towards future prospects should be made. Relevant paragraph of Pranay Sethi's case reads thus :**-**

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

18. In view of above settled law, there will be an addition of 15% of gross-salary of deceased for calculating the total income.

19. The Tribunal has awarded total sum of **Rs.20,000**/- under other conventional heads, which in the opinion of this Court is on lower side and the same is required to be enhanced in view of the decision of Supreme Court in

[3] (2017) 16 SCC 680

the case of **Pranay Sethi** (supra) and **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhuru Ram**[4].

20. So far as the assessment of age of deceased is concerned, deceased was in permanent employment but the claimant have not placed on record any evidence (oral and documentary) to prove age of deceased. The Tribunal has taken into consideration the age mentioned in the post mortem report as 55 years, which is a general assessment not a specific evidence to prove the age.

21. The Tribunal while considering the age of deceased as recorded in post-mortem report (Ex.P-7) as 55 years and taking into consideration the age of wife of deceased has assessed the age of deceased in between 55 to 60 years. In absence of any evidence placed on record by the claimants, moreso when deceased was in a permanent employment with SECL, we do not find any reason to accept the submission made by the learned counsel for the appellants and disturb the finding recorded by the Tribunal with regard to age of deceased.

22. For the foregoing reasons, we propose to recompute the amount of compensation awarded by the Tribunal.

23. Gross - income of deceased is taken as Rs.30,081/- per month as above. By adding 15% of income towards future prospects, total monthly income comes to Rs.34,593.15 paise (15% of Rs.30,081 + Rs.30,081) and yearly comes to Rs.4,15,117.8/- (12 X 34593) rounded off Rs.4,15,117/-.

24. As per income tax rates/slabs applicable for assessment year 2011-12, no tax was payable upto Rs.1,60,000/-, income tax @ 10% was payable on income from Rs.1,60,000/- to 5,00,000/-. So, first Rs.1,60,000/- is not taxable income of deceased and remaining income of deceased ie Rs.2,55,117/-

[4] 2018 18 SCC 130

(4,15,117 -160000) is taxable. As per income tax slab rate prevailing in assessment year 2011-12, income tax @ 10% is payable ie Rs.25,511.7 paise (10% of Rs.2,55,117) (rounded off Rs.25,512/-). Accordingly, after deduction of Rs.25,512/- towards income tax from gross income of deceased, net annual income of deceased comes to Rs.3,89,605/- (Rs.4,15,117 – Rs.25,512/-).

25. Number of claimants on the date of accident were '2' including widow, therefore, there will be deduction of 1/3rd towards personal and living expenses as per decision of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Ors**[5]. After deducting 1/3rd towards personal & living expenses, net income of deceased comes to Rs.2,59,737/- (Rs.3,89,605 - 1/3 of Rs.3,89,605). As held age of deceased in between 56 to 60 years, appropriate multiplier would be 9. By applying multiplier of 9, total loss of dependency will come to Rs.23,37,633/- (Rs.2,59,737/- X 9). Apart from this, appellants/claimants will be further entitled for Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards parental consortium, Rs,15,000/- towards funeral expenses & Rs.15,000/- towards loss of estate.

26. Now appellant/claimants will be entitled for a total compensation of **Rs.24,47,633/-** (Rs.23,37,633 + Rs.40000 + Rs.40000 + Rs.15000 + Rs.15000) instead of **Rs.18,72,344/-** as awarded by the Tribunal. This amount of compensation shall carry interest @ 7.5% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

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

Sd/-	**Sd/-**
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

Jamal/-

[5] (2009) 6 SCC 121