**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 632 of 2013**

1. Shiv Kunwar wd/o late Ramdhan Binjhwar, aged 46 years.
2. Tikaram s/o late Ramdhan Binjhwar, aged about 28 years
3. Badrika Bai D/o late Ramdhan Binjhwar, aged about 29 years
4. Rewati Bai D/o late Ramdhan Binjhwar, aged about 26 years
5. Tej Kunwar D/o late Ramdhan Binjhwar, aged about 23 years
   All R/o Village Tilaibhatha, Post Chicholi, Urga, Tahsil Korba, Civil and Revenue District Korba, C.G.

**------Appellants/claimants**

**VERSUS**

1. Munna Das D/o Deenbandhu Bairagi, aged about 21 years, R/o Logai, Police Station Rajmahal, District Sahebganj Jharkhand **-------Driver**
2. Smt. Laxmirani Shaha w/o Shri Gourang Kumar Shaha, Nandankanan Madhyamgram North 24, Pargana West Bengal **----------Owner**
3. The New India Insurance Company Limited, 140 D/E B.T. Road, Kolkata, 700035 through The New India Insurance Company Limited Divisional Office, District Korba C.G. **-----Insurer**

-------**Respondents**

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| For Appellants | : | None. |
| For Respondent No. 3 | : | Mr. B.N. Nande, Advocate. |

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**Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**
**Hon'ble Shri Parth Prateem Sahu, Judge**

**Judgment on Board**

**Per Parth Prateem Sahu, J.**

**20/07/2020**

1. This appeal has been filed by the claimants under Section 173 of the Motor Vehicles Act, 1988, seeking enhancement of award dated 05-03-2013 passed by learned Additional Motor Accident Claims Tribunal, Korba, District Korba, C.G. in claim case No. 39/2012, wherein learned Claims Tribunal allowed the claim application in part and awarded total sum of Rs. 8,26,800/- as compensation.

2. This case was listed on 27-05-2020 under the head of Targeted for Hearing and Disposal, when the case came up for hearing on 08-06-2020, no one appeared for the appellants as well as the Respondents and this Court, after recording non-appearance of the learned counsel for the parties, in the pre-lunch and post-lunch session, dismissed the appeal for non-prosecution. The Court taking note of the

plight of the appellants who are seeking enhancement of the award on account of death of their breadwinner as also the period in which the appeal came to be dismissed, have registered suo motu MCC and restored the appeal to its original file. This appeal was again listed before this Court on 18-06-2020, again, no one appeared for the appellants as also for the respondents and we directed the Registry to show the name of Panel Lawyer appearing on behalf of Respondent 3-Insurance Company, thereafter, the appeal came to be listed on 20-07-2020. Today also no one appeared on behalf of the appellants who are claimants and Mr. B.N. Nande, learned counsel appeared on behalf of Respondent 3/ Insurance Company.

3. Looking to the fact that this appeal is only with respect to enhancement of the amount of compensation, the insurance policy was not disputed by the learned counsel for the Insurance Company, we have decided to take up the case for hearing in absence of the learned counsel for the appellants, this is also because the amount of compensation is to be calculated on the basis of the salary slips, if government servant or any documentary evidence placed on record showing the income of the deceased for the purpose of assessing the income of the deceased and for the person who is not a Government employee or not has filed any document in support of the pleadings of income then taking the income on notional basis, calculating the amount of compensation in the light of the law laid down by the Hon'ble Supreme Court with regard to deduction towards personal and living expenses, application of multiplier and further award of amount on other conventional heads.

4. Facts relevant for disposal of this appeal are that on 23-10-2007, Ramdhan Binjhwar, left out from his house at village Tilaibhata to go to middle school situated at village Jarve, on the way near Sohagpur bus stand at Champa-Korba main road, he was standing waiting for the bus and at that relevant time, one Truck bearing Registration No. WB 23A 8925 (referred to as "offending Truck") driven by Respondent 1 dashed him. In this accident, Ramdhan suffered grievous injuries over his person and he was taken to B.D.M. Hospital, Champa,

where he succumbed to the injuries suffered by him. The appellants filed an application under Section 166 of the Motor Vehicles Act, seeking compensation of Rs. 31,85,742/-, against untimely death of late Ramdhan Binjhwar due to motor accident.

5. Respondent 1 and 2 did not appear before the learned Claims Tribunal and they were proceeded ex parte and no reply to the claim application was submitted by them.

6. Respondent 3- Insurance Company submitted reply to the claim application and denied the pleadings made in the claim application and further pleaded that claim application has been filed on false and fabricated grounds, the Insurance policy available on record is a fabricated document, the Insurance Company had not issued insurance policy for the offending Truck, there was violation of conditions of insurance policy as on the date of accident, there was no valid and effective driving licence.

7. On appreciation of the pleadings and evidence placed on record by the respective parties, learned Claims Tribunal held that the Respondent 1, driver of the offending truck due to his rash and negligent driving, dashed Ramdhan and caused accident, death of Ramdhan is on account of motor accident, there was no breach of conditions of insurance policy and awarded Rs. 8,26,800/- as compensation, taking the income of the deceased as Rs. 16,274/- per month. Upon going through the pleadings made in the appeal, it appears that the learned counsel for the appellants have taken main ground for enhancement of the amount of compensation on the ground of less assessment of monthly income of the deceased as Rs. 16,274/- instead of Rs. 22,166/-.

8. Learned counsel for the Respondent 3-Insurance Company supported the impugned award and argued that the learned Claims Tribunal has assessed the income of the deceased as Rs. 16,274/- per month on the basis of the material and evidence placed on record by the claimants, the Tribunal has calculated the amount of income by adding the amount on the basis of revised pay scale and

adding the increment also and therefore, the ground raised by the learned counsel for the appellants in this appeal memo is not sustainable.

9. The claimants in their claim application have pleaded that on the date of accident, deceased was working as Upper Division Teacher at Middle School, Jarve and drawing salary of Rs. 20,600/- per month. The claimants in support of their pleadings have submitted copy of Service Book certified by District Education Officer, Bilaspur as Ext. P-10(C), copy of salary slip of the month of July, 2007 (Ext. P-7) in which the basic pay has been shown as Rs. 6,800/-, Gross salary has been shown as Rs. 13,550/-, Ext. P-8 copy of the certificate dated 12.12.2009 issued under the seal of Block Education Officer, showing that late Ramdhan was working as Upper Division Teacher at Middle School, Jarve and further Ext. P-9 the salary calculation sheet under the signature of Head Master, Middle School, Jarve, showing the old pay scale and the salary as per Sixth Pay Commission. As per the old pay scale, deceased's salary comes to Rs. 14,761/- per month and on the basis of Sixth Pay Commission, the monthly salary calculated is Rs. 22,166/- per month. The claimants in support of their claim have examined Tikaram Binjhwar as AW-1, Chitrabhan Singh as AW-2, Sandeep Kumar Pandey, Block Education Officer as AW-3, Kunj Bihari Binjhwar as AW-4 and Uday Shankar as AW-5.

10. Sofar as, the ground raised in this appeal with regard to the assessment of the monthly income of the deceased, the evidence of AW-3 Sandeep Kumar Pandey, Block Education Officer, and AW-4 Kunj Bihari, Head Master, would be relevant. AW-3, in this evidence made before the Tribunal stated that the deceased was working as Upper Division Teacher who died in the month of October 2007. He produced original service book of the deceased to prove the engagement and employment of the deceased as Upper Division Teacher. AW-4, Kunj Bihari has stated about the income of the deceased, looking to the fact that the date accident was 23-10-2007, the Claims Tribunal has calculated the amount of salary as Rs. 16,274/- per month in absence of any clinching piece of evidence placed on record by the claimants to prove the income as pleaded before the

Tribunal and that has not been considered, we are not inclined to accept the ground raised by the claimants in their appeal.

11. Now the question arises for consideration is whether the learned Claims Tribunal has awarded just amount of compensation in view of the law laid down by the Hon'ble Supreme Court in the case of ***Sarla Verma & others v. Delhi Transport Corp. & Anr*** reported in ***(2009) 6 SCC 121***, ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in ***(2017) 16 SCC 680*** and ***Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others*** reported in ***(2018) 18 SCC 130.*** Perusal of award shows that the learned Claims Tribunal has not added any amount towards future prospects, the deduction is 1/3rd towards personal and living expenses, multiplier applied is of 13 and Rs. 15,000/- awarded under other conventional heads. Learned Claims Tribunal deducted Rs. 5,000/- from the monthly income of the deceased, taking note of the fact that son of the deceased has been given compassionate appointment for the purpose of calculating the loss of dependency.

12. Deduction made by the learned Claims Tribunal of Rs. 5,000/- from the monthly dependency of the claimants on account of compassionate appointment is not sustainable being contrary to the law laid down by the Hon'ble Supreme Court in the case of ***Vimal Kanwar and others v. Kishore Dan and others*** reported in ***2013 7 SCC 476.*** The Hon'ble Supreme Court in the aforementioned case law has held that the income from the compassionate appointment cannot be taken as pecuniary advantage arising out of the motor accidental death of Government servant and held thus:

> "20. The second 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."
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> 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 dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee 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 dependents 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. In view of the aforementioned law laid down by the Supreme Court, there cannot be deduction of Rs. 5,000/- as made by the learned Claims Tribunal from the month salary of the deceased for the purpose of calculating the amount of loss of dependency. In the cause title of the claim application as well as memo of appeal, five applicants/ appellants have been shown to be dependent upon the deceased. Even if taking Tikaram who is son of deceased, who has been given compassionate appointment to be not dependent. Further the three daughthers who were made claimant by way of amendment appears to be married as reflecting from photographs affixed in claim application and they also cannot be treated to be dependent upon the deceased. In view of the dictum of the Supreme Court in the case of **Sarla Verma (supra),** the deduction towards personal and living expenses would be 1/3rd as taken by the Claims Tribunal; on the date of accident, deceased has been shown to be 54 years of age, he was in permanent government employment, in view of the dictum of the Supreme Court in the case of **Pranay Sethi (supra),** there will be addition of 15% of the established income (Rs.16,274/-) towards future prospects. Learned Claims Tribunal awarded only Rs. 15,000/- on other conventional heads is also on lower side in view of the dictum of Supreme Court in the case of **Pranay Sethi (supra)** and **Nanu Ram (supra)**. The submission made with regard to the award of amount of compensation on other conventional heads, the learned counsel for the Respondent 3/ Insurance Company submits that the Hon'ble Supreme Court in its recent judgment of ***United India Insurance Co. Ltd. v. Satindar Kaur @ Satwinder Kaur and ors*** passed in **Civil Appeal No. 2705/2020** held that the

amount of compensation on the other conventional heads is to be awarded according to the dictum passed by the Hon'ble Supreme Court in the case of **Pranay Sethi (supra)** and according to which, the amount of compensation on other conventional heads is restricted to Rs. 70,000/- only. The Hon'ble Supreme Court in the case of **Satindar Kaur (supra)** has held that the amount on other conventional heads can be awarded only under three heads i.e. loss of consortium, loss of estate and funeral expenses. The Hon'ble Supreme Court in the same judgment has discussed three different types of consortium *(a)* spousal consortium to wife for death of husband/ wife; *(b)* parental consortium to children in case of death of parent; *(c)* filial consortium to parent in case of death of their child. The amount of consortium to spouse is fixed as Rs. 40,000/- and therefore, the amount on loss of other consortium cannot exceed Rs. 40,000/- each. The amount of consortium in view of the law laid down by the Hon'ble Supreme Court in case of **Nanu Ram (supra)** and **Satindar Kaur (supra)** can be upto maximum of Rs. 1,20,000/-, if in the facts of the case, all the three types of consortium is required to be awarded but the restriction is that the amount of consortium does not increase to Rs. 40,000/- in each type of consortium. In view of above, submission made by the learned counsel for Respondent 3 that the amount of compensation cannot exceed to Rs. 70,000/-, is not correct and is hereby rejected.

14. In view of the above, the amount of compensation awarded by the learned Claims Tribunal requires re-consideration and re-calculation which is as under.

15. The income of the deceased as taken by the learned Claims Tribunal Rs. 16,274/- per month i.e. yearly income as Rs. 1,95,288/-, after adding 15% in the established income the yearly income comes to Rs. 2,24,581/- [Rs. 1,95,288+15% of Rs.1,95,288]. Now, for the purpose of calculating the compensation, net income is required to be taken in consideration i.e. Gross Income-Income Tax. In the financial year 2007-08, income tax slab was as under:

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| Income upto Rs. 1,45,000/- | -- NIL |
| Rs. 1,45,000/- to Rs. 1,50,000/- | -- 10% on exceeding to Rs. 1,45,000/- |

Rs. 1,50,000/- to Rs. 2,50,000/- -- Rs.500 +20% on amount exceeding Rs. 1,50,000/-

In view of above, total tax will be Rs. 500 +Rs. 14,916.2/- (Rs. 74,581x20%) which equals to Rs. 15,416.2/- rounded off to as Rs. 15,416/-. From above, net income of the deceased will be Rs. 2,09,165/- [Rs.2,24,581-Rs.15,416]. There will be deduction of 1/3rd towards personal and living expenses of the deceased, after deducting 1/3rd of the income towards personal and living expenses, yearly loss of dependency will be Rs. 1,39,443/- [Rs.2,09,165-1/3rd of Rs.2,09,165], on the date of accident, deceased was 54 years of age, therefore, multiplier of 11 will be applicable, by applying multiplier of 11, total loss of dependency will come to Rs. 15,33,873/- [Rs.1,39,443x11], apart from the above, the claimants i.e. Appellant 1 being widow of the deceased will be entitled for 40,000/- towards spousal consortium, and the appellants who are children of the deceased will be entitled for Rs. 40,000/- towards parental consortium and further the claimants will be entitled for Rs. 15,000/- for funeral expenses and Rs. 15,000/- towards loss of estate. Now, the claimants are entitled for total amount of **Rs. 16,43,873/-** [Rs. 15,33,873+ Rs. 40,000+ Rs. 40,000+ Rs. 15,000+ Rs. 15,000] as compensation instead of Rs. 8,26,800/-. The aforesaid amount will carry interest @ 6% from the date of filing the claim application.

16. Out of the enhanced amount of compensation 50% (fifty percent) of the enhanced amount of compensation shall be kept in fixed deposit with any Nationalized Bank for a period of three years. Rest of the conditions imposed by the learned Claims Tribunal will remain intact.

17. Consequently, the appeal is allowed in part and the impugned award passed by the learned Claims Tribunal is hereby modified to the extent as indicated herein-above.

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

Pawan