

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 588 of 2013**

*{Arising out of order dated 20.03.2013 passed by the Additional Motor Accident
Claims Tribunal, Korba, (C.G.) in M.A.C.C. No.51/2012}*

1. Smt. Meena Bai W/o Late Baiga Ram Kanwar Aged About 38 Years
2. Kumari Rakhi D/o Late Baiga Ram Kanwar Aged About 14 Years Minor
3. Budeshwar Singh S/o Baiga Ram Kanwar Aged About 12 Years Minor
4. Kumari Bhagwati D/o Latte Baiga Ram Kanwar Aged About 7 Years

Appellant No.2 to 4 are minor thorough the natural guardian mother Smt. Meena Bai appellant No.1, All R/o Village Manikpur, PS. Korba, Distt. Korba, Chhattisgarh

5. Smt. Purnima Devi W/o Prem Singh Kanwar Aged About 31 Years
6. Pushpraj S/o Prem Singh Kanwar Aged About 8 Years
7. Pradeep S/o Prem Singh Kanwar Aged About 6 Years
8. Parvesh S/o Prem Singh Kanwar Aged About 4 Years Minor,
9. Kumari Preeti D/o Prem Singh Kanwar Aged About 3 Years

Appellant No.6 to 9 are minor through the appellant No.5 natural guardian mother Smt. Purnima Devi, all R/o Village Manikpur, Ps. Korba, Distt. Korba, Chhattisgarh

---- Appellants**Versus**

1. Dwarika Kurmi, S/o P.R. Kurmi Aged About 50 Years R/o Qrt. No. 67, SECL Colony Manikpur, PS Korba, Distt. Korba, Chhattisgarh
2. The General Manager SECL Korba Area, Teh. And Distt. Korba, Chhattisgarh

---- Respondents

For Appellants	:	Shri Rahul Mishra, Advocate
For Respondent No.2	:	Shri Shailendra Shukla, Advocate.

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

Per Parth Prateem Sahu, Judge

08.06.2020

1. Claimant has filed this appeal seeking enhancement of the amount of compensation awarded by the Additional Motor Accident Claims Tribunal, Korba (for short, 'the Claims Tribunal') in M.A.C.C. No.51/2012, whereby the learned Claims Tribunal awarded a total sum of Rs. 4,31,000/-.
2. The facts of the case in brief is that on 26.11.2002 at 11:15 am, when Baiga Ram Kanwar was driving the Jeep, it met with an accident with Dumper bearing Registration No. 7FZ-00164 driven by the Non-Applicant No.1. The injured was taken to hospital where during the course of treatment, he succumbed to the injuries suffered by him on 16.12.2002. Appellants filed a claim application before the learned Claims Tribunal seeking a sum of Rs. 40,38,000/- as compensation against the death of husband of the Appellant/Claimant No.1 and father of the Claimants No. 2 to 4 on the ground that the deceased, on the date of accident was working as a driver-cum-mechanic with the Respondent No.2/SECL and they were dependent upon him. During the pendency of the claim application, the Claimants have filed an application for seeking amendment and making a prayer for adding the name of Appellants No. 5 to 9 in the array of Applicants on the ground that the Appellant No.5 is widow of Prem Singh Kanwar i.e. son of the deceased and the Appellants No. 6 to 9 are grand children of the deceased which was allowed.

3. The Respondents No. 1 and 2 submitted their reply to the claim application and pleaded that it is the negligence on the part of the deceased Baiga Ram Kanwar and all the medical expenses have been borne by the Respondent No.2/SECL. There was contributory negligence on the part of the deceased (Baiga Ram Kanwar) and on the date of accident the vehicle Jeep was insured with Oriental Insurance Company. It was also pleaded that the Respondents have deposited an amount of Rs. 3,26,140/- by way of draft before the Commissioner Workmen Compensation, but the legal representatives of the deceased refused to accept the amount, the amount so deposited before the Commissioner was returned to the SECL. It was also pleaded that after the death of Baiga Ram Kanwar, his son Prem Singh Kanwar has been given compassionate appointment on the post of General Majdoor and he was being paid Rs.8,426/- per month as salary.
4. The learned Claims Tribunal, on appreciation of the pleadings and evidence placed on record by the respective parties, have arrived at a finding that there was contributory negligence on the part of the deceased to the extent of 50% and after deducting 50% of the amount of the income of Prem Singh Kanwar from the compassionate appointment, awarded a total sum of Rs. 4,31,000/- as compensation.
5. Learned counsel for the Appellants submits that the learned Claims Tribunal erred in holding that there was contributory negligence on the part of the deceased (Baiga Ram Kanwar) as there was no admissible piece of evidence on record to this effect. It is also contended that the learned Claims Tribunal erred in deducting 50% of the wages of Prem Singh Kanwar i.e. son of deceased which he was receiving from the salary on account of compassionate appointment as income and further

that the income of deceased has been erroneously reduced than what is mentioned in salary slip. It is also argued by the learned counsel for the Appellants that the learned Claims Tribunal awarded meager amount on other financial heads.

6. Per contra, learned counsel appearing for the Respondents submits that the learned Claims Tribunal was justified in holding that there was contributory negligence on the part of the deceased Baiga Ram Kanwar which is based on evidence. Respondents have examined Baldev Singh (NAW No.2) and Non-Applicant NO.1 as NAW No. 1 to prove the negligence on the part of the deceased. It is also submitted that the learned Claims Tribunal have deducted 50% of the income which was being received by Prem Singh Kanwar on account of the compassionate appointment which cannot be said to be erroneous as the compassionate appointment was on account of accidental death of Baiga Ram. It is lastly contended that the learned Claims Tribunal has awarded just and reasonable amount of compensation, in the facts and circumstances of the case which do not call for any interference.
7. We have heard the learned counsel for the respective parties and perused the record.
8. So far as first submission made by the learned counsel for the Appellant that the learned Claims Tribunal erred in holding that the deceased was contributory negligent to the extent of 50% is concerned, the Respondent No.2/SECL examined Baldev Singh as NAW-2 to prove the fact of contributory negligence. Perusal of the statement of Baldev Singh recorded before the learned Claims Tribunal would show that he was also sitting in the Jeep driven by the deceased Baiga Ram Kanwar and was employee of the Respondent No.2/SECL. On the date of accident he

was working as Dumper Operator. In his statement in paragraph 4, he has stated that at the time of accident he was traveling in front seat of the Jeep. He denied the suggestion given by the learned counsel for the Claimants that the offending Dumper was running on a high speed of 150 km/hr and stated specifically that the Dumper was running at the speed of 20-25 km/hr. This witness has further stated that he had alarmed the driver of Jeep i.e. deceased that the Dumper i.e offending vehicle is coming but the driver of the Jeep failed to turn the Jeep on his left side which cause the accident. The Jeep was coming from the side road which is about 15ft wide, whereas the Dumper was running on the main road which was around 50 ft. wide and the accident occurred only when the Jeep came on the main road. The driver of offending vehicle was also examined before the learned Claims Tribunal as AW-1 and in his statement, he stated that at the place of accident there was a turning and there was a big wall on the road side and the Jeep was running with speed of 40-50 km/hr, the accident took place on account of negligence on the part of the deceased.

9. Looking to the evidence placed on record by the Respondents particularly, looking to the statement of AW-2 (Baldew Singh) who was one of the occupant in the Jeep which was driven by the deceased, we do not find any error in finding arrived by Tribunal and holding the deceased to be contributory negligent for the accident to the extent of 50%.
10. The other ground raised by learned counsel for the Appellants is that the learned Claims Tribunal deducted 50% of income (salary) of Prem Singh Kanwar which he was receiving after getting compassionate appointment on the post of General Majdoor category. Income received by legal heirs of the deceased died in motor accident towards their salary / wage

cannot be termed as the pecuniary advantage received on account of the motor accidental death. Grant of compassionate appointment can be under the service condition or under the employer's policy. If there is any such policy or service condition, that any one of the legal heirs of the deceased employee to be considered for compassionate appointment irrespective of the mode of death, then it cannot be said that claimants have accrued pecuniary advantage by getting compassionate appointment only on account of Motor accidental death. This issue has been considered and decided by the Hon'ble Supreme Court in the matter of ***Vimal Kanwar & Others v. Kishore Dan & Others*** reported in **(2013) 7 SCC 476** and held thus (Paragraphs 20 and 21), which is reproduced below:

“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”.

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 who 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 statue occasioned on account 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 the Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act.”

11. In view of the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in the case of **Vimal Kanwar (supra)**, in our considered view the learned Claims Tribunal erred in deducting 50% of the wages received from compassionate appointment for calculating the amount of compensation. We set aside the said finding recorded by the learned Claims Tribunal.
12. In view of the above, now we have to consider whether the learned Claims Tribunal assessed the income of the deceased correctly or have committed an error. The learned Claims Tribunal have assigned the reasons and arrived at the finding about the income of deceased as Rs. 10,000/-. In paragraph 16 the learned Claims Tribunal have considered the pay slip of the deceased for the month of September, 2002 wherein the salary has been shown as Rs. 9,950/- per month and there apart his other income from holiday wages, Sunday and overtime etc. have been shown as Rs. 7,105/- making the total wages 17,053/-. The Sunday wages, holiday wages and overtime wages are not regular income of the deceased and it cannot be claimed as a matter of right.
13. But at the same time it also cannot be over looked that prior to the date of death, the deceased has earned Rs.7,105/- from his efforts. Working on holidays, Sundays and long overtime may be need of the deceased for better earning of the livelihood of his family members, like educational expenditure of his children, medical requirement and saving for future.
14. True it is that the work on holiday's and Sundays may not be there always and it will depend upon the nature of institution and organization in which deceased was employee, no straight jacket formula can be applied denying that benefit on the ground that those income are not regular or permanent. In case at hand, deceased was employed as driver of four

wheeler with the Respondent No.2. Respondent No.2 organization is engaged in coal mining activities, where requirement to work on holidays and Sundays are need of the institution. We are aware that this income cannot be fixed and is fluctuative but then the salary slip shows the earning by legal means for which deceased has done labour and made efforts to earn more money for betterment of his family members dependent on him. In view of aforementioned facts in our considered view, looking to the nature of income i.e. fluctuating the entire amount earned Rs. 7,105/- may not be taken as income for calculating the total income of the deceased but in facts and circumstances of the case particularly looking to the number of dependents nature of the engagement of the deceased and the organization where deceased was employed coal fields and posted in colliery area the other income i.e. Sunday wages and over time can be taken as 1/3rd of the income shown in salary slip. The income apart from fixed salary of deceased is shown in salary slip Ex. P/10 as Rs. 346.20/- Holiday wages, Rs. 1,384.79/- Sunday wages, Overtime Double wages Rs. 1644.41/- and Bonus Rs. 3,200/-. From the above amount shown in salary slip 1/3rd of the Sunday wages and Overtime wages double can be taken for computing the monthly income of deceased as income from these heads can be every month. $1384.79 + 1644.41 \div 3 = 1009.73$ rounded off as Rs. 1010/-. Now the total monthly income of the deceased in Rs. $9950 + 1010 =$ Rs.10,960/- minus professional tax Rs.150. Income of the deceased is Rs.10,810/-.

15. Perusal of the amount of compensation shows that the learned Claims Tribunal have awarded only Rs.25,000/- on other conventional heads i.e. Rs.5,000/- towards the legal expenses, Rs.10,000/- towards loss of

consortium and Rs.10,000/- towards the loss of estate. The amount ought to have been awarded on other conventional heads in view of the law laid down by the Hon'ble Supreme Court in the matter of ***National Insurance Company Limited v. Pranay Sethi & Another***, reported in (2017) 16 SCC 680 and the ***Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram***, reported in (2018) 18 SCC 130.

16. In view of the above discussion the amount of compensation awarded by the learned Claims Tribunal requires reconsideration and recalculation. The income of the deceased has been assessed as Rs. 10,810/- and by adding 30% of the established income towards future prospects as the deceased was in between 46 to 50 years of the age, income of the deceased will come to Rs.14,053/- $\{10,810 + (10,810 \times 30 / 100)\}$ and yearly income as Rs. 1,68,636/-. The deceased being a Government servant is required to pay the income tax. The slab of income tax for the year 2002-03 was Rs. 50,000-60,000 = 10%, Rs. 60,000-1,50,000 = 20% and above Rs. 1,50,000 = 30%. From the total yearly income 50,000 to 60,000 = 10%, 60,000 to 1,50,000 = 20% and over 1,50,000 = 30%. The income tax will be $1,000 + 18,000 + 5,590 = \text{Rs. } 24,590/-$. Net income will come to $\text{Rs. } 1,68,636 - 24,590 = \text{Rs. } 1,44,046/-$. By deducting $\frac{1}{4}$ of the income towards personal and living expenses the loss of yearly dependency comes as Rs. 108034.50 rounded off as Rs. 1,08,035/-. Date of birth of deceased as shown in Ex.P/9 is 04.06.1955. On the date of accident deceased was aged 47 years and therefore, as held in the case of ***Sarla Verma & Ors v. Delhi Transport Corp. & Anr.*** reported in (2009) 6 SCC 121, the appropriate multiplier would be 13 and not 11 as applied by the learned Claims Tribunal. Now the total loss of dependency for which the Claimants would be entitled for is Rs. Rs. 14,04,455/-

(1,08,035 x 13). Apart from the aforementioned amount, claimants will be entitled for a sum of Rs.40,000/- towards the loss of spousal consortium, Rs.15,000/- towards funeral expenses, and Rs. 15,000/- towards loss of estate. Appellants No.2&3 are the children of the deceased and therefore, they will also be entitled for Rs.40,000/- towards loss of parental consortium. In view of the dictum of the Hon'ble Supreme Court in case of ***Pranay Sethi (supra)*** and ***Magma General (supra)***, the Claimants will further be entitled for Rs. 10,000/- towards pains and suffering.

17. As the deceased was admitted in the hospital for about 20 days, some persons might have deployed during that period and therefore, the Claimants will further be entitled for a sum Rs.2,000/- towards the attendant and sum of Rs. 2,000/- towards conveyance and other miscellaneous expenses. The total amount of compensation calculated is Rs.15,28,455 (14,04,455 + 15,000 + 15,000 + 40,000 + 40,000 + 10,000 + 2,000 + 2,000). As the Appellant has been held to be contributory negligent to the extent of 50%, the calculated amount of compensation is to be reduced by 50%. Now the Appellants will be entitled for a sum of Rs. 7,64,227.5 (15,28,455 x 50/100) rounded off as Rs. 7,64,228/-. The amount of compensation will carry interest @ of 7% from the date of filing of claim application. The liability to satisfy the amount of compensation will be on Respondent No.2 other condition imposed by Tribunal will remain intact.
18. Appeal is allowed in part and the impugned award is modified to the extent indicated above.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge