NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 89 of 2014

1. Smt. Kantabai Meshram, aged about 46 years, W/o Late Chamruram Meshram
2. Prathviraj Meshram, aged about 25 years, S/o Chamruram Meshram
3. Tirathraj Meshram aged about 28 years, S/o Chamruram Meshram

R/o Village Kedarbadi, Khairagarh Road, Dongargarh, District Rajnandgaon.

------Appellants/Claimants

VERSUS

1. Gajan Farrullakhan, aged about 50 years, S/o Habibulla Khan, Santoshi Nagar, Near Mazjid, Raipur **------Driver**
2. M/s Kanker Roadways, through Managing Director, infront of Chandani Gardan, Civil Lines, Raipur **---------Owner**
3. The New India Assurance Co. Ltd., head Office, New India Assurance Building 87, Mahatma Gandhi Marg, Fort, Mumbai 400001, Divisional Office through Divisional Manager First Floor Madina Building, Jail Road, Raipur **–---------Insurer**
4. Ishwarraj Meshram, aged about 26 years, S/o Chamruram Meshram, R/o Village Kedarbadi, Khairagarh Road, Dongargarh, Distt. Rajnandgaon

----Respondents

For Appellants : Mr. Parag Kotecha, Advocate.
For Respondent No. 3 : Mr. Qamrul Aziz, Advocate.

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

Judgment on Board

Per Parth Prateem Sahu, J.

21/08/2020

1. This is claimants' appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 03-12-2013 passed in claim case no. 06/2009 by Additional Motor Accident Claims Tribunal, Khairagarh, Chhattisgarh whereby the learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs. 4,55,740/- as compensation in a death case.

2. Facts of the case in nutshell are that on 07-09-2008 when Chamruram Meshram, while traveling on motor cycle bearing Registration No. CG 07LL 6730, reached village Gunderdehi, at that relevant time, one bus bearing Registration No. CG 04E 1296 (hereinafter referred to as “offending bus”) driven rashly and negligently by Respondent 1/ Non-applicant 1 hit the motor cycle of Chamruram on account of which he suffered grievous injuries and succumbed to those injuries during the course of treatment. Claimants who are widow and children of late Chamruram filed an application under Section 163 of the Motor Vehicles Act, seeking compensation of Rs. 22,40,000/- pleading therein that on the date of accident, deceased was aged of 46 years and earning Rs. 7,000/- per month as salary from his employment as Peon at Middle School Khargaon and they were dependents upon the deceased.

3. Non-applicant 1 and 4/ Respondent 1 and 4 chose not to appear before the learned Claims Tribunal and they were proceeded *ex parte*.

4. Non-applicant 2/ Respondent 2 owner of the offending bus submitted reply to the claim application and denied the pleadings made in the claim application. It was pleaded that, there was negligency on the part of the deceased himself, the amount of compensation claimed is highly exaggerated, offending bus was insured with Respondent 3/ Non-applicant 3 hence liability, if any, would be upon the Insurance Company.

5. Non-applicant 3/ Respondent 3-Insurance Company submitted reply to the claim application and pleaded that at the time of accident, motor cycle was being driven by son of deceased who is Respondent 4 herein rashly and negligently, there was no licence with Respondent 4/ Non-applicant 4, there was contributory negligence on the part of driver of both the vehicles. One of the sons of deceased has been granted compassionate appointment and the income received from the

compassionate appointment is required to be deducted from the income of the deceased for the purpose of calculating the amount of compensation.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties held that late Chamruram died on account of motor accidental injuries suffered by him due to rash and negligent driving of the offending bus by Respondent 1/ Non-applicant 1, breach of conditions of insurance policy could not be proved and awarded Rs. 4,55,740/- as compensation after deducting monthly income drawn from compassionate appointment by one of the sons of deceased by name Tirathraj Meshram.

7. Mr. Parag Kotecha, learned counsel for the appellants submits that learned Claims Tribunal erred in deducting the income received by one of the sons of deceased namely Tirathraj Meshram from his compassionate appointment from the income of the deceased. He submits that the salary received from the compassionate appointment to any of the legal representatives of the deceased cannot be deducted while calculating the amount of compensation on account of motor accidental death of any person/ government servant. He places his reliance on the judgment passed by the Hon'ble Supreme Court in the matter of ***Vimal Kanwar and others v. Kishore Dan and others*** reported in ***(2013) 7 SCC 476*** to buttress his submissions. It is further submitted that the Claims Tribunal has also not awarded any amount towards the future prospects and awarded meagre amount on other conventional heads in view of the law laid down by the Supreme Court in the case of ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in ***(2017) 16 SCC 680***.

8. Mr. Qamrul Aziz, learned counsel representing the Insurance Company while opposing the submissions made by the learned counsel for the

appellants submits, that one of the sons of the deceased got compassionate appointment only on account of untimely death of late Chamruram, therefore, the Claims Tribunal was justified in deducting the salary/ income received by him for the purpose of awarding the amount of compensation. He further submits that the Claims Tribunal has passed just and proper amount of compensation which does not call for any interference.

9. We have heard learned counsel for the respective parties and perused the record with utmost circumspection.

10. Sofar as, to prove the income of the deceased for the purpose of calculating the amount of compensation, the claimants have produced the details of General Provident Fund account issued by Principal of Government Higher Secondary School, Khadgaon as Ext. P-33 in which there is mentioned about the total salary of the deceased as Rs. 8,078/- per month. In view of the above certificate issued by the Principal of Government Higher Secondary School, the claimants have proved the income of the deceased on the date of accident. Sofar as, the deduction of Rs. 4,500/- assessing the income of the son of deceased on account of his compassionate appointment from the salary of the deceased for the purpose of calculating the amount of compensation is concerned. The issue of income of any of the legal representatives on account of compassionate appointment has been considered and decided by the Hon'ble Supreme Court in the case of ***Vimal Kanwar (supra)*** 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."

11. In the aforementioned ruling rendered by the Hon'ble Supreme Court, it has been clearly held that the salary receivable on account of compassionate appointment cannot be termed as "pecuniary advantage". In view of the law laid down by the Supreme Court, deduction of salary received by the legal representative of the deceased from compassionate appointment from the total income of the deceased is erroneous and is not sustainable and it is hereby set aside.

12. Learned Claims Tribunal has not awarded any amount towards future prospects even though, age of the deceased has been taken as 46 years. Award of future prospects has been dealt with by the Hon'ble Supreme Court in the matters of ***Sarla Verma & others v. Delhi Transport Corp. & anr*** reported in ***(2009) 6 SCC 121*** and ***Pranay Sethi (supra)*****.** The constitution Bench of Supreme Court has held that the person who is in permanent employment and is above 40 years of age and less than 50 years of age is entitled for an addition of 30% of the established income towards future prospects.

13. In view of the aforementioned rulings of the Hon'ble Supreme Court,

there will be an addition of 30% of the established income in the income of the deceased for the purpose of calculating the amount of compensation. The Claims Tribunal has awarded Rs. 2,500/- towards loss of estate, Rs. 2,000/- towards funeral expenses, Rs. 5,000/- towards loss of consortium to wife and Rs. 6,000/- towards love and affection which is contrary to law laid down by the Supreme Court in ***Pranay Sethi (supra)*** and ***Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others*** reported in ***(2018) 18 SCC 130***.

14. For the foregoing reasons, the amount of compensation to be awarded to the claimants requires re-computation which is as under.

15. Income of the deceased is taken as Rs. 8,078/- per month i.e. Rs. 96,936/- per annum, there will be an addition of 30% of the established income in the income of the deceased to assess the total income as on the date of accident which makes total yearly income of the deceased as Rs. 1,26,016.8/- [Rs.96,936+30% of Rs.96,936] rounded off to as Rs. 1,26,017/-. Looking to the number of claimants including the widow, there will be deduction of 1/3rd towards personal and living expenses which makes loss of yearly dependency to Rs. 84,011.33/- [Rs.1,26,017-1/3rd of Rs.1,26,017] rounded off to as Rs. 84,011/-. Deceased, on the date of accident was 46 years of age and therefore, the multiplier applicable to the yearly loss of dependency will be 13 which makes the total loss of dependency as Rs. 10,92,143/- [Rs.84,011x13]. Apart from the above, claimants will be further entitled for Rs. 40,000/- towards loss of spousal consortium, Rs. 40,000/- towards parental consortium, Rs. 15,000/- towards loss of estate, Rs. 15,000/- towards funeral expenses. Now, the claimants will be entitled for total sum of **Rs.12,02,143**/- [Rs.10,92,143 + Rs.40,000 + Rs. 40,000 + Rs.15,000 + Rs.15,000] as compensation instead of Rs. 4,55,740/- as

awarded by the learned Claims Tribunal. The aforementioned amount of compensation will carry interest @ 6% from the date of filing of claim application till its realization. Other conditions imposed by the learned Claims Tribunal will remain intact.

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

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

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