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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No.43 of 2015

Reserved on 01.09.2020
Pronounced on 17.09.2020

The Oriental Insurance Company Limited, Near Commissioner Office, Jagdalpur, Chhattisgarh (Non-Applicant No.3). **--- Appellant**

Versus

1. Nitaichandra Saha, S/o Late Sachin Saha, Aged About 50 Years, R/o Bagichapara, Sukma, P.S. Sukma, District Sukma, Chhattisgarh (Claimant).

2. Vikash Saha, S/o Nitaichandra Sahu, Aged About 25 Years, R/o Bagichapara, Sukma, P.S. Sukma, District Sukma, Chhattisgarh (Claimant).

3. Vishal Saha, S/o Nitaichandra Sahu, Aged About 22 Years, R/o Bagichapara, Sukma, P.S. Sukma, District Sukma, Chhattisgarh (Claimant).

4. Arjun Singh Markam, S/o Late Bheemaram Markam, Aged About 25 Years, R/o Village Nilavaram, presently residing at Gandhi Nagar, Sukma, District Sukma, Chhattisgarh (Non-Applicant No.1).

5. Durgesh Rai, S/o Baijnath Rai, Aged About 30 Years, R/o Village Sonakukanar, presently residing at Gandhi Nagar, Sukma, District Sukma, District Sukuma, Chhattisgarh (Non-Applicant No.2).

---- Respondents

For Appellant	:	Mr. Pankaj Agrawal, Advocate.
For Respondent Nos.1 to 3	:	Mr. Praveen Dhurandhar, Advocate.
For Respondent Nos.4 & 5	:	None, though served.

Hon'ble Shri Justice Sanjay S. Agrawal, J

CAV Award/Order

1. The Oriental Insurance Company Limited has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') questioning the legality and propriety of the award dated 12.11.2014 passed by the Additional Motor Accident Claims Tribunal, South Bastar, Dantewada (C.G.) in Claim Case No.354/2014, whereby the learned Tribunal, while fastening the liability upon the Insurance Company, has awarded the total amount of compensation to the tune of Rs.18,70,800/- with 7.5% interest per annum from the date of filing of the claim petition till the date of actual payment with a further direction that on its default, it shall carry interest @ 9% per annum from the date of award till the date of actual payment. While, the claimants have raised a cross-objection under Order 41 Rule 22 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') for its enhancement. The parties to this appeal shall be referred hereinafter as per their description in the Tribunal.

2. Briefly stated the facts of the case are that on 21.06.2012, the deceased Smt. Pushpa Saha was going to Village Budadi from Village Sukma by a motorcycle *'Pulsar'* bearing Registration No.CG-18-E-7422 while sitting behind her son's friend namely, Arjun Singh Markam/Non-Applicant No.1. The alleged vehicle was owned by Non-Applicant No.2/Durgesh Rai and was insured with the Appellant/The Oriental Insurance Company Limited and it was being driven in a rash and negligent manner by said Arjun Singh Markam, owing to which, she fell down and sustained serious injuries. She was admitted into

the hospital but succumbed to the injuries during the course of her treatment, giving rise to the institution of the claim petition under Section 166 of the Act of 1988 by her legal representatives, who are her husband and sons. It was alleged in the claim petition that the deceased, a 50 years old, was a government employee working as a Rural Health Coordinator (Nurse) in the Primary Health Centre, Sukma at the monthly wages of Rs.20,885/-. According to the claimants, the deceased was the only bread earner in the family and they were dependent upon her and, thus, have claimed total amount of compensation to the tune of Rs.24,00,000/- under various heads.

3. The Non-Applicants have contested the claim. According to the Non-Applicant Nos.1 & 2, the driver and owner of the alleged motorcycle, the deceased herself was responsible for the alleged accident as she was travelling in the said vehicle while sitting carelessly and owing to which, she fell down suddenly from it. It is pleaded further that since the alleged vehicle was insured with the Oriental Insurance Company Limited, therefore, in case of any liability being fastened, the same could be indemnified by the said company. While, the Non-Applicant No.3/Insurer has contested the claim mainly on the ground that the alleged motorcycle was being used in violation of the insurance policy as its driver was not holding the effective and valid driving license and, therefore, no liability could be fastened upon it.

4. After considering the evidence led by the parties, the Tribunal arrived at a conclusion that the alleged accident occurred due to the rash and negligent driving of the driver of the alleged motorcycle, which caused the sad demise of Smt. Pushpa Saha, who was 50 years old. It held

further that the vehicle in question was not being used in violation of the insurance policy as the driver of it was holding the effective and valid driving license at the relevant time and that by considering the monthly income of the deceased to the tune of Rs.20,885/-, awarded the total amount of compensation as mentioned hereinabove while fastening the liability upon the insurance company.

5. Mr. Pankaj Agrawal, learned counsel appearing for the Appellant submits that the finding of the Tribunal holding that the alleged motorcycle was not being used in violation of the insurance policy is apparently contrary to law. It is contended further that the claimants are the adult male members and were not dependent upon the deceased, as such, they are not entitled to any amount of compensation. It is contended further that after the sad demise of Smt. Pushpa Saha, a compassionate appointment was given to her son, namely Vikas Saha, therefore, while determining the amount of compensation, salary receivable by him on the said compassionate appointment was liable to be deducted. Having failed to do so, the Tribunal has committed a serious illegality in awarding the huge amount of compensation. In support, he placed his reliance upon the decision rendered by the Supreme Court in the matter of ***Bhakra Beas Management Board Versus Kanta Aggarwal and others***, reported in **(2008) ACJ 2372: (2008) 11 SCC 366.**

6. On the other hand, Mr. Praveen Dhurandhar, learned counsel appearing for the Claimants, submits that although the claimants are the adult male members, but were dependent upon the income of the deceased and after considering the evidence led by them, the

Tribunal has not committed any illegality in holding that they were dependent upon the deceased. He placed his reliance in this regard upon the decision rendered in the matter of ***Santosh Devi Versus National Insurance Company Limited and Others,*** reported in **(2012) 6 SCC 421**. It is contended further that the salary of the deceased's son receivable on account of the compassionate appointment is not liable to be deducted under the benevolent provision of the Act of 1988 and has placed his reliance upon the decision of the Supreme Court rendered in the matter of ***Vimal Kanwar and Others Versus Kishore Dan and Others,*** reported in **(2013) 7 SCC 476.** Further contention of him is that the amount of compensation as determined by the Tribunal without considering the future prospects of the income of the deceased and/or without applying the proper multiplier, is liable to be modified in order to provide just and proper compensation payable to the claimants and has placed his reliance in this aspect upon the decision rendered by the Supreme Court in the matter of ***National Insurance Company Limited Versus Pranay Sethi and Others,*** reported **in (2017) 16 SCC 680.**

7. I have heard learned counsel for the parties and perused the entire record carefully.

8. It is true that the claimants are the adult male members in the family, but from a bare perusal of the averments made in the claim petition and the evidence of the deceased's husband Nitaichandra Saha, it appears that the claimants are completely dependent upon the deceased, Smt. Pushpa Saha. That apart, this fact was neither

controverted by the Non-Applicants in their written statements nor have led any evidence in this regard in order to disprove the same. The observation of mine is fortified by the principles laid down by the Supreme Court in the matter of ***Santosh Devi Versus National Insurance Company Limited and Others, (supra)*** as relied upon by Mr. Dhurandhar, wherein it has been observed at para 20 that merely looking to the fact that the sons had become majors, it cannot be said, in absence of any evidence regarding the source of their sustenance, that they are not dependent upon the deceased. The said observation is relevant at this juncture, which reads as under:-

> **20.** The Tribunal's observation that the two sons of the appellant cannot be treated as dependent on their father because they were not minor is neither here nor there. In the cross-examination of the appellant, no question was put to her about the source of sustenance of her two sons. Therefore, there was no reason for the Tribunal to assume that the sons who had become major can no longer be regarded dependent on the deceased.

9. In view of above, it cannot be held that they are not dependent upon the deceased and the Tribunal has, therefore, rightly arrived at a conclusion that the claimants are dependent upon the deceased.

10. Now, the further contention of Mr. Agrawal that upon the death of Smt. Pushpa Saha, a compassionate appointment was provided to her son Vikash Saha and, therefore, the salary receivable by the claimants on account of such an appointment was liable to be deducted, is, however, noted to be rejected. It is true that the compassionate

appointment was provided to the deceased's son Vikash Saha, but the salary receivable on account of it would not be liable to be deducted under the Act of 1988 as held by the Supreme Court in the matter of ***Helen C. Rebello (Mrs) and Others Versus Maharashtra State Road Transport Corporation and Another,*** reported in **(1999) 1 SCC 90.** In the said matter, the issue was whether the amounts received by the deceased by way of provident fund, pension, life insurance policies and similarly, in cash, bank balance, shares, fixed deposits etc., are 'pecuniary advantages' received by the heirs on account of death of the deceased and liable to be deducted from the compensation. The Supreme Court held that these amounts have no co-relation with the compensation receivable by the dependents under the Motor Vehicles Act. The following observations were made at para 35 as under:-

> **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 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 corelation 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 corelation 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 corelation. The insured (deceased) contributes his own money for which he receives the amount which has no corelation 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.

11. Yet, in the matter of ***United India Insurance Co. Ltd. and Others Versus Patricia Jean Mahajan and Others,*** reported in **(2002) 6 SCC 281,** the deceased was a doctor practicing in the United States of America and died on a visit to India. His wife had received an amount of $ 2,50,000/- on account of life insurance policies of the deceased. She had also received unemployment allowance for 8 or 9 months and it was urged that these amounts should be deducted from the compensation assessed. After referring to the entire law on the subject including the decision in ***Helen C. Rebello*** case (supra), the Supreme Court held at para 36 as under:-

> **36.** We are in full agreement with the observations made in the case of *Helen Rebello* (supra) that principle of balancing between losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some correlation with

the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accidents Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this judgment, it is clear that the amount on account of social security as may have been received must have a nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation. There must be some correlation between the amount received and the accidental death or it may be in the same sphere, absence (*sic*) the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far as other items in respect of which learned counsel for the Insurance Company has vehemently urged, for example some allowance paid to the children, and Mrs Patricia Mahajan under the social security system, no correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on account of social security system is made, one of the

> constituents of the fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under the social security system which the claimant would have also otherwise been entitled to receive irrespective of accidental death of Dr Mahajan. If the proposition "receipts from whatever source" is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains, may be on account of savings or other investment etc. made by the deceased, would not go to the benefit of wrongdoer and the claimant should not be left worse off, if he had never taken an insurance policy or had not made investments for future returns.

12. The similar issue has again come up for consideration before the Supreme Court in the matter of ***Vimal Kanwar and Others Versus Kishore Dan and Others, (supra)*** and while following the principles as laid down in the matter of ***Helen C. Rebello (Mrs) and Others Versus Maharashtra State Road Transport Corporation and Another, (supra)*** it was held at paragraph 21, that the salary received by the heirs on compassionate appointment cannot be deducted. The said paragraph is relevant for the purpose which

reads as under:-

> **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 dependants, one of the dependants 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 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 dependants 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.

13. It is, however, contended by Mr. Agrawal that the principles laid down by the Supreme Court in the matter of ***Bhakra Beas***

Management Board Versus Kanta Aggarwal and others, (supra), wherein it was held, that the benefits which have been received by the claimant by way of compassionate appointment being wife on account of the death of her husband have to be considered while fixing the amount of compensation was, however, not placed before the Supreme Court, in the above referred matters, therefore, the principles laid down in the said two matters of the same strength would be *per incuriam* in nature and would not come in support of the claimants.

14. It is true that the principles laid down in the matter of ***Bhakra Beas Management Board Versus Kanta Aggarwal and others, (supra)*** was not brought to the notice of the Supreme Court in the above mentioned decisions, i.e., ***Vimal Kanwar and Others Versus Kishore Dan and Others, (supra)*** and ***United India Insurance Co. Ltd. and Others Versus Patricia Jean Mahajan and Others, (supra)*** but it was, however, considered subsequently by the three Judge Bench decision of the Supreme Court in the matter of ***Reliance General Insurance Company Limited Versus Shashi Sharma and Others,*** reported in **(2016) 9 SCC 627** wherein, at paragraph 16, it has been observed while considering the said matter, i.e., ***Bhakra Beas Management Board Versus Kanta Aggarwal and others, (supra)*** that the principles laid down therein would not be an authority by having a contrary view than the view taken in ***Helen C. Rebello (Mrs) and Others Versus Maharashtra State Road Transport Corporation and Another, (supra)*** and ***United India Insurance Co. Ltd. and Others Versus Patricia Jean Mahajan and Others, (supra).*** The said paragraph relevant

for the purpose, is reproduced herein as under:-

> **16.** In *Bhakra Beas Management Board,* ostensibly, it may appear that a departure has been made in allowing deduction of the pecuniary advantage received by the claimants from other source on account of death of her husband. However, on a closer analysis of the said decision, two aspects become prominent. Firstly, the grievance of the appellant Board was that the claimants had filed an appeal before the High Court for enhancement of compensation of amount, which was still pending. However, the appeal preferred by the Board against the same decision was dismissed by the High Court. The grievance of the appellant was essentially about the inappropriate approach of the High Court in dismissing its appeal. That can be discerned from the observation in para 13 of the reported decision. From the observation found in para 14 of the reported decision, it is seen that the High Court judgment has been held to be clearly unsustainable. That must be understood as disapproving the approach of the High Court in dismissing the appeal filed by the appellants, though cross-appeal filed by the claimants for enhancement of compensation amount was pending before it. The second aspect is that, the Court, to do complete justice between the parties and for bringing quietus to the long pending litigation (14 years) between them, including to dispose of appeal of the claimants pending before the High Court, passed an order for full and final

settlement of all the claims inter partes. That can be discerned from paras 13 and 14, which read thus : (SCC pp. 372-73)

"13. The learned counsel for the respondent supported the judgment and additionally submitted that appeal of Respondent 1 is pending. *In normal course, when two appeals are directed against the common judgment, both the appeals should be heard by the same Bench of the High Court.* But we find that the High Court had lost sight of the fact that the benefits which the claimant receives on account of the death or injury have to be duly considered while fixing the compensation. It is pointed out that Respondent 1 was getting Rs 4700 p.m. and a residence has been provided to her and actually the compassionate appointment was given immediately after the accident.

14. In view of what has been stated above, the High Court's judgment is clearly unsustainable. However, the accident took place more than 14 years back and it would not be desirable to send the matter back to the Tribunal for fresh consideration. A sum of rupees five lakhs has been deposited vide this Court's order dated 1-11-2004. *We are of the considered view that in view of the background facts, it is just and proper that the sum of rupees five lakhs already deposited shall be permitted to be withdrawn by the claimants in full and final settlement of the claim relatable to the death of the deceased.* It is for the Tribunal to fix the

> quantum of fixed deposit and the amount to be released to the claimants.” (emphasis supplied)
>
> Thus understood, *Bhakra Beas case* is not an authority of having taken a contra view than the view expressed in *Helen C. Rebello* and *Patricia case.* As a matter of fact, in para 11 of the reported decision in *Bhakra Beas case,* paras 32 to 34 of *Helen C. Rebello case* have been reproduced in their entirety. No observation is found in the entire decision, to have doubted the correctness of the dictum in *Helen C. Rebello* and *Patricia case.*

16. It is, thus, evident based upon the aforesaid settled principles of law that the salary receivable by the claimants on account of the compassionate appointment comes within the periphery of the Act of 1988 and, therefore, cannot be termed as 'pecuniary advantage' so as to be liable to be deducted, as contended by Mr. Agrawal. The contention of him, is thus, noted to be rejected and I, therefore, do not find any substance in the appeal preferred by the Appellant/Insurance Company, which is accordingly dismissed.

17. In so far as the cross-objection filed by the claimants under Order 41 Rule 22 of CPC is concerned, it appears that the amount of compensation as determined by the Tribunal without considering the future prospects of the income of the deceased and/or without applying the proper multiplier and even without providing the amount of compensation towards the conventional heads in its proper manner

is unjustified and, deserves to be modified.

18. Perusal of the record would show that the deceased Smt. Pushpa Saha was a government employee working as a Rural Health Coordinator (Nurse) at the Primary Health Centre, Sukma and her monthly salary was Rs.20,885/- as held by the Tribunal based upon the pay certificate marked as 'Ex.A-6(A)' and therefore, I do not find any infirmity in holding the monthly income of the deceased as such. It appears further that the deceased was 50 years old at the time of the accident as evidenced from the merg intimation report (Ex.A-3) and the Tribunal has, therefore, rightly observed the age of the deceased to be as such. In view of that, while determining her actual income, an addition of 15% of it, i.e., Rs.37,593/- (Rs.20,885 x 12 x15/100), towards future prospects of her income, is to be made as she was a salary paid government employee in the light of principles laid down by the Supreme Court in the matter of ***National Insurance Company Limited Versus Pranay Sethi and Others, (supra).*** It would, thus, come to Rs.2,88,213/- (Rs20,885 x 12 + Rs.37,593) and that by deducting 1/3rd of it, i.e., Rs.96,071/- towards her personal and living expenses, the yearly dependency would come to Rs.1,92,142/- (Rs.2,88,213 – Rs.96,071). As the age of the deceased at the time of the accident was 50, the multiplier applicable would be 13 and, thus, the total amount of dependency would arrive at Rs.24,97,846 (Rs.1,92,142 x 13).

19. Besides, the husband and two sons of the deceased are entitled to be awarded loss of consortium under the head of spousal and parental consortium as held in the matter of ***Magma General Insurance***

Company Limited Versus Nanu Ram** Alias Chuhru Ram **and Others, reported in **(2018) 18 SCC 130.** Consequently, in addition, the claimants are entitled to the following amounts towards conventional heads:-

S.No.	Modes of Compensation	Amount (In Rs.)
1.	For loss of consortium to husband	40,000/-
2.	For loss of parental consortium to two sons @ of Rs.40,000/- each	80,000/-
3.	For funeral expenses	15,000/-
4.	For loss of estate	15,000/-
	Total	**Rs.1,50,000/-**

20. The Claimants would, thus, be entitled to a total amount of compensation to the tune of Rs.26,47,846/- (Rs.24,97,846/- + Rs.1,50,000/-) with 7.5% interest per annum from the date of filing of the claim petition till the date of actual payment.

21. In view of above, the cross-objection/appeal is allowed in part to the extent indicated hereinabove. Rest of the observations as made by the Tribunal shall remain intact. No order as to costs.

Sd/-
(**Sanjay S. Agrawal**)
Judge

Deepti Jha