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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1094 of 2015

- Ganesh Ram Kanwar, S/o Chhotu Kanwar, aged about 55 years, R/o Village Kumhi, Police Station & Tahsil Khairagarh, District Rajnandgaon (CG) [Owner/Driver/Non- Applicant]

---- Appellant

Versus

1. Sandeep S/o Late Ramsukh Sahu, aged about 26 years.
2. Komal, S/o Late Ramsukh Sahu, aged about 19 years.
3. Ku. Deepti, D/o Late Ramsukh Sahu, aged about 23 years.
4. Smt. Yamuna Bai, W/o Late Ramsukh Sahu, aged about 47 years

   All are resident of Ward No.16, Dauchoura, Khairagarh, Post & Tahsil Khairagarh, District Rajnandgaon (CG) [Applicants/ Claimants]

---- Respondents

For Appellant	:	Mr. Abhishek Pandey, Advocate on behalf of Mr. Rakesh Pandey, Advocate
For Respondents	:	None.

SB: Hon'ble Shri Justice Parth Prateem Sahu

Order On Board

27/10/2020

1. Appellant-owner of vehicle has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the award dated 28.7.2015 passed in Claim Case No.1/14 whereby the learned Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon (for short 'the Claims Tribunal') has partly allowed application filed under Section 166 of the Act of 1988 filed against non-

applicant/appellant herein and awarded Rs.9,84,000/- as compensation in a death case.

2. Facts of the case, in brief, are that on 28.11.2013 at about 6.30 p.m. Ramsukh Sahu along with his co-brother Hirawal Ram Sahu was returning home from evening walk and when he reached near Shivmangal Petrol Pump, he was hit from behind by TVS Excel Super Moped bearing registration No.CG08-MB-4148, driven by non-applicant in rash and negligent manner. As a result, said Ramsukh Sahu suffered grievous injuries on various parts of body. He was taken to Khairagarh Hospital, looking to grievousness of his injuries, he was referred to Apollo Hospital, Bhilai where during the course of treatment he succumbed to his injuries on 19.12.2013. Accident was reported in the Police Station Khairagarh, District Rajnandgaon based on which crime bearing No.323/13 was registered against non-applicant-owner of offending vehicle.

3. Claimants, who are widow and children of deceased, have filed an application under Section 166 of the Act of 1988 before the Claims Tribunal seeking compensation of Rs.54,25,000/- under various heads. It was pleaded in the application that on the date of accident, the deceased was working as 'Line-man' in the Electricity Department, Khairagarh and earning net income of Rs.49,532/- per month. The deceased was the only breadwinner in the family and on account of his untimely death in a road accident, loss of income has occasioned to them.

4. Non-applicant submitted reply to claimants' application denying

the fact that accident occurred from his Moped. Income and employment of deceased with Electricity Department have also been denied for want of knowledge. It was pleaded that a false report has been lodged against him, there are chances of his acquittal from criminal case registered against him and the amount claimed as compensation is highly exaggerated.

5. Upon appreciation of pleadings and evidence placed on record by the respective parties, the Claims Tribunal held that the non-applicant while driving offending vehicle in rash and negligent manner caused accident resulting in death of deceased and accordingly awarded Rs.9,84,000/- as compensation to claimants.

6. Mr. Abhishek Pandey, learned counsel representing claimants/ appellants submits that the amount of compensation awarded by the Claims Tribunal is highly excessive in the given facts and circumstances of case. The Claims Tribunal has not taken into consideration the entire evidence available on record particularly the admission on the part of claimants that Claimant No.2 has been granted compassionate appointment on account of death of deceased in harness, and Claimant No.4, widow of deceased, is getting family pension of Rs.21,000/- per month. While assessing the amount of compensation, did not deduct said income from total amount of compensation. He further submits that the Claims Tribunal has not properly considered the evidence of non-applicant/appellant wherein he has denied the fact of accident from his Moped and pleaded his false

implication.

7. I have heard learned counsel for appellant and perused the record of the Claims Tribunal.

8. To appreciate the submission made by learned counsel for appellant with regard to false involvement of his Moped in the accident, I have perused the records of Claim Case wherein the claimants have placed on record copy of final report as Ex.P-1 and copy of FIR as Ex.P-2. Perusal of FIR (Ex.P-2) reveals that it has been lodged against non-applicant/ appellant herein within few hours of the accident. The police after completion of investigation filed charge sheet against the appellant before the Court of jurisdictional Magistrate. The appellant in his evidence has admitted that he has not made any complaint to any higher police authority with regard to false involvement of his Moped in accident in question. He has admitted that on account of report lodged against him with regard to accident in question, his Moped was seized in the course of investigation and thereafter took the vehicle on Suprudnama (release of vehicle).

9. In view of above evidence available on record, particularly the admission of appellant that he has not taken any step regarding registration of criminal case against him or false involvement of his Moped in accident in question before any higher police official or competent Court of law, this Court does not find any force in the submission of learned counsel for appellant that his Moped has been falsely involved in accident

or he has been falsely implicated in this case, and the same is hereby repelled.

10. As regards the quantum of compensation, Hon'ble Supreme Court in case of **Vimal Kanwar & ors Vs. Kishore Dan & ors** reported in **(2013) 7 SCC 476** has considered the issue of deduction of pecuniary advantages received from other sources by reason of victim's death while computing compensation for death in motor accident and held that such an amount will not come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. Relevant portion of the said judgment is reproduced below;-

> "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) & ors 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 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.
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> 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 view of above law laid down by Hon'ble Supreme Court, submission of learned counsel for appellant that salary received by claimant No.2, son of deceased, and family

pension received by widow of deceased are required to be deducted from the total amount of compensation is also not sustainable and is hereby repelled.

12. In the result, the appeal being *sans merit* is liable to be dismissed and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-