NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 285 of 2015

1. Hilya Bai @ Hirla Bai, W/o Late Shri Chhotelal Chaudhari, Aged About 32 Years.
2. Radheshyam, Aged About 15 Years.
3. Bhupat Prasad, Aged About 13 Years.
4. Mukesh, Aged About 11 Years.
5. Ayeeska, Aged About 01 years.

   Appellant No. 2 to 5 are minor sons of Late Chhotelal Chaudhari, through their natural guardian i.e. mother the appellant No. 1- Hilya Bai
6. Bhagwat Chaudhari, S/o Late Lengru Chaudhari, Aged About 65 Years.
7. Budhani Bai, W/o Shri Bhagwat Chaudhari, Aged About 60 Years.

   All are R/o Village Lalpur, Tahsil Pendra, District- Bilaspur (C.G.)

---- Appellants

Versus

1. Kokila Prasad Kenwat, S/o Shri Mithayee Lal Kenwat, Aged About 55 Years, R/o Village- Daldal, P.S. Bijuri, District- Anuppur (M.P.) (Driver)
2. Ramanuj Gupta, S/o Shri Rameshwar Gupta, Aged About 45 Years, R/o Bijuri District- Anuppur (M.P.) (Owner)
3. United India Insurance Company Limited, through the Divisional Manager, Rajendra Nagar Chauk, Bilaspur, District- Bilaspur (C.G.)

---- Respondents

For Appellants	:	Mr. Pushkar Sinha, Advocate.
For Respondent No. 1 & 2	:	None though served
For Respondent No. 3	:	Mr. Dashrath Gupta, Advocate.

DB: Hon'ble Shri P.R. Ramachandra Menon, Chief Justice &

Hon'ble Shri Narendra Kumar Vyas, J.

Order on Board

Per Narendra Kumar Vyas, J.

23/03/2021

1. The appellants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, “the Act 1988”), challenging the award dated 10-12-2014 passed by the learned Additional District Judge/ Additional Motor Accident Claims Tribunal, Pendra Road, District- Bilaspur (C.G.) in Claim Case No. 22/2012 (Smt. Hilya Bai @ Hirla Bai & others Vs. Kokila Prasad Kenwat & others) for enhancement of compensation awarded in their favour.

2. The brief facts as projected by the appellants before the Claims Tribunal are that on 26.07.2012, the deceased-Chhotelal Chaudhari, who was husband of appellant No.1 and father of appellants No. 2 to 5, was going by his motor cycle and due to natural call, he stayed near Ramnagar Forest Barrier and at the same time the vehicle bearing Registration No. MP65 GA-0439 driven by respondent No.1 rashly and negligently hit the deceased, as a result of which he succumbed to death. The FIR was lodged in Police Station-Bijuri against respondent No. 1 for committing offence under Section 304(A) of IPC. A case was registered against respondent No. 1 as Criminal Case No. 292/2012.

3. The claimants have filed an application under Section 166 of the Act, 1988 before the learned Claims Tribunal, Pendra

Road, District- Bilaspur (C.G.) mainly contending that deceased Chhotelal Chaudhari was aged about 34 years and working as Fitter Helper in the permanent post of SECL Open Cast Collery, E-Sector, Rajnagar. The claimants were solely depending on earning of deceased. The monthly salary of deceased was Rs. 33,158/ and increase in salary for future prospects, @ 50% as per law on its support, will make it Rs. 49,737/-. On this factual matrix, the claimants have prayed for grant of compensation to the tune of Rs. 84,53,600/- along with 9% interest per annum.

4. The learned Claims Tribunal taking cognizance, issued notice to the respondents. The respondent No. 1 in turn, filed his written statement denying the accident and further contended that since vehicle was insured with the United India Insurance Company/respondent No. 3 and driver was having a valid driving license, it is the responsibility of respondent No. 3/ Insurance Company to indemnify respondent No. 1.

5. The respondent No.3/ Insurance Company has filed written statement contending that deceased himself was negligent while driving the motor cycle, which had lost its balance and caused accident. The deceased was not having a valid driving license. It was also denied that the monthly salary of the deceased was Rs. 33,158/- and prayed for revision of the claim.

6. The appellants/claimants to substantiate their claim application, have examined Hilya Bai/appellant No. 1, Ram

Vishal and in their support, they have exhibited documents namely First Information Report dated 27.07.2012, Merg Intimation Report, Pay slip. These documents were exhibited from P/1 to P/10, whereas respondent No. 1 exhibited documents namely fitness certificate of vehicle bearing registration MP65 GA- 0439 and insurance policy No. 393875, which was valid from 30.01.2012 till 29.01.2013. The driving license of the offending vehicle was exhibited as D/4 and certificate of registration was exhibited as D/3. The Insurance Company has not examined any witness in support of its case.

7. The learned Claims Tribunal, after appreciating evidence and material placed on record, has passed the award on 10.12.2014, treating the monthly salary of the deceased Rs. 26,567/-. The learned Claims Tribunal relying upon the judgment of Hon'ble the Supreme Court in case of ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another***, reported in ***(2009) 6 SCC 121***, has applied multiplier of 15 for calculating compensation. Thus, held that the claimants are entitled to get compensation to the tune of Rs. 57,36,340/-. The learned claims tribunal has further allowed Rs. 25,000/- for funeral expenses, Rs. 1,00,000/- for loss of love and affection and Rs. 1,00,000/- for loss of estate. Thus, the total compensation has been awarded to the tune of Rs. 59,61,350/-.The learned claims tribunal has further awarded

interest @ 6% from 16.08.2012 till the payment is actually made.

8. The appellants have filed appeal for enhancement of the compensation awarded by the claims tribunal on the ground that the learned claims tribunal has committed illegality in not treating the gross salary of the deceased as Rs. 33,158/- as provident fund, employees provident pension fund have not been added for computing the compensation. The appellants have also prayed for grant of interest @ 9% instead of 6%. It was further contended that the learned claims tribunal should have added over time wages and Sunday wages for assessing the compensation, as such, the award to the extent of non- adding of these components deserves to be set aside by this Court and accordingly, the enhanced compensation should be payable to the appellants.

9. On the other hand, learned counsel for respondent No. 3/ Insurance Company submits that the learned claims tribunal has committed mistake in not deducting the income tax from compensation. It is further submitted that the learned claims tribunal has rightly not added the bonus (quarterly/yearly) as well as PF/EPF contribution of the employer for calculating the compensation. Thus, the order is legal, justified and not liable to be interfered by this Hon'ble Court and the appeal deserves to be dismissed, as there is already excess payment.

10. We have heard learned counsel for the parties and perused the documents on record.

11. The learned Claims Tribunal has rightly denied adding of over time wages and Sunday wages while calculating the compensation, as these components are not part of wages, but they are allowances, which is payable on actual working of workman in the establishment and it cannot be claimed as a matter of right. The finding of the learned Claims Tribunal to that extent is legal, justified and does not warrant any interference of this Court. Further, contention of the appellants that the provident fund, employees provident fund pension which comes to Rs. 3721/-, Rs. 487/- & Rs. 50/-, should have been added. This has been added in the gross salary of the deceased as is evident from Ex.P/10, which is salary slip for the month of May, 2012. As such, for calculation of compensation, it is to be done on the basic pay after adding provident fund and employee provident fund pension, which comes to Rs. 21,366/- + Rs. 3721/- + Rs. 487/- + Rs. 50/- i.e. Rs. 25,624/-. Therefore, monthly income of deceased comes to Rs. 25,624/-.

12. Since, deceased was aged about 34 years, his future prospects should have been calculated @ 50% and added on. Thus, monthly income of deceased comes to Rs. 38,436/-. The total annual income of deceased comes to Rs. 3,68,985/-. But, the learned claims tribunal has committed illegality in not deducting the income tax as held by Hon'ble the Supreme Court in ***National Insurance Company Limited Vs. Pranay***

Sethi & others**,* reported in ***(2017) 16 SCC 680 wherein Constitution Bench in paragraph 59.4 has held as under:-

> *"59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

13. It is pertinent to mention here that at the relevant period for the Assessment Year 2013-14, ceiling of income tax was Rs. 2,00,000/- and income tax is payable when the annual income crosses the limit of Rs. 2,00,000/-. The annual income of the deceased is Rs. 3,68,985/- and after deducting the limit of income tax @ Rs. 2,00,000/-, the taxable income comes to Rs. 1,68,985/-. As such, the tribunal should have deducted income tax on this amount, which comes to Rs. 16,899/- i.e. @ 10% per annum. Thus, after deducting the income tax, the per annum salary of deceased comes to Rs. 3,52,086/-. While calculating compensation treating age of the deceased as 34 years, multiplier of 16 should have been applied in place of 15.

14. The deceased had old aged parents as well as four children and widow, thus, the dependency is more than 6, therefore, as per the judgment of Hon'ble the Supreme Court in ***Pranay Sethi (Supra)****,* the deduction of 1/5th for personal expenses would be allowed and 4/5th amount for determining loss of dependency would be considered for determining the compensation.

15. In view of the above, the appellants are entitled to get compensation in the following manner:-

Monthly income of the deceased	Rs. 25,624/-
50% future prospects (monthly)	Rs. 12,800/-
Total monthly income	Rs. 38,436/-
Annual income of the deceased	Rs. 3,68,985/-
Deduction of Income Tax	Rs. 16,899/-
Total annual income after deduction of Income Tax	Rs. 3,52,086/-
4/5th amount for dependency head	Rs. 2,81,668/-
Applying multiplier 16	Rs. 45,06,700/-

So far as grant of compensation, Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- on loss of love and affection and Rs. 1,00,000/- on loss of consortium and according to the law laid down by the Supreme Court in **Pranay Sethi (Supra)** *&* in the matter of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & others**, reported in **(2018) 18 SCC 130**, should be Rs. 1,50,000/- as per chart given below:-

Funeral Expenses	Rs. 15,000/-
Loss of Estate	Rs. 15,000/-

Loss of Spousal Consortium to widow	Rs. 40,000/-
Loss of Parental Consortium to Children (As per Magma Case)	Rs. 40,000/-
Loss of Filial Consortium to the parents (As per Magma Case)	Rs. 40,000/-
Total	**Rs. 1,50,000/-**

Thus, the compensation granted on the above heads, are on higher side.

16. Thus, adding the above figures, it is quite vivid that the learned Claims Tribunal has passed the award on higher side. Looking to the peculiar facts and circumstances of the case, more particularly that Insurance Company, has not challenged award passed by the learned Claims Tribunal, we cannot reduce the compensation granted in favour of the appellants, therefore, we are of the view that the appeal is liable to be dismissed.

17. In view of the above, the instant appeal being devoid of merit is liable to be and is hereby dismissed.

No order as to costs.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Narendra Kumar Vyas)
Judge

Arun