

(2015) 07 CHH CK 0041
In the Chhattisgarh High Court
Case No : MAC No. 1227 of 2012

Malti Devi Tripathi

APPELLANT

Vs

Mukesh Tiwari

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2017) ACJ 277

Hon'ble Judges : Shri Goutam Bhaduri, J.

Bench : Single Bench

Advocate : Mr. Govind Dewangan, Advocate, for the Respondent No. 2; Mr. Amiyakant Tiwari, Advocate, for the Appellants

Final Decision : Allowed

Judgement

Shri Goutam Bhaduri, J. - The appeal is against the award dated 22.08.2012 passed in Claim Case No.48/2011 by the learned Sixth Additional Motor Accident Claims Tribunal, Raipur.

2. The claim case was filed by the widow and two sons of the deceased namely Upendra Prasad Tripathi. It is pleaded that on 29.04.2009, the deceased was travelling in a Bus which was owned by the original Non-applicant No.1, Mukesh Tiwari, bearing registration No.C.G.04-E/0378. The vehicle was driven by one Shyamsundar in high speed in rash and negligent manner and dashed against the tree, as an impact of it, few of the people died and Upendra Prasad Tiwari sustained severe injuries. It was stated that after such accident, Upendra Prasad Tiwari had multiple fracture and injury and consequently he was immediately admitted to M.M.I. Hospital, Raipur, wherein he was operated and subsequently he was shifted to Chandulal Hospital, Bhilai, and continuously he was under treatment. However, on 30.10.2009, he succumbed to the injuries.

3. It was stated that at the time of death, the deceased Upendra Prasad Tiwari was aged 59 years and was working in the Irrigation Department of the State

Government, wherein he was getting a salary of Rs. 18,000/- per month. Consequently, on the different heads, an amount of Rs. 13,18,000/- was claimed.

4. The Non-applicant No. 1, Owner of the Bus, denied the averments of the claim petition and it was stated that the said vehicle was insured with the Non-applicant No.2 i.e. National Insurance Co. Ltd. Consequently, the insurance company is liable to make good the payment of compensation.

5. The Non-applicant No.2, Insurance Company, also refuted the averments of the claim petition and contended that no accident actually had happened by the offending vehicle i.e. Mini Bus bearing No.C.G.04-E/0378. Therefore, the petition be rejected summarily.

6. The learned Claims Tribunal after evaluating the facts and evidence came to a finding that on the date of accident, the vehicle i.e. Mini Bus belonged to Sharda Travels was being driven in rash and negligent manner and it dashed into a tree. The FIR document was also exhibited and one eyewitness namely Suresh Kumar Kuldeep also contended that because of the negligent driving, the accident had happened. The learned Tribunal, therefore, after evaluating such facts of the case, came to a finding that on the date of accident, the vehicle was being driven in rash and negligent manner at a high speed and therefore the accident had happened. In absence of any challenge to the same, the finding so arrived at by the learned Tribunal is affirmed.

7. Mr. Amiyakant Tiwari, learned counsel for the appellants, would submit that the Tribunal while calculating the amount of compensation has failed to take into account the law laid down by the Hon'ble Supreme Court. He placed his reliance in case of Vimal Kanwar & Others v. Kishore Dan & Others reported in (2013) 7 SCC 476, and it is contended that the pensionary benefit which was given to the wife was deducted against the law laid down by the Supreme Court. He further contended that the salary certificate in this case, which is marked as Ex.P-73 would show that the deceased was getting a salary of Rs. 11,786/- at the time of accident and therefore except the statutory deduction of income no other deduction is permissible. Consequently, it is stated that the quantum of assessment has to be reassessed. It is further submitted that future prospect has also not been considered, which needs to be recalculated as the deceased was below the age of 60 years and was still in service, not retired.

8. Per contra, Mr. Govind Dewangan, learned counsel appearing on behalf of the Insurance Company supported the award. It is stated that it would be relevant in this case to note that the just compensation has been awarded by making the lawful deduction and therefore the quantum of compensation do not require any reconsideration.

9. I have heard the learned counsel appearing for the parties, perused the pleadings, documents & evidence on record.

10. The only question which false for consideration as to what would be the

amount of dependency for calculation. The Tribunal in its judgment has deducted the amount of pension which is being paid to the wife of the deceased after his death. The Tribunal relied on the statement of AW-3, Banshidhar Soni, who has proved the salary certificate and in the cross examination, it is stated that the wife of the deceased is getting pension of Rs. 4950/- per month. The Tribunal while assessing the income has further believed the Ex.P-73 and has come to a finding that at the time of accident, the deceased was getting an amount of Rs. 11,786/-.

11. I have gone through the statement of AW-3 and the salary slip Ex.P-73 issued by the Office of Subject Divisional Officer, Water Resources Sub Division, Deobhog, District Raipur. According to such salary slip, the deceased was getting a salary of Rs. 11,786/- at the time of accident. The further question is as to whether the pensionary benefit given to the wife can be deducted ? The aforesaid issue fell for consideration before the Supreme Court in *Helen C. Rebello v. Maharashtra SRTC* reported in (1999) 1 SCC 90, wherein it was held that the 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.

12. Recently, the Supreme Court in case of *Vimal Kanwar & Other v. Kishore Dan & Others*, reported in (2013) 7 SCC 476, reiterated such view and also held that apart from these deductions, even the compassionate appointment cannot be considered for making any deduction on account of death of a person. Further held that 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. The Supreme Court at para 19, 20 & 21 in the said judgment has held as under :

"19. The aforesaid issue fell for consideration before this Court in *Helen C. Rebello v. Maharashtra SRTC* 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:

"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."

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 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.

13. Therefore, necessarily by application of such principles laid down by their Lordship, the amount of compensation given to the wife cannot be a subject matter of deduction. In a result, the salary of the deceased would be calculated for the purpose of compensation at Rs. 11,785/- in the instant case.

14. Furthermore, the deceased was below 60 years, as he was in the service and was stated to be of 59 years, therefore, for computing the future prospects, as per the law laid down in case of *Rajesh & Others v. Rajbir Singh & Others* reported in (2013) 9 SCC 54, it would be just and proper to add future prospects of 15% in the salary [$11,785 \times 12 = 1,41,420 + 21213 (15\%) = 1,62,633/-$], which comes to Rs. 1,62,633/-.

15. The income tax as was payable for the financial year 2009-10 and assessment year 2010-11, up till Rs. 1,60,000/- no tax was payable and further exceeding Rs. 1,60,000/-, 10% income tax was payable. Therefore, after deduction of Rs. 1,60,000/- from the annual income i.e. Rs. 1,62,633/-, the taxable income works out to Rs. 2,633/-, on which 10% income tax would be chargeable, which comes to Rs. 263/-. Thereafter, by addition of 2% education cess, the amount comes to Rs. 268/-, which will be deductible from the income i.e. Rs. 1,62,633 - 268, thereby, the net income works out to Rs. 1,62,365/-.

16. The claim petition has been preferred by three persons, therefore, as per the law laid down in case of *Sarla Verma v. Delhi Transport Corporation* reported in (2009) 6 SCC 121, 3rd would be deducted towards personal expenses, which comes to Rs. 54,121/- and the dependency works out to Rs. 1,08,244/-. Further, the age of the deceased was stated to be 59 years, therefore, multiplier of 9 would be applicable, therefore, the total amount of dependency works out to Rs. 9,74,196/-.

17. The learned Claims Tribunal has further awarded an amount of Rs. 85,415/- for the medical expenses. Taking into the evidence on record, the amount of Rs. 85,415 granted for medical expenses is maintained. Furthermore, an amount of Rs. 5,000/- has been awarded to the wife for loss of consortium and Rs. 20,000/- has been granted for loss of love and affection to the children, which also appears to be too meagre. Therefore, the consolidated sum of Rs. 1,00,000/- is awarded for loss of consortium to the wife and for loss of love and affection to the children. The Tribunal has awarded Rs. 2,000/- for funeral expenses, which is also enhanced to Rs. 25,000/- and the award of Rs. 2,500/- for loss of estate is enhanced to Rs. 25,000/-. Therefore, the compensation is recomputed as under :-

Sl. No.	Heads	Amount
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(i) Loss of dependency Rs. 9,74,196/-

(ii) For loss of consortium & for love and affection Rs. 1,00,000/-

(iii) For funeral expenses Rs. 25,000/-

(iv) For loss of estate Rs. 25,000/-

Grand Total Rs. 11,24,196/-

18. Thus, the total compensation is recomputed as Rs. 11,24,196/-. After deducting Rs. 5,10,627/- as awarded by the Tribunal, the enhancement would be Rs. 6,13,569/-.

19. In the result, the appeal is allowed in part. The appellants will be entitled to the said sum of Rs. 6,13,569/- in addition to what is already awarded by the Claims Tribunal with interest at the rate of 9% per annum from date of application of petition till the date of its realization.

20. The Registry is further directed to communicate the claimants in writing the "amount enhanced in this appeal" as against the award made by the Tribunal below. The said communication be made in Hindi Devanagari language.

21. No order as to costs.