

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ROOPESH CHANDRA VARSHNEY

ON THE 14th OF NOVEMBER, 2024

MISC. APPEAL No. 742 OF 2013

SMT. ANGOORI BAI AND ORS.

VS.

GANGAIYA JI AND ORS.

AND

MISC. APPEAL No.773 OF 2013

SMT. RUKSANA KHAN AND ORS.

VS.

GANGAIYA JI AND ORS.

APPEARANCE

Shri R.P.Gupta, learned counsel for the claimants.

Shri Kamal Rochlani, learned counsel for the Insurance Company.

None for the other respondents.

ORDER

This common order shall govern disposal of M.A.No. 742/2013 and M.A.No. 773/2013 as both these appeals are filed by claimants seeking enhancement of the compensation amount against the common award dated 9/5/2013 passed by Member, First Motor Accident Claims Tribunal,

Gwalior in Claims Cases No. 28/2013 and 27/2013 respectively; whereby, claimants of Claim Case No. 28/2013 have been awarded a compensation of Rs. 1,86,000/- for the death of Balram; whereas, claimants of Claim Case No. 27/2013 have been awarded a compensation of Rs. 5,70,000/- for the death of one Mehboob Khan and liability for payment of compensation amount was fastened over Driver, Owner and Insurance Company jointly and severally.

2. Briefly stated facts of the case are that deceased Mehboob Khan was a driver of Bus bearing registration No. UP86E9112 and on the fateful day i.e. 8/4/2012 he was driving the bus from Agra to Dholpur in which deceased Balram was also travelling as passenger. It is alleged that on the way, Mehboob Khan stopped the bus by the side of road to get the passengers down and while passengers were getting down, he also get off the bus to take the pressure of air in tyres, at that time deceased Balram also get off the bus to answer the nature's call, however, at that time driver of truck No. AP16TA3999 by driving it in rash and negligent manner dashed the bus, due to which Mehboob Khan and Balram crushed and died on spot. Other passengers of bus also sustained injuries. Therefore, dependents of deceased Mehboob Khan filed Claim Case No. 27/2013 seeking total compensation of Rs. 27,79,000/-; whereas, dependents of deceased Balram filed Claim Case No. 28/2013, seeking total compensation of Rs. 27,35,000/-; however, learned Claims Tribunal awarded compensation as mentioned hereinabove alongwith interest at the rate of 6% per annum from the date of filing of claim case.

3. It is the submission of learned counsel for the claimants of M.A.No. 773/2013 that while awarding the compensation amount, learned Claims Tribunal has not awarded any amount under the head future prospects;

whereas, in light of the decision of Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Ors., (2017)16SCC680**, since the deceased was self employed and aged 43 years at the time of death, an addition of 25% of the established incomes should required to be added. It is further submitted that Claims Tribunal deducted 1/3rd towards personal expenses; whereas, there were 4 dependents over the deceased and therefore, in the light of decision of Apex Court in the matter of **Sarla Verma (Smt.) and Ors. Vs. Delhi Transport Corporation and Anr., (2009)6SCC121**, it should have been 1/4th.

4. As regards M.A.No. 742/2013, it is the submission of learned counsel for the claimants that deceased was Balram aged 19 years at the time of death. Learned Claims Tribunal applied the multiplier of 10 as per the age of his mother; however, in the light of catena of decisions of Apex Court as well as this Court, multiplier should have been applied as per the age of deceased himself. It is further submitted that learned Claims Tribunal has not awarded any amount under the head future prospects; whereas, in light of the decision of Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Ors., (2017)16SCC680**, since the deceased was self employed and aged 19 years at the time of death, an addition of 40% of the established incomes should required to be added.

5. Learned counsel for the Insurance Company supported the impugned award and prayed for dismissal of the appeals.

4. Heard.

6. Perused the record.

7. As regards M.A.No. 773/2013 is concerned, from perusal of award, it is clear that no amount under the head future prospect has been awarded by the Claims Tribunal; whereas, 25% was required to be added in established income in light of decision of Apex Court in the matter of **Pranay Sethi (supra)**. Further in the opinion of this Court, learned Claims Tribunal erred in deducted $1/3^{\text{rd}}$ towards personal expenses, whereas, in light of decision of Apex Court in the matter of **Sarla Verma (supra)**, looking to the number of dependents, it should be $1/4^{\text{th}}$.

8. The Claims Tribunal assessed the income of the deceased at Rs. 60,000/- per annum, therefore, in the said amount Rs. 15,000/- (25%) is required to be added towards future prospects and after adding the same, the amount comes to Rs. 75,000/-. Now $1/4^{\text{th}}$ is required to be deducted towards personal expenses and after deducting the same, the amount comes to Rs. 56,250/-. Multiplier of 13 would be applicable and after applying the same, loss of dependency comes to Rs. 7,31,250/-. Claimants shall also be entitled to receive a sum of Rs. 70,000/- towards loss of consortium, funeral expenses and loss of estate and after adding the same, the amount of compensation to which claimants are entitled for comes to Rs. 8,01,250/-. The Claims Tribunal has already awarded a compensation of Rs. 5,70,000/-, therefore, claimants shall be entitled to receive an enhanced compensation of Rs. 2,31,250/- which shall carry interest as per impugned award from the date of claim case.

9. As regards M.A.No. 742/2013, in the opinion of this Court learned Claims Tribunal erred in applying the multiplier as per the age of mother of deceased, whereas, it should be age per the age of deceased himself, therefore, considering the fact that deceased was aged 19 years at the time of death, multiplier of 17 would applicable. The claimants shall also be

entitled to receive 40% of the established income in light of decision of Apex Court in the matter of **Pranay Sethi (supra)** under the head future prospects.

10. Thus, while taking the annual income of deceased at Rs. 36,000/- per annum as per impugned award, in the said amount Rs. 14,400/- (40%) is required to be added towards future prospects and after adding the same, the amount comes to Rs. 50,400/-. Now 1/2 is required to be deducted towards personal expenses and after deducting the same, the amount comes to Rs. 25,200/-. Multiplier of 17 would be applicable and after applying the same, loss of dependency comes to Rs. 4,28,400/-. Claimants shall also be entitled to receive a sum of Rs. 30,000/- towards funeral expenses and loss of estate and after adding the same, the amount of compensation to which claimants are entitled for comes to Rs. 4,58,400/-. The Claims Tribunal has already awarded a compensation of Rs. 1,86,000/-, therefore, claimants shall be entitled to receive an enhanced compensation of Rs. 2,72,400/- which shall carry interest as per impugned award from the date of claim case.

11. Accordingly, in light of aforesaid discussion, both the appeals are allowed in part and claimants of M.A. No. 742/2013 are held entitled to receive an enhanced compensation of Rs. 2,72,400/-; whereas, the claimants of M.A.No. 773/2013 are held entitled to received an enhanced compensation of Rs. 2,31,250/-. The enhanced amount of compensation shall carry interest @6% per annum from the date of claim case. Rest of the conditions as imposed by Claims Tribunal including liability shall remain intact. This order shall be executable upon payment of proportionate Court fees on the enhanced amount as the claimants of M.A.No. 742/2013 have paid Court fees only for enhancement of Rs. 2

lacs. The Court fees be paid within 3 months from the date of this order. Registry to prepare memo of costs. The claimants' counsel shall provide certified copy of memo of costs to the counsel for Insurance Company. The Insurance Company thereafter shall deposit the enhanced amount with costs with the Tribunal within one month from the date of receipt of memo of Cost. Failure to comply with the aforesaid direction no interest would be payable on the enhanced amount from the date of order till the Court fees is actually paid and memo of costs is supplied to counsel for Insurance Company.

12. Impugned award is modified to the extent indicated hereinabove.

(ROOPESH CHANDRA VARSHNEY)
JUDGE

jps/-