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MA-2803-2019

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 2<sup>nd</sup> OF JULY, 2025MISC. APPEAL No. 2803 of 2019*SMT. ANITA**Versus**RADHESHYAM AND OTHERS*

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Appearance:

Ms. Meena Singhal - learned counsel for the appellant.

Shri Bal Krishna Agrawal - learned counsel for respondent No.3-  
Insurance Company.

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ORDER

This miscellaneous appeal has been preferred by the appellants/claimants for enhancement of the amount awarded by 12th MACT, Gwalior, vide award dated 18.02.2019 in Claim Case No.656/2016 whereby MACT has awarded compensation amount of Rs.10,78,000/- along with interest @6% per annum to the claimants on account of death of deceased in a road accident.

2. The necessary facts for the disposal of this appeal are that on 18.01.2016, Vijay Shukla was going from Bhind to Gwalior by car with his relative, Umesh Sharma. When the car reached near *charan ki puliya* on the Bhind Gwalior road, a truck bearing registration No. MP-07TD-1079, which was being driven rashly and negligently by respondent No.2, Roshan Pandey, came from the opposite direction and dashed with the car. As a result, the car



was severely damaged, and Vijay Shukla sustained fatal injuries and died on the spot.

3. It is submitted by the learned counsel for the appellant that the learned Tribunal has assumed the income of the deceased as Rs. 5,000/- per month, whereas the salary certificate (Ex.P/1) was filed and proved by the employer, Bhoopendra Kumar Shukla (AW/3). As per the said certificate, the salary of the deceased was Rs. 20,000/- per month. She placed reliance on the following judgments:

- (i) Nagar Mal (Shri) and others v. The Oriental Insurance Company Ltd and others MACD 2018 (1) (SC) 36
- (ii) *M. Seetharama @ Seetharama Gowda vs. Manager, Future Generali India Insurance Co. Ltd. and Others*, 2025 (2) T.A.C. 760 (S.C.)
- (iii) Shaik Sadik Shaik Rafique v. Reliance General Insurance Company Ltd 2025 (2) T.A.C. 709
- (iv) *Lakshmana Gowda B.N. vs. Oriental Insurance Co. Ltd. and Another*, 2023 ACJ 1481,
- (v) Sadhana Tomar and others v. Ashok Kushwaha and other 2025 ACJ 414
- (iv) *Seema Rani and Others vs. Oriental Insurance Co. Ltd. and Others*, 2025 ACJ 338
- (vii) Gurpreet Kaur and others vs. United India Insurance Co. Ltd and others 2023 ACJ 279.

It is further submitted that loss of consortium has also not been granted to the appellants/claimants, which ought to have been granted with a 20% increase as per the dictum laid down in *National Insurance Company Limited v. Pranay Sethi and Others*, (2017) 16 SCC 680. On these two grounds, she prays for enhancement of the amount of compensation.

4. Per contra, learned counsel for the respondent—Insurance Company has opposed the prayer on the ground that the accident occurred in the year 2016; therefore, the consortium cannot be considered with a 20% increase. It is further submitted that the salary mentioned in Ex.P/1 is not proved by cogent and reliable evidence. The learned Tribunal has properly assessed and awarded an appropriate amount of compensation; therefore, there is no ground for enhancement.



5. Heard the learned counsel for the parties and perused the record.
6. As far as the income of the deceased is concerned, learned Tribunal has assumed Rs.5,000/- per month on the date of death i.e. 18.1.2016. The salary slip of the deceased got exhibited as Exhibit P/1 issued by Bhoopendra Shukla AW/3 in this respect. It is admitted by Aneeta (AW/1) and Bhoopendra (AW/3) that deceased was real brother of Bhoopendra (AW/3). In such a situation, the evidence in respect of Ex.P/1 ought to be cogent and reliable. It is admitted by the Anita (AW/1) that she has no documentary evidence in respect to the income of her husband as Rs.20,000/- per month. Neither his husband was submitting any income tax return nor had any bank account.
7. Bhoopendra (AW/3) has also admitted in his cross-examination that he has not got registered himself or the business of operation of vehicle dumper. He has also not submitted any permit with regard to the vehicle. He has not maintaining any register for the presence of employer or any other document with regard to the disbursement of the salary of the deceased and other employees. No receipt has been taken from the employees for receiving salary by them.
8. It is not found believable that when Bhoopendra (AW/3) has engaged the deceased as manager for operating the vehicles and giving salary of Rs.20,000/- per month but has not maintained any documents in respect of the deceased and other employees with regard to their appointment, work and salary. There is no document on record that for operating the business of vehicle, Bhoopendra has obtained any permission and for that purpose he has engaged the deceased as manager and the deceased was in receipt salary as



Rs.20,000/- per month from him. These evidence might be available but could not produced before the learned Tribunal by the claimant for the reasons best known to him. Mere preparing as salary certificate on plain paper produced by Bhoopendra is not sufficient to prove the income of the deceased as Rs.20,000/- per month.

9. In the case of **Syed Basheer Ahamed and others Vs. Mohammed Jameel and another**, (2009)2 SCC 225, the Hon'ble Apex Court has held that onus lies on the claimant to prove his income by leading reliable and cogent evidence before the Tribunal. Bare assertions in the claim petition in this behalf is not sufficient to discharge the onus with regard to proving the income. Paragraphs 14 and 21 of the decision are relevant which are as infra.

"14. Similarly, although the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons affected nor should it be punitive to the person(s) liable to pay compensation. The determination of compensation must be based on certain data, establishing reasonable nexus between the loss incurred by the dependants of the deceased and the compensation to be awarded to them. In a nutshell, the amount of compensation determined to be payable to the claimant(s) has to be fair and reasonable by accepted legal standards.

21. In the instant case, the main grievance of the appellant is that the High Court erred in reducing the monthly income of the deceased from Rs 7000 to Rs 4000. More so, when the claim of the appellants was that the deceased was earning about Rs 20,000 per month. It needs little emphasis that insofar as the question of earnings of the deceased is concerned, the onus lies on the claimants to prove this fact by leading reliable and cogent evidence before the Tribunal. A bare assertion in the claim petition in that behalf is not sufficient to discharge that onus." 7. In absence of cogent & reliable evidence as regards occupation & income of the appellant, it would be appropriate to assume the notional income of the appellant."

10. In the light of the aforesaid discussion, it is not found proved that the deceased was working as a manager, and was receiving a salary of Rs.



20,000/- per month. The learned Tribunal assumed the income of the deceased to be Rs. 5,000/- but without any cogent basis. In this regard, the minimum wages declared by the Labour Department may be resorted to. Since the educational qualification and other skills of the deceased have not been established by the claimant/appellants, therefore, in the considered opinion of this Court, the minimum wages of an unskilled labourer can be assumed as the income of the deceased, which, on the date of the accident, was Rs. 6,575/-.

11. As far as the dependency is concerned, the learned Tribunal has rightly assessed the dependency as  $\frac{3}{4}$  for the claimants, who are the widow, mother, father, and children of the deceased, total five in number. The learned Tribunal has also awarded 40% of the compensation towards future prospects, and considering the age of the deceased as 35 years, the multiplier of 16 has been appropriately applied. However, as far as the loss of consortium is concerned, it ought to be awarded to each claimants @ 40%/.

12. In the case of **Nagar Mal (Shri) and others v. The Oriental Insurance Company Ltd and others** MACD 2018 (1) (SC) 36 the Hon'ble Apex held that in absence of proof of income, assessment of income of the deceased as Rs.6000/- per month is appropriate.

13. In the case of *M. Seetharama @ Seetharama Gowda vs. Manager, Future Generali India Insurance Co. Ltd. and Others*, 2025 (2) T.A.C. 760 (S.C.), in the year 2015 looking to the minimum wage of unskilled worker, Rs.10,000/- was assumed as the income of the injured. In the case of **Shaik Sadik Shaik Rafique v. Reliance General Insurance Company Ltd** 2025 (2)



T.A.C. 709 the Supreme Court considering that claimant is an unskilled worker, took his monthly income at Rs.9,000/-.

14. In the case of *Lakshmana Gowda B.N. vs. Oriental Insurance Co. Ltd. and Another*, 2023 ACJ 1481, the Hon'ble Apex Court even in the absence of the examination of employer but looking to the material on record had assumed the income of the injured as Rs.8,000/- per month.

15. In the case of *Sadhana Tomar and others v. Ashok Kushwaha and other* 2025 ACJ 414 the monthly income of the deceased was assumed as Rs.6,500/- keeping in view the minimum wages of unskilled worker. In the case of *Seema Rani and Others vs. Oriental Insurance Co. Ltd. and Others*, 2025 ACJ 338, the income of the deceased, who was working in the State Electricity Department and drawing Rs. 50,000/- per month, was assumed to be Rs. 2,80,140/- per year.

16. In the case of *Gurpreet Kaur and others vs. United India Insurance Co. Ltd and others* 2023 ACJ 279, the Apex Court observed that minimum wages cannot be a guiding factor to evaluated monthly income, where positive evidence has been led. The Apex Court considering that deceased was paying monthly installment of Rs.11,550/- maintaining a family of 5 members and owning a tractor and motorcycle fixed income at Rs.25,000/- per month.

17. In the case of *Govind Yadav vs. The New India Insurance Co. Ltd.*, (2011) 10 SCC 683, the Hon'ble Apex Court held that in the absence of cogent and reliable evidence on record regarding the income of the deceased, the minimum wage declared can be adopted as the income of the deceased.

18. The law laid in the aforesaid cases, gives a clear indication that if the



income of the deceased or injured has been established by reliable evidence before the Tribunal then such proved income ought to be assumed as the income of the deceased or injured. If the income has not been got proved with cogent and reliable evidence, then minimum wage of the worker may be taken as the income of the deceased/injured. It is pertinent to mention that in different States the rate of minimum wages of unskilled workers are different. The rate of minimum wage prevailing in the Madhya Pradesh particularly in the region where deceased or claimant was residing would be applicable. In this case as discussed aforesaid that the claimants are failed to prove the income of deceased as Rs.20,000/- per month, hence, in the considered opinion of this Court, the minimum wage of unskilled labour may be resorted to in this case which seems to be appropriate.

19. As far as the submission of the learned counsel for the appellant regarding 20% increase in the amount under other heads, namely loss of estate, funeral expenses and loss of consortium is concerned, these amounts of compensation are payable in light of the judgment in **National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680**, which was passed in the year 2017. The relevant para- 59.8 of the said judgment is reproduced as under:

59.8 Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and 15,000/- respectively. The aforesaid amount should be enhanced at the rate of 10% in every three years.

The language in aforesaid para clearly indicates that such increase in every year is prospective in nature which shall apply after lapse of three years from the date of the judgment. In the present case, the accident



occurred in the year 2016; therefore, no such increase applies in the present case.

20. Resultantly, the assessment of the compensation in this case as under:

Sr. No.	Head	Amount of compensation awarded by Claims Tribunal	Amount of Compensation assessed by this Court
1	income	5000/-	Rs.6575/-
2	dependency	3/4	3/4
3	future prospects	40%	40%
4.	Multiplier	16	16
5	Loss of income	10,08,000/-	$(6575 \times 12 = 78,900/-) \times 3/4 = 59,175/-$ $+40\% = 82,845 \times 16 = 13,25,520/-$
6.	Loss of consortium	40,000/-	2,00,000/-
7.	Loss of Estate	15,000/-	15,000/-
8	Funeral Expense	15,000/-	15,000/-
9.	Total	10,78,000/-	15,55,520/-
10	Additional Enhancement		4,77,520/-

21. Rest of the terms and condition of the impugned award passed by the learned Tribunal shall remain intact.

22. Ex.consequenti, the appeal stands disposed of with the enhancement of Rs.4,77,520/- in the compensation amount.

23. In view of the aforesaid, the appeal stands disposed of.

(RAJENDRA KUMAR VANI)  
JUDGE