

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE DEEPAK KUMAR AGARWAL
ON THE 2nd DECEMBER, 2022
MISC.APPEAL NO. 6056 OF 2019

Between:-

**1. AKHTARI BANO, WIFE OF LATE
SHRI HAMID KHAN, AGE-42 YEARS,
OCCUPATION- HOUSEWIFE,
RESIDENT OF RANIPURA, NEAR
HARIDARSHAN SCHOOL, JHANSI
ROAD, LASHKAR, GWALIOR
(MADHYA PRADESH)**

**2. ASHIF KHAN, SON OF LATE SHRI
HAMID KHAN, AGE-23 YEARS,
RESIDENT OF RANIPURA, NEAR
HARIDARSHAN SCHOOL, JHANSI
ROAD, LASHKAR, GWALIOR
(MADHYA PRADESH)**

.....APPELLANTS

(SHRI MAHESH HASWANI- ADVOCATE)
AND

1 AZAD ALI, SON OF SHRI SAUKAT MIYA, RESIDENT

- OF MAMA KA BAZAR, KAITH WALI GALI,
LASHKAR, GWALIOR (MADHYA PRADESH)
(OWNER- AUTO NO. MP07R 3343)
- 2 TATA AIG GENERAL INSURANCE COMPANY
LIMITED 317-320, INDRPRASHTHA TOWER, THIRD
FLOOR, 6TH M.G. GOAD, INDORE (MADHYA
PRADESH) THROUGH ITS LEGAL MANAGER
- 3 SALMAN KHAN SON OF SHRI CHAND KHAN, AGE-
23 YEARS, OCCUPATION- DRIVER, RESIDENT OF
APAGANJ, NEAR POLICE CHOKI, MADHOGANJ,
LASHKAR, GWALIOR (MADHYA PRADESH)
[DRIVER- AUTO NO. MP07R 3343]
.....RESPONDENTS

***(SHRI B.K. AGRAWAL- ADVOCATE FOR THE
RESPONDENT NO.2- INSURANCE COMPANY)***

*The Misc. Appeal coming on for hearing this day, the court
passed the following:*

ORDER

Being aggrieved by the impugned Award dated 29-08-2019 passed by 13th Member, Motor Accident Claims Tribunal, Gwalior in Motor Accident Claim Case No. 681 of 2017, the present Miscellaneous Appeal under Section 173(1) of the Motor Vehicles Act, 1988 has been preferred by appellants- claimants for

enhancement of compensation amount.

Prosecution case, in brief, is that on 29-04-2017 at about 12:30- 01:00 in the night after finding his work deceased Hameed Khan was going to his house towards Ranipur by pulling his handcart and when he reached near Naya Bazar Chauraha, an auto bearing registration No.MP07-R-3343 being driven by respondent No.3 rashly and negligently dashed against the deceased as a result of which, deceased Hameed Khan sustained grievous injuries and thereafter, he was hospitalized and during treatment, he died on 05-05-2017 in the Government Hospital, Gwalior.

It is the contention of counsel for the appellants- claimants that while passing the impugned Award, the Claims Tribunal has determined monthly income of deceased at Rs.5,500/- only which is on the lower side and has also awarded 10% of monthly income towards future prospect which is on the lower side. Hence, an additional compensation of Rs.2 lac may be awarded in favour of appellants-claimants along with interest @ 12% per annum from the date of filing of claim petition till its realization.

On the other hand, the counsel for the Insurance Company opposed the contention of appellants-claimants and prayed for dismissal of this appeal.

It is not in dispute that the alleged accident took place by the offending vehicle being driven by respondent No.3 herein. The owner of the offending vehicle is respondent No.1 herein and the insurer is respondent No.2 herein and in the said accident, deceased

Hameed Khan died who was working as a worker for transportation of instruments of the band party through handcart. After recording evidence of the parties and the documents available on record, the Claims Tribunal passed an Award to the tune of Rs.7 lac along with interest @ 7% per annum in favour of the appellants- claimants with a liberty to the Insurance Company to recover the same from the owner and driver of offending vehicle.

From perusal of record of the Claims Tribunal, it is evident that the accident took place in the year 2017 and the age of deceased appears to be between 45-50 years as per postmortem report. The deceased was only an earning member of his family. Although no document regarding his income has been produced before Claims Tribunal, but the notional income of deceased has to be taken into consideration at Rs.7,125/- per month. The learned Claims Tribunal has rightly assessed the dependency as 2/3rd and 10% towards future prospect. Looking to the age of the deceased, by applying multiplier of 13, the appellants- claimants are entitled for the following compensation amount:-

1. Yearly income @ Rs. 7,125 pm /-x 12	=Rs. 85,500/-
2. Future prospect (10%)	=Rs. 8,550/-
3. Dependency (2/3 rd)	=Rs. 62,700/-
4. Multiplier of 13	= Rs. 8,15,100/-
5. Other heads	= Rs. 70,000/-

Total = **Rs. 8,85,100/-**

The Claims Tribunal has already awarded Rs.7 lac as compensation in favour of claimants. Therefore, in addition, the appellants- claimants are entitled for compensation to the tune of **Rs.1,85,100/-** and the said amount shall carry interest at the rate of 7% per annum as awarded by Claims Tribunal from the date of filing of claim petition till its realization.

So far as the liability of the Insurance Company is concerned, the Insurance Company shall be liable to pay and recover from the owner and driver of the offending vehicle in the light of judgment passed by the Hon'ble Supreme Court in the matter of **Shamanna & Another vs. Divisional Manager, Oriental Insurance Company Limited & Others (2018) 9 SCC 650**.

Accordingly, the impugned Award dated 29-08-2019 passed by 13th Member Motor Accident Claims Tribunal, Gwalior in Motor Accident Claim Case No.681 of 2017 is **modified** to the extent mentioned above. Appeal stands partly **allowed**.

(Deepak Kumar Agarwal)
Judge