

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 14th OF SEPTEMBER, 2023

MISC. APPEAL No. 1450 of 2012

BETWEEN:-

DATINDER KAUR AND 3 ORS. W/O LATE SARVJEET SINGH
1. JAT, AGED ABOUT 25 YEARS, OCCUPATION: HOUSEHOLD
STATION ROAD, MALHARGARH, DISTT. MANDSAUR (MADHYA
PRADESH)

RAMANJEET SINGH S/O SARVJEET SINGH JAT, AGED ABOUT
2. 3 YEARS, OCCUPATION: MINOR THR: APPELLANT NO.1
STATION ROAD, MALHARGARH (MADHYA PRADESH)

AVTARSINGH S/O SAHEB SINGH JAT, AGED ABOUT 60 YEARS,
3. OCCUPATION: NIL STATION ROAD, MALHARGARH (MADHYA
PRADESH)

BALVINDER KAUR W/O AVTARSINGH JAT, AGED ABOUT 58
4. YEARS, OCCUPATION: HOUSEHOLD STATION ROAD,
MALHARGARH (MADHYA PRADESH)

....APPELLANTS

(SHRI SOURABH NEEMA, ADVOCATE FOR APPELLANTS)

AND

MOHANLAL AND 2 ORS. S/O RATANLAL MALVIYA, AGED
1. ABOUT 33 YEARS, OCCUPATION: DRIVER VILL. ARNIYA
NIZAMUDDIN, TEH. AND DISTT. MANDSAUR (MADHYA
PRADESH)

JAIDEEP S/O SURENDRA PATIDAR, AGED ABOUT 30 YEARS,
2. OCCUPATION: TRUCK OPERATOR VIL. PAHEDA, TEHSIL
MALHARGARH (MADHYA PRADESH)

THE NEW INDIA INSURANCE CO. LTD. THR: BRANCH
3. MANAGER BRANCH OFFICE MHOW NEEMUCH ROAD,
NAHTA CHOURAHA MANDSAUR (MADHYA PRADESH)

.....RESPONDENTS

(SHRI SUDARSHAN PANDIT, ADVOCATE FOR RESPONDENT NO.3)

This appeal coming on for orders this day, the court passed

the following:

ORDER

This appeal has been filed by the appellants/claimants under Section 173(1) of Motor Vehicles Act, 1988, is arising out of award dated 20.04.2012 passed by Third Additional Member, Motor Accident Claims Tribunal, Mandsaur (MP), in Claim Case No.105/2011 on account of inadequacy of compensation and seeking enhancement of compensation.

(2) The date of accident, negligence and the issue of liability is not in dispute, however the finding recorded by the Tribunal in this regard is not in question. As per the finding of the Tribunal in the case of death of **Sarvjeet Singh Jat** the amount of compensation has been allowed accepting earning of **Rs.3000/- per month** and the total amount of compensation has **awarded Rs.420500/-** with interest from the date of awarding of the claim case.

(3) Counsel for the appellants contended that the compensation awarded by the Tribunal by accepting earning of Rs.3,000/- per month is on very lower side and he submitted that the Tribunal has erred in holding the deceased that he was unskilled labour and was earning Rs.3,000/- per month only, while it is proved at the time of accident the deceased was only aged about 26 years and was a successful businessman and was earning Rs.50,000/- per month by running a petrol pump, hotel (*Dhaba*) and other agricultural works. He further submitted that the Tribunal has erred in deducting 1/3rd of the income of the deceased towards the personal expenses. The Tribunal has also erred in not considering the future prospects

while it was an admitted fact that at the time of the accident the deceased was only aged about 26 years and was earning a handsome amount. It was also argued that the learned Tribunal has erred in applying the multiplier of 17 only whereas looking to the age of deceased and dependents a higher multiplier ought to have been applied. He further submitted that the learned Tribunal has erred in overlooking the oral and documentary evidence and IT returns of the deceased on record which proves that at the time of accident the deceased was having a handsome income. Hence prays for enhancement of the awarded amount and the impugned award deserves to be set-aside.

(4) *Per contra*, counsel for the respondent No.3 – Insurance Company contended that Tribunal has rightly awarded the compensation and argued in support of the finding recorded by the Tribunal.

(5) Counsel for the appellant contended that he has filed the income tax return of the deceased before the trial Court i.e. Ex.P/3. A perusal of the income tax return – Ex.P/3 shows that the same has been filed on 27.07.2007 and the accident had occurred on 14.07.2007, hence the return has been filed by some other person after the death of deceased and the same cannot be taken into consideration as possibility of them being filed by inflating the income cannot be ruled out. In *Sutinder Pal Singh Arora and Others vs. Ashok Kumar Jain and Others reported in 2004 ACJ 782* in which it has been held that if the return was filed after the death it cannot be taken into consideration as possibility of them being filed by inflating the income cannot be ruled out. So in the

considered opinion of this Court, the Tribunal has not committed any error in discarding Ex.P/3 income tax return for assessing the income of the deceased.

(6) On perusal of the record, it was found that the deceased was running the petrol pump in partnership and he is also maintaining the Dhaba (Hotel) in the name of his father and he is also doing the agricultural work, it was found that the income of the deceased was on the lower side and in view of the aforesaid and in the considered view of this Court, the just and proper amount of income of the deceased would be **Rs.6,000/- per month.**

(7) Counsel for the appellant submits that the Tribunal has erred in deducting the 1/3 of the deceased towards personal expenses because there are more than three dependents upon the deceased. He has placed reliance over the judgments of Hon'ble Apex Court in the case of *Sarla Verma vs. Delhi Transport Corporation reported in 2009 ACJ SC Page 1298. Para 14 is relevant* which reads as under:-

14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra's case, 1996 ACJ 831 (SC), the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceed six.

(8) In the present case, the father of deceased **Avtar Singh (PW/3)** was examined as a witness and he stated that he was doing the agriculture work and hence according to the evidence of Avtar Singh (PW/3) he and his wife (parents of the deceased) were not exclusively dependent upon the deceased for livelihood and hence in view of the case of *Sarla Verma (supra)* the Tribunal had rightly deducted 1/3 part of amount for the personal expenses of the deceased.

(9) Counsel for the appellants submitted that the Tribunal has erred in applying the multiplier of 17 while awarding the compensation. He submitted that the deceased was 24 years of age at the time of accident.

(10) After hearing counsel for both the parties and on perusal of the record and as per evidence adduced before the claims Tribunal, the date of birth of deceased is 20.03.1983 which is mentioned in Ex.P/1 and the driving licence and PAN card of the deceased is Ex.P/2. The accident was occurred in the year 2007, it means that on the date of incident, the deceased was around 24 years of age. As per *Sarla Verma's* case if the claimant/deceased is around 21-25 years of age at the time of accident, the multiplier of 18 would be applied for calculation. Hence it was found that the Tribunal has committed error in applying the multiplier.

(11) Hence, in view of the aforesaid discussion and in the considered opinion of this Court, the actual multiplier is 18 and the actual income of the deceased for calculation of compensation is Rs.6000/- per month instead of Rs.3000/- per month.

(12) In the case of **National Insurance Company Limited vs.**

Pranay Sethi reported in 2017 ACJ 2770, the Apex Court held that if the deceased was self employed and was having a fixed salary then the addition of 40% of the established income would be warranted where the deceased was below than the age of 40 years. In the present case, the deceased was below 25 years of age at the time of accident, so in the head of future prospects 40% of addition in his income, hence the monthly income is Rs.6000/- per month + 40% i.e. Rs.8400/-.

$$(Rs.6000/-+40%\times 12\times 18 = 18,14,400/-)$$

(13) In the case of **Magma General Insurance Company Limited Vs. Nanuram reported in 2018 ACJ 1782**, the Apex Court held that the claimants are entitled to get the amount in the consortium, like filial consortium, hence in this case, Claimant No.1 is the wife of deceased, Claimant No.2 is the child of deceased and Claimant Nos.3 and 4 are the parents of deceased. Hence in the said case, the claimants are entitled to get Rs.1,60,000/-. The appellants/claimants are entitled to get compensation amount under the following heads:

Loss of Dependency	= Rs.18,14,400.00
Funeral Expenses	= Rs. 15,000.00
Loss of Estate	= Rs. 15,000.00
Loss of Consortium	= Rs. 1,60,000.00

Total Amount	= Rs. 20,04,400.00
MACT Award	= Rs. 4,20,500.00

Enhanced Amount	= Rs. 15,83,900.00

(14) The amount is enhanced from Rs.4,20,500/- to Rs.20,04,400/- and after reducing the same the total comes to

Rs.15,83,900/- over and above the amount already awarded by the Tribunal.

(15) Counsel for the appellants submitted that the interest must be awarded from the date of filing of the claim petition instead of the date of award.

(16) *In rebuttal*, counsel for the respondent-Insurance Company opposed the same.

(17) After hearing counsel for both the parties and on perusal of the record of Tribunal in para 58 of the award, the Tribunal held that the appellants/claimants filed the claim petition on 07.11.2007 and after framing of issue on 04.08.2008, the claimants had taken continuous adjournments for adducing the evidence and he closes the evidence on 21.02.2011 and after that the Insurance Company had taken time for adducing the evidence but the Tribunal has rightly held in para 58 of the award that the Insurance Company has not delayed deliberately for adducing the evidence. A perusal of para 58 of the award of Tribunal, it was found that the Tribunal has held that the claimants are entitled for interest from the date of award instead of filing of the claim petition.

(18) In the result, the appeal is allowed in part and to the extent indicated here-in-above. The enhanced amount i.e. Rs.15,83,900/- shall bear interest at the same rate as awarded by the Tribunal. The other findings recorded by the Tribunal shall remain intact.