

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

BEFORE

HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL

MISC. APPEAL No.2354/2013

BETWEEN:-

1. SMT. GAYATRI DEVI W/O CHETAN SHARMA, AGED ABOUT 22 YEARS, OCCUPATION: HOUSE HOLD R/O 251, ALKAPURI DEWAS (MADHYA PRADESH)

2. RUDRA PRATAP S/O CHETAN SHARMA, AGED ABOUT 2 YEARS, MINOR THR GUARDIAN SMT. GAYATRI DEVI W/O CHETAN SHARMA R/O 251, ALKPURI, DEWAS (MADHYA PRADESH)

3. SATYANARAYAN SHARMA S/O LATE MAYARAM JI SHARMA, AGED ABOUT 55 YEARS, OCCUPATION: AGRICULTURE R/O GRAM ALWASA TEH HATOD DIST INDORE (MADHYA PRADESH)

4. SMT. SHARDA BAI W/O SATYANARAYAN SHARMA, AGED ABOUT 52 YEARS, OCCUPATION: HOUSE WORK R/O GRAM ALWASA TEH HATOD DIST INDORE (MADHYA PRADESH)

.....APPELLANTS

(SHRI RAJESH LAL, LEARNED COUNSEL FOR THE APPELLANTS)

AND

1. ROOP NARAYAN S/O BADRILAL SAHU, AGED ABOUT 36 YEARS, OCCUPATION: DRIVER R/O 334, GIL TRANSPORT GURU JAMBESHWAR NAGAR VAISHALI JAIPUR, RAJASTHAN (RAJASTHAN)

2. SANTOSH GIL S/O SURESH GIL, AGED ABOUT 35 YEARS,

**OCCUPATION: BUSINESS R/O 334 GIL TRANSPORT, GURU
JAMBESHWER NAGAR VAISHALI JAIPUR (RAJASTHAN)**

**3. KSHETRIYA PRABANDHAK NATIONAL INSURANCE CO.
LTD. INDORE 13 OLD PALASIYA INDORE (MADHYA
PRADESH)**

....RESPONDENTS

*(SHRI PRADEEP GUPTA, LEARNED SR. COUNSEL WITH SHRI
BHASKAR AGRAWAL FOR THE RESPONDENT/INSURANCE
COMPANY)*

MISC. APPEAL No.2278/2013

BETWEEN:-

**THE NATIONAL INSURANCE CO. LTD. THRU.
REGIONAL MANAGER 13, OLD PALASIYA, INDORE
(MADHYA PRADESH)**

.....APPELLANT

*(SHRI PRADEEP GUPTA, LEARNED SR. COUNSEL WITH SHRI
BHASKAR AGRAWAL FOR THE APPELLANT/INSURANCE
COMPANY)*

AND

**1. SMT. GAYTRIDEVI AND WD/O CHETAN
SHARMA, AGED ABOUT 22 YEARS, OCCUPATION:
HOUSE HOLD R/O 251, ALKAPURI (MADHYA
PRADESH)**

**2. RUDRAPRATAP S/O CHETAN SHARMA, AGED
ABOUT 2 YEARS, MINOR THROUGH MOTHER SMT.
GAYATRI DEVI R/O 251, ALKAPURI, DEWAS
(MADHYA PRADESH)**

**3. SATYANARAYAN SHARMA S/O LATE MAYARAM
SHARMA, AGED ABOUT 55 YEARS, OCCUPATION:
AGRICULTURE R/O VILL-ALWASA, TEH-HATOD,
DISTT-INDORE (MADHYA PRADESH)**

4. SMT. SHARDA BAI W/O SATYANARAYAN, AGED ABOUT 52 YEARS, OCCUPATION: HOUSEHOLD R/O VILL-ALWASA, TEH-HATOD, DISTT-INDORE (MADHYA PRADESH)

5. ROOPNARAYAN S/O BADRILAL SAHU, AGED ABOUT 36 YEARS, OCCUPATION: DRIVER R/O 334, GIL TRANSPORT, GURU JAMBESHWAR NAGAR, VAISHALI, JAIPUR (RAJ.) (RAJASTHAN)

6. SANTOSH GIL S/O SURESH GIL, AGED ABOUT 35 YEARS, OCCUPATION: BUSINESS 334, GIL TRANSPORT, GURU JAMBESHWAR NAGAR, VAISHALI, JAIPUR (RAJ.) (RAJASTHAN)

.....RESPONDENTS

(SHRI REJESH LAL, LEARNED COUNSEL FOR RESPONDENTS NO.1 TO 4)

.....
Reserved on : 22.11.2023.

Pronounced on : 22.12.2023.

*These miscellaneous appeals having been heard and reserved for orders, coming on for pronouncement this day, **JusticeAchal Kumar Paliwal** pronounced the following:*

ORDER

This common order shall govern disposal of both M.A.No.2354/2013 and M.A.No.2278/2013 as both appeals arise out common award dated 13.08.2013.

2. These appeals by the appellants/claimants (M.A.No.2354/2013) and Insurance Company (M.A.No.2278/2013) under section 173(1) of

the Motor Vehicles Act are arising out of the award dated 13.08.2013 passed by Member, MACT, Dewas district Dewas in Claim Case No.248/2009 seeking enhancement/reduction of compensation amount awarded by the Tribunal.

3. Learned counsel for the appellant/claimants has submitted that Tribunal has assessed deceased's income on the lower side. Deceased was appointed on a monthly salary of Rs.14,603/-. Hence, his monthly income should be determined as Rs.14,603/- per month. Further, annual bonus of Rs.55,000/- be also added in the income.

4. Learned counsel for the Insurance Company has submitted that Tribunal has assessed deceased's income on the higher side. As per deposition of PW/2 Anil Sharma and salary slip Ex.P/17, Deceased's basic salary was Rs.8190/- per month. Learned counsel for the Insurance Company, after referring to para-11 of impugned award, submits that Tribunal has wrongly assessed deceased's monthly income as Rs.12,784/- by including other allowances which is not permissible in law. Learned counsel has submitted that only allowances under the head of HRA and education allowances should be added for calculating monthly income and other allowances i.e. washing allowance, conveyance allowance, supervisory allowance, CCA, medical allowance etc. cannot be added for determining monthly income. In this connection learned counsel for the appellant has relied upon the decision in the case of *National Insurance Company Ltd. Vs. Indira Srivastava and others* – (2008) 2 SCC 763. It is also urged that as deceased was not in any permanent job and he was in job for less than 9 months, therefore, 50% of the income cannot be added under the head of future prospects, instead only 40% of the income should be

added as future prospects. Therefore, Tribunal has wrongly added 50% as future prospects while calculating deceased's income. Learned counsel after referring to para-24 of the order passed in the case of *Sarla Verma & others vs. Delhi Transport Corporation & another – AIR 2009 SC 3104* submits that bonus cannot be added for calculating /determining income. In Sarla Verma's case (supra) bonus has already been taken into consideration while allowing addition under the head of future prospects. Therefore, while calculating / determining income bonus cannot be added separately.

5. I have heard learned counsel for parties and perused record of the case.

INCOME / SALARY:-

6. So far as monthly salary of deceased Chetan Sharma is concerned, from depositions of Smt.Gayatri Devi, Anil Sharma and Ex.P/16 (salary certificate) & P/17 (salary slip), it is clearly established that at the time of accident, deceased was working in Eicher Engineering Company as Accounts Officer and he was appointed on above post on 04.04.2008.

7. Break-up of Ex.P/17 (pay slip) is as under:

ECV Dewas – 2009-10

Pay-slip for the month of July, 2009

Name : Chetan Sharma	ESIC# Days paid 31.00
Employee ID -00916	PF# 743 LOP Days .00
Designation – Officer	DOJ 04/04/2008 OT days-00
Grade -M1a	EL Balance -13.00
Dept. –Accounts & Finance	CL Balance -2.00

EARNINGS			DEDUCTIONS	
Description	Basic structure	Payable (Rs)	Description	Amount (Rs)
Basic	8190.00	8190.00	Provident Fund	983.00
House Rent Allowance	500.00	500.00	DBE Society	83
Conveyance Allowance	300.00	300.00		12.00
Washing Allowance	325.00	325.00	Loan deduction	282.00
Supervisory Allowance	2985.00	2985.00	EMP welfare fund	1250.00
Education allowance	100.00	100.00		6.00
City Com. Allowance	50.00	50.00		
Medical Allowance	417.00	417.00		
GROSS PAY		12867.00	Gross deduction	2616.00
Net Pay	10251.00	Ten Thousand Two hundred fifty one only		

8. As per above salary slip Ex.P/17 basic monthly salary of deceased appears to be Rs.8190/- and not Rs.14603 as deposed by PW/2 Anil Sharma. As per Ex.P/17 (pay slip), gross salary of deceased is Rs.12867/-, including perks as mentioned in the salary slip. It is well established that while calculating salary/ income, statutory deductions such as professional tax etc. have to be excluded. In the instant case, as per Ex.P/17 (salary slip), Rs.83/- was being deducted as professional tax.

9. So far as other perks, as mentioned in above salary slip, are concerned, Hon'ble Apex Court in the case of *National Insurance Co. Ltd. Vs. Indira Srivastava and others – (2008) 2 SCC 763* has discussed and examined the matter and has determined as to which perks are to be included and which perks are to be excluded, while calculating income.

10. In the case of *Indira Srivastava (supra)*, Hon'ble Apex Court has held as under:-

2. Connotation of the term “income” for the purpose of determination of 'just compensation' envisaged under Section 168 of the Motor Vehicles Act, 1988 (the Act) calls for question in this appeal.....A salary certificate was produced in the said proceedings which is in the following terms:

Earnings	Amount	Deductions	Amount
Basic	3420.00	CPF(S)	488.00
Special Pay	70.00	CPF (Add)	
FDA	350.00	GIS	3.75
VDA	1040.00	LIC/GIS	509.10
CCA	100.00	HRR	
HRA	1047.00	MSPI	60.00
Washing All.	75.00	Soceity	576.00
Conv.	225.00	Union	3.00
Cant. Sub	265.00	HBA	340.00
CEA	2040.00	B.fund	10.00
Total	8632.00	Total	1089.85

9. The term “income” has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.

10. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We

cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined. For the aforementioned purpose, we may notice the elements of pay, paid to the deceased :

Basic	63,400.00
Conveyance allowance	12,000.00
Rent CO lease	49,200.00
Bonus (35% of basic)	21,840.00
Total	1,45,440.00

In addition to above, his other entitlements were:

Contribution to PF-10% basic	Rs.6240 (p.a)
LTA reimbursement	Rs.7000(p.a)
Medical reimbursement	Rs.6000(p.a)
Superannuation 15% of basic	Rs.9360 (p.a)
Gratuity contribution-5.34% of basic	Rs.3332 (p.a)
Medical policy – self and family	@Rs.55,000 (p.a)
Education scholarship @ Rs.500 payable to his two children directly	Rs.12,000 (p.a)

11. There are three basic features in the aforementioned statement which require our consideration :

1. Reimbursement of rent would be equivalent to HRA;
2. Bonus is payable as a part of salary; and
3. Contribution to the Provident Fund.

12. We may furthermore notice that apart therefrom, superannuation benefits, contributions towards gratuity, insurance of medical policy for self and family and education scholarship were beneficial to the members of the family.

13. We have, however, no doubt in mind that medical reimbursement which provides for a slab and which keeping in view the terminology used, would mean reimbursement for medical expenses on production of medical bills and, thus, the same would not come within the purview of the aforementioned category.

16. We may, however, notice that a Division Bench of this Court in *Asha & Ors. v. United Indian Insurance Co. Ltd. & Anr.* [(2008) 2 SCC 774], whereupon reliance has been placed by Mr. Satija, was considering a case where, like the present one, several perks were included in salary. We may reproduce the salary certificate hereto below :

"This is to certify that Shri A.M. Raikar was working as AG 111 in this organisation has been paid the following Pay & Allowances for the month of May, 1995:

Earnings	Amount	Deductions	Amount
Basic	3420.00	CPF(S)	488.00
Special Pay	70.00	CPF (Add)	
FDA	350.00	GIS	3.75
VDA	1040.00	LIC/GIS	509.10
CCA	100.00	HRR	
HRA	1047.00	MSPI	60.00
Washing All.	75.00	Soceity	576.00
Conv.	225.00	Union	3.00
Cant. Sub	265.00	HBA	340.00
CEA	2040.00	B.fund	10.00
Total	8632.00	Total	1089.85

Net payable Rs.6642.00 (Rupees six thousand six hundred and forty two only)."

In that case, this Court held :

“ 9. Lastly it was submitted that the salary certificate shows that the salary of the deceased was Rs.8,632/-. It was submitted that the High Court was wrong in taking the salary to be Rs.6,642/-. It was submitted that the High Court was wrong in deducting the allowances and amounts paid towards LIC, Society

charges and HBA etc. We are unable to accept this submission also. The claimants are entitled to be compensated for the loss suffered by them. The loss suffered by them is the amount which they would have been receiving at the time when the deceased was alive. There can be no doubt that the dependents would only be receiving the net amount less 1/3rd for his personal expenses. The High Court was therefore right in so holding."

17. This Court in *Asha* (supra) did not address itself the questions raised before us. It does not appear that any precedent was noticed nor the term 'just compensation' was considered in the light of the changing societal condition as also the perks which are paid to the employee which may or may not attract income tax or any other tax. What would be 'just compensation' must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay packet is what the dependents have lost due to death of the deceased. It is in the nature of compensation for future loss towards the family income.

19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contra distinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.

20. The term 'income' in P. Ramanatha Aiyar's *Advanced Law Lexicon* (3rd Ed.) has been defined as under :

"The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture."

It has also been stated :

“ INCOME' signifies 'what comes in' (per Selborne, C., *Jones v. Ogle*, 42 LJ Ch.336). 'It is as large a word as can be used' to denote a person's receipts '(per Jessel, M.R. *Re Huggins*, 51 LJ Ch.9355), income is not confined to receipts from business only and means periodical receipts from one's work, lands,

investments, etc. **Secy. to the Board of Revenue, Income Tax v. Al. Ar. Rm. Arunachalam Chettiar & Brothers** (AIR 1921 Mad 427). **Ref. Vulcun Insurance Co. Ltd. v. Corpn. Of Madras** (AIR 1930 Mad 626).”

21. If the dictionary meaning of the word 'income' is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income-tax or profession tax although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute.

24. Yet again in *New India Assurance Co. Ltd. v. Charlie & Anr* [(2005) 10 SCC 720], the same view was reiterated. However, therein although the words 'net income' has been used but the same itself would ordinarily mean gross income minus the statutory deductions. We must also notice that the said decision has been followed in *New India Assurance Co. Ltd. v. Kalpana (Smt.) & Ors.* [(2007) 3 SCC 538].

25. The expression 'just' must also be given its logical meaning. Whereas it cannot be a bonanza or a source of profit but in considering as to what would be just and equitable, all facts and circumstances must be taken into consideration.

26. In view of our finding above mentioned, the appeal is to be allowed in part in so far as the High Court had directed deduction of medical reimbursement and tax elements on the entire sum which according to the statute constitute income. But we decline to do so for two reasons. Firstly, the accident had taken place as far back as on 1st September, 1997 and secondly the Tribunal as also the High Court failed to take into consideration rise in income of the deceased by way of promotion or otherwise.

27. For the aforementioned reasons, we are not inclined to interfere with the impugned judgment. This appeal is, therefore, dismissed. In the facts and circumstances of the case, there shall be no order as to costs.”

11. Therefore, in view of principles laid down by Hon’ble Apex Court in *Indira Srivastava (supra)*, in this Court’s opinion,

following perks, as mentioned in Ex.P/17 (pay slip), needs to be included in Basic monthly salary (Rs.8,190/-) of deceased:

HRA	-Rs.500/-
Education allowance	-Rs.100/-
Supervisory allowance	-Rs.2985/-
CCA	-Rs.50/-
Medical allowance	-Rs.417

12. Thus, if above perks are calculated alongwith basic salary, then, deceased Chetan Sharma's monthly gross salary comes to Rs.12,242/- but washing allowance Rs.325/- and conveyance allowance Rs.300/- cannot be included while computing monthly salary and the same are excluded from gross salary.

13. Thus, in view of above, after deducting professional tax of Rs.83/-, **net salary of deceased comes to Rs.12,159/-.**

14. So far as computing bonus in above net salary is concerned, learned counsel for the appellant has submitted that Rs.55,000/- annual bonus be also included while computing/calculating monthly salary of the deceased. It is correct that in Ex.P/16 certificate Rs.8400/- is mentioned as bonus and Rs.46,000/- as performance pay. PW/2 Anil Sharma, who has proved documents Ex.P/16 /Ex.P/17, has stated in his examination-in-chief that Rs.55,000/- was payable for one year as performance bonus but this witness has admitted in his cross examination that Chetan Sharma (deceased) did not work in his company for minimum none months, hence, no

performance bonus was given to him. Further, from documentary as well as oral evidence, it is not proved that any bonus payable to deceased was either part of salary or amount of bonus was fixed. Further, as per deposition of Anil Sharma, bonus was performance based. In view of above, in this Court's opinion, it will not be just and proper to add any bonus while calculating / computing monthly salary of the deceased.

15. In view of above facts, principles laid down in the case of *New India Assurance Co. Ltd. Vs. Gopali – 2012 ACJ 2131* do not apply to the facts of the present case because in above case bonus was being paid to deceased at the rate of 20% of his salary and it is not so in the present case.

Future Prospects:

16. So far as future prospects is concerned, perusal of impugned award reveal that learned Tribunal has awarded 50% as future prospects by holding deceased 30 years old at the time of accident. Learned counsel for the appellant/Insurance Company has submitted that Tribunal has wrongly awarded 50% as future prospects because deceased was not in permanent job. Hence, 40% should have been added as future prospects. Perusal of PW/2 Anil Sharma's testimony reveal that there is nothing in his testimony to show that job of deceased was not permanent, instead, it was temporary. No such suggestion has been given to Anil Sharma during his cross examination that deceased was not working in the company as permanent employee and he was temporarily employed with the

company. Further, there is nothing in Ex.P/16 & P/17 to show that deceased did not have permanent job in the company. Hence, it cannot be said that Tribunal has wrongly awarded 50% as future prospects.

17. Perusal of para 18 of impugned award reveal that Tribunal has also awarded Rs.1,00,000/- for spousal consortium & Rs.25,009/- for funeral expenses. But Tribunal has not awarded any amount for loss of estate & parental/filial consortium, for which an appropriate amount should have also awarded.

18. In view of discussion in the foregoing paras, the compensation payable to the claimants is recalculated as under:

Loss of dependency -Rs.24,80,436/- (i.e.
Rs.12,159+50% FP i.e. Rs.6080=18,239 - 1/3 personal
expenses i.e. 6080=12159 x 12=1,45,908 x 17=24,80,436/-)

Funeral expenses -Rs.15,000/-

Loss of Estate -Rs.15,000/-

Consortium -Rs.1,60,000/- (Rs.40,000/-x4)

TOTAL -Rs.26,70,436/-

19. Thus, the just and proper amount of compensation in the instant case is Rs.26,70,436/- as against the award of the Tribunal of

Rs.27,32,936/-. Accordingly, appellant No.1 Smt. Gayatri shall refund the difference amount (Rs.62,500/-) along with interest to appellant/insurance company, if compensation amount is already deposited & appellant/insurance company shall have right to recover difference amount (Rs.62,500/-) from appellant No.1 Smt. Gayatri. Appellant No. 3 & 4 (Satyanarayan Sharma & Smt.Sharda Bai) shall be entitled to receive only Rs.40,000/- each for “parental Consortium”.

20. In the result, the appeal filed by the claimants (MA No.2354/2013) is dismissed and the appeal filed by the Insurance Company (M.A.No.2278/2013) is partly allowed by reducing the compensation amount from Rs.27,32,936/- to Rs.26,70,436/-. The other findings recorded by the Tribunal shall remain intact.

21. Let a copy of this order be placed in the record of connected appeal.

(ACHAL KUMAR PALIWAL)
JUDGE

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