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

**BEFORE  
HON'BLE SHRI JUSTICE HIRDESH  
ON THE 1<sup>st</sup> OF SEPTEMBER, 2023**

**MISC. APPEAL No. 1700 of 2021**

**BETWEEN:-**

**THE NEW INDIA ASSURANCE CO. LTD. THR. TP HUB  
D.O. 105, SHAGUN COMPLEX, VIJAY NAGAR SQUARE,  
221 SAKET NAGAR (MADHYA PRADESH)**

**.....APPELLANT**

***(SHRI SUDHIR DANDWATE- ADVOCATE)***

**AND**

- 1. KALABAI W/O SURESH, AGED ABOUT 20 YEARS,  
OCCUPATION: LABOUR GRAM PANCHAYAT  
PIPALPATI TEH. UDAINAGAR (MADHYA  
PRADESH)**
- 2. GITABAI W/O PREMSINGH CASTE BHILALA,  
AGED ABOUT 50 YEARS, OCCUPATION: LABOUR  
KISHANGARH PIPALPATI KUNWA, GRAM  
PANCHAYAT PIPALPATI, TEH. UDAINAGAR.  
(MADHYA PRADESH)**
- 3. BHARAT S/O JADISH SISODIYA, AGED ABOUT 33  
YEARS, OCCUPATION: DRIVER VEHICLE NO. M.P.  
09F.A.8214 GRAM GAGHOGARH TEH. AND DIST.  
DEWAS (MADHYA PRADESH)**
- 4. DHARMENDRA SINGH S/O PREMSINGH  
SHAKTAVVAT (RAJPUT) OCCUPATION: OWNER  
VEHICLE NO. M.P. 09F.A.8214 GRAM AAGURLI  
TEH. BAGLI, (MADHYA PRADESH)**

**.....RESPONDENTS**

***(SHRI GAURAV KUMAR VERMA, LEARNED COUNSEL FOR THE  
RESPONDENT NO.4 ALONGWITH SHRI RITESH INANI, LEARNED  
COUNSEL FOR THE RESPONDENT NO.2.)***

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*This appeal coming on for hearing this day, the court passed the  
following:*

**ORDER**

This miscellaneous appeal is filed by the New India Assurance Co. Ltd. under Section 173(1) of the Motor Vehicles Act, 1988. This appeal is arisen out of the award dated 17.02.2021 passed by the Motor Accident Claims Tribunal (hereinafter referred to as the Tribunal) Bagli, District- Dewas in Claim Case No.07/2018 on account of reduction of compensation.

2. The date of accident negligence and issue of liability is not disputed however, the finding recorded by the Tribunal is not in question. As per the finding of the Tribunal in the case of death of Suresh, the amount of compensation has been allowed accepting the earning of Rs.4,500/- per month with total amount of compensation is Rs.5,63,600/- with interest.

3. Learned counsel for the appellant being aggrieved by award filed this appeal on the ground that Tribunal grossly erred in holding both the applicants/respondents as dependency on the earnings of the deceased. In spite of clear admission of respondent No.2 Geetabai after the death of Suresh his wife went to her father's house and got remarried. As such the only dependent could be Geetabai mother of the deceased, and therefore the deduction for personal expenses could not be exceeded to 50%. He further submitted that Tribunal further erred in not considering that respondent No.1 Kalabai did not appear before the Tribunal, which clearly shows that Kalabai got remarried and she was not dependent on the deceased. On this ground the New India Assurance Co. Ltd. seek the reduction of the compensation which was awarded by the Tribunal.

4. On the other hand learned counsel for the claimant contended that the Tribunal has rightly awarded the compensation and argued in support of finding recorded by the Tribunal.

5. After hearing both the parties and perusal of the record it was found that Kalabai was the wife of the deceased(Suresh) and respondent Geetabai was the mother of the deceased(Suresh). It was also found that Geetabai admitted in the evidence that Kalabai went to her father's house and got remarried.

6. In "*2020 ACJ 307 Renu Rani Shrivastav and Others v. New India Insurance Company Ltd.*" the Apex Court held that grant of compensation by the Tribunal in respect of death of a person in an accident will not be affected by the family arrangements of the party in as much as compensation has per law has to be awarded by the Court in favour of claimant.

7. In *Iffco Tokio General Insurance Company Ltd. v. Smt. Bhagyashri Ganesh Gaikwad and Others*" first appeal No.111/19 decided on 13.03.2023 passed by the Bombay High Court held in para 10 inspite of issues of remarriage of claimant No. 1 in my view, it appears from record that at the time of death of her husband she was only 19 years old. Thereafter, she filed a claim petition for getting compensation during the pendency of the claim petition she got remarried.

8. One cannot expect that in getting compensation of deceased/husband the widow has to remain widow for life time or during getting compensation. Considering the age of claimant at the time of accident she was wife of the deceased which is sufficient ground that she is entitled for the compensation. However, after death of her husband she got remarried cannot be taboo to get compensation. Section 166 of Motor Vehicles Act states about who can file application for Compensation which is reproduced below:

**“Section 166. - Application for Compensation – 1) An application for compensation arising out of an accident of the**

**nature specified in sub-section (1) of section 165 may be made -**

**(a) by the person who has sustained the injury; or**

**(b) by the owner of the property; or**

**(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or ----- ”**

9. This section provides that by all or any legal representative of deceased can file application for compensation. Claimant Kalabai was wife of the deceased at the time of the accident being legal representative she filed application for compensation which is legal.

10. In "*Deensi Devsahay v. United Insurance Company Ltd. MSC appeal 26/19 decided on 12/12/19*" by the Delhi High Court held that calculation of law of dependency was based on her dependency on her deceased/husband, her loss is equal to loss of dependency suffered by her parents-in-law. Her decision to remarry was entirely her personal choice over which nobody can have any say. Her right to claim compensation upon her husband life being prejudicially snatched away in motor accident. Therefore, simply because she got remarried, her right to claim compensation does not lessen. Who can judge whether the second marriage was not a compromise because of her personal circumstances and whether it would have the same value emotionally and psychologically as the first marriage. Her entitlement fruited when the dependency was calculated. Therefore, as an aggrieved widow she would be entitled to share compensation apropos loss of dependency of equal amount to her parents in law who had lost their son. This verdict was upheld by the Apex Court in "*Bridget Irene & Anr. V. Dincy Devassy & Anr. (Leave to Appeal (C) No.9844/2020 by order dated 06.04.2021)*".

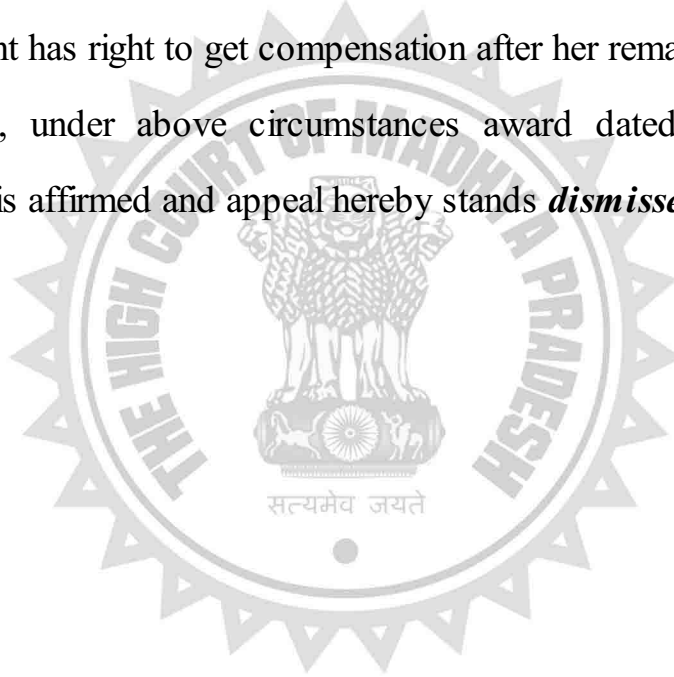
11. So as aforesaid discussion in considered view of this Court the right of wife of the deceased was not ended when she got remarried.

12. Learned counsel for the Insurance Company further argued that respondent No.1 Kalabai did not appear before the Tribunal for showing her dependency upon deceased. But it is not necessary to all claimants entered in witness box for stating their dependency upon deceased. So, this submission also does not sustain.

13. So in view of the aforesaid discussion the Tribunal did not committed any error in holding that respondent No.1 Kalabai wife of deceased at the time of incident has right to get compensation after her remarriage.

So, under above circumstances award dated 17.02.2021 passed by Tribunal is affirmed and appeal hereby stands *dismissed*.

akanksha



**(HIRDESH)  
JUDGE**