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

**BEFORE
HON'BLE SHRI JUSTICE HIRDESH**

ON THE 4th OF MARCH, 2024

MISC. APPEAL No. 2939 of 2021

BETWEEN:-

**THE ORIENTAL INSURANCE CO. LTD. MANDAL
OFFICE THRU. REGIONAL OFFICE MANDAL OFFICE
MIG-1, M.R.2, RISHI NAGAR, UJJAIN (MADHYA
PRADESH)**

.....APPELLANT

(BY SHRI ABHAY CHAND JAIN – ADVOCATE)

AND

- 1. SMT. DALIBAI W/O VISHNUPRASAD, AGED ABOUT 41 YEARS, GRAM LIMA CHOUHAN, TEH. SARANGPUR (MADHYA PRADESH)**
- 2. RAMSUDHA S/O VISHUNUPRASAD, AGED ABOUT 23 YEARS, GRAM LIMA CHOUHAN TEHSIL SARANGPUR DIST RAJGARH (MADHYA PRADESH)**
- 3. ISHWAR S/O VISHNUPRASAD, AGED ABOUT 19 YEARS, GRAM LIMA CHOUHAN, TEH. SARANGPUR (MADHYA PRADESH)**
- 4. KU. BABITA MINOR THR NATURAL GUARDIAN AND NEXT FRIEND MOTHER SMT. DALIBAI W/O VISHNUPRASAD, AGED ABOUT 41 YEARS, GRAM LIMA CHOUHAN, TEH. SARANGPUR (MADHYA PRADESH)**
- 5. RADHESHYAM MINOR THR NATURAL GUARDIAN AND NEXT FRIEND MOTHER SMT. DALIBAI W/O VISHNUPRASAD, AGED ABOUT 41 YEARS, GRAM LIMA CHOUHAN, TEH. SARANGPUR (MADHYA PRADESH)**
- 6. SMT. MANUBAI W/O GANGARAM, AGED ABOUT**

70 YEARS, GRAM LIMA CHOUHAN TEHSIL SARANGPUR DIST RAJGARH (MADHYA PRADESH)

7. **GANGARAM S/O NANDRAM, AGED ABOUT 68 YEARS, GRAM LIMA CHOUHAN, TEH. SARANGPUR (MADHYA PRADESH)**
8. **MUKHTIYAR S/O MEHMOOD AHMED, AGED ABOUT 35 YEARS, OCCUPATION: DRIVER GRAM KACCHI KHEDI, TEHSIL JIRAPUR DIST RAJGARH (MADHYA PRADESH)**
9. **MOHAMMAD FARHAN S/O MOHAMMAD ANWAR KHAN, AGED ABOUT 34 YEARS, OCCUPATION: TRANSPORT 86, VISHWAVIDHYALAYA MARG, FREEGANJ UJJAIN (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI ABHISHEK GILKE – ADVOCATE FOR RESPONDENTS NO.1 TO 7)

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

ORDER

This appeal has been filed by the appellant – Insurance Company under Section 173(1) of Motor Vehicles Act, 1988, against the award dated 17.08.2021 passed by Vth Additional Member, MACT Ujjain in Claim Case No.19/2021 for reduction of the amount of compensation.

2. The date of accident, negligence and the issue of liability are not in dispute and the findings recorded by the Tribunal in this regard are also not in question. As per the findings of the Tribunal, in case of death of Vishnu Prasad, the Tribunal has awarded a total compensation of Rs.32,01,400/- along with interest.

3. Learned counsel for the Insurance Company contended that the Tribunal has committed error in holding the income of the deceased as Rs.18,000/- per month without there being any cogent and positive evidence. He further submitted that the Tribunal has committed error in adding 30% as future

prospects contrary to the judgment of the Apex Court in the case of **National Insurance Co.Ltd.Vs.Pranay Sethi and others (2017) 16 SCC 680** which ought to have been 25%. The assessment is highly excessive and cannot be considered as just and proper and prays for reduction of the amount of compensation.

4. On the other hand learned counsel for the respondent/claimants filed cross objection under Order 41 Rule 22 read with Section 151 of CPC for enhancement of compensation and submitted that the Tribunal has committed error in awarding amount of compensation on the lower side as the claimant/respondents no.1 to 7 are wife, children and aged parents of the deceased and they are entitled to get parental filial consortium. It is also submitted that there are seven dependants of the deceased and the Tribunal has committed error in deducting 1/4th for the personal expenses. So when number of dependants are more than 7 then 1/7th should be deducted and prays for rejection of the appeal.

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

6. Learned counsel for the Insurance Company submitted that the Tribunal has committed error in assessing the income of the deceased as Rs.18,000/- per month. He submitted that according to the pay slip Ex.P-14, Ex.P-15 and Ex. P-16, the deceased got conveyance allowance of Rs.1250/- and mobile allowance of Rs.250/- which should not have been added in the income of the deceased. In the case of **National Insurance Company Vs. Indira Srivastava 2008 ACJ 614** the Apex Court held that allowances like travelling allowance (conveyance allowance) allowance for newspaper/periodicals, telephone, servant, club fee, car maintenance etc. by virtue of vocation need not be included in the salary while computing the net earnings of the deceased.

7. So considering the aforesaid judgment, the Tribunal has committed error in assessing the income of the deceased as Rs.18,000/- per month which is not sustainable in law. Hence, conveyance allowance and mobile allowance must be deducted from the salary. In the considered opinion of this Court net salary

of the deceased was Rs.18,000/- and after deducting Rs.1,500/-, the salary comes to Rs.16,500/-. The finding of the Tribunal in this regard is modified and net salary of the deceased should be taken as Rs.16,500/-.

8. Learned counsel for the appellant also submits that the Tribunal has also committed error in adding future prospect as 30%, whereas it should be 25% as per the judgment of the Apex Court in the case of Pranay Sethi (Supra).

9. In the case of Pranay Sethi (Supra) the Apex Court held that when the deceased has permanent job then 30% future prospect must be added in the age group of 42-50 years. So, the finding of the Tribunal in this regard is just and proper and this Court is of the considered opinion that no interference is called for in this regard.

10. Learned counsel for the appellant submitted that respondents no.2 and 4 got married during the pendency of the claim petition before the Tribunal so they are not dependent upon the deceased.

11. On the other hand, learned counsel for the respondents/claimants submits that respondents no.2 and 4 are daughter of the deceased and in the case of **Kirti and another etc Vs. Oriental Insurance Company Limited reported in (2021) 2 SCC 166** the Apex Court held that :-

10. We have thoughtfully considered the rival submissions. It cannot be disputed that at the time of death, there in fact were four dependents of the deceased and not three. The subsequent death of the deceased's dependent mother ought not to be a reason for reduction of motoraccident compensation. Claims and legal liabilities crystallise at the time of the accident itself, and changes post thereto ought not to ordinarily affect pending proceedings. Just like how appellant-claimants cannot rely upon subsequent increases in minimum wages, the respondent-insurer too cannot seek benefit of the subsequent death of a dependent during the pendency of legal proceedings. Similarly, any concession in law made in this regard by either counsel would not bind the parties, as it is legally settled that advocates cannot throw-away legal rights or enter into arrangements contrary to law.

12. In view of the aforesaid judgment, in the present case, it cannot be disputed that at the time of death of the deceased, there in fact were seven dependants of the deceased. The subsequent marriage of the daughter of the

deceased ought not to be a reason for reduction of the motor accident compensation.

13. Learned counsel for the appellant-Insurance Company relied on the judgment of the Apex Court in the case of **Amrit Bhanu Shali and others Vs. National Insurance Company Limited and others 2012 ACJ 2002 and Manjuri Bera Vs. Oriental Insurance Company Limited and another 2007 ACJ 1279.**

14. The above two judgments are Division Bench verdict and the judgment in the case of **Kirti and another (Supra)** is a three Judges Bench verdict.

15. In the case of **National Insurance Company Ltd. vs. Birender and Others reported in 2020 (11) SCC 356** , Hon'ble Apex Court has held that "even major married and earning sons of deceased being legal representatives have a right to apply for compensation and it would be bounden duty of Tribunal to consider application irrespective of whether they were fully dependent on deceased or not, in accordance with law". Para numbers 12 and 14 are reproduced as below:-

"12. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166(1). The major married son who is also earning and not fully dependent on the deceased, would be still covered by the expression "legal representative" of the deceased. This Court in Manjuri Bera [Manjuri Bera v. Oriental Insurance Co. Ltd., (2007) 10 SCC 643 : (2008) 1 SCC (Cri) 585] had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the legal representative concerned. Notably, the expression "legal representative" has not been defined in the Act. In Manjuri Bera [Manjuri Bera v. Oriental Insurance Co. Ltd., (2007) 10 SCC 643 : (2008) 1 SCC (Cri) 585] , the Court observed thus: (SCC pp. 647-48, paras 9- 12)

"9. In terms of clause (c) of sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view [Manjuri Bera v. Oriental Insurance Co. Ltd., 2003 SCC OnLine Cal 523 : (2004) 2 CHN 370] that the appellant could maintain a claim petition in terms of Section 166 of the Act.

10. ... The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.

11. According to Section 2(11) CPC, "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(g).

12. As observed by this Court in *Custodian of Branches of Banco National Ultramarino v. Nalini Bai Naique* [*Custodian of Branches of Banco National Ultramarino v. Nalini Bai Naique*, 1989 Supp (2) SCC 275] the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". As observed in *Gujarat SRTC v. Ramanbhai Prabhatbhai* [*Gujarat SRTC v. Ramanbhai Prabhatbhai*, (1987) 3 SCC 234 : 1987 SCC (Cri) 482] a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child."

14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000 and Rs 1,50,000 per annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years."

16. The same analogy will be applicable in the present case, where claimants are married daughters.”

17. In view of the aforesaid discussions, it is found that Tribunal has committed error in holding respondents no.2 and 4 are not dependant upon the deceased. So finding of the Tribunal in this regard must be modified to the extent that there are seven dependants upon the deceased. In the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 ACJ 1298** the Apex Court held that where family members dependent on the deceased exceeded six then 1/5th to be deducted for personal expenses. So Tribunal has committed error in deducting 1/4th for the personal expenses. The Tribunal has also committed error in not awarding filial consortium to the respondents no.2 and 4. So respondents no.2 and 4 are also entitled for consortium.

18. Learned counsel for the Insurance Company submitted that interest in future prospect must not be awarded as per the judgment in the case of **Oriental Insurance Company Limited Vs. Champabati Ray and others 2020 ACJ 2409**.

19. In the aforesaid judgment, the Gauhati High Court has not considered the verdict of the Apex Court, hence this judgment cited by the Insurance Company is of no help in giving benefit to the Insurance Company. In view of the aforesaid discussion, the just and proper amount of compensation is as follows:-

Income of the deceased	Rs.16,500/- p.m + 30% (F.P.) x 12 =Rs.2,57,400/-(less 1/5 th)= Rs.2,05,920/- X 14=Rs.28,82,880/-
Consortium	Rs.3,08,000/-
Loss of estate	Rs.16,500/-
Funeral expenses	Rs.16,500/-
Total Amount	Rs.32,23,880/-
Compensation awarded by Tribunal	Rs.32,01,400/-
Enhanced amount	Rs.22,480/-

20. Accordingly, the instant appeal filed by the Insurance Company is **dismissed**. However, the cross-objection filed by the claimants is allowed to the extent indicated above.

(HIRDESH)
JUDGE

RJ