IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 10th OF APRIL, 2024

MISC. APPEAL No. 3791 of 2022

BETWEEN:-

1. **VILAS S/O SHRI NAMDEV PATIL OCCUPATION: DRIVER GRAM NEEM, TEHSIL AMALNER, TEHSIL JALGAON (MAHARASHTRA)**

2. **MAHARASHTRA STATE ROAD TRANSPORT CORPORATION JALGAON DIVISION JANGAON, MAHARASHTRA (MAHARASHTRA)**

.....APPELLANTS

(BY SHRI CHANDRA BHUSAN PANDEY – ADVOCATE))

AND

1. **DR. SHANTILAL S/O SHRI GHEVARCHAND PARAKH, AGED ABOUT 64 YEARS, OCCUPATION: DOCTOR 62-63/1 SOUTH TOKOGANJ, INDORE (MADHYA PRADESH)**

2. **SILIKA D/O SHANTILAL PARAKH, AGED ABOUT 39 YEARS, OCCUPATION: CHARTERD ACCOUNTANT 63-63/1, SOUTH TUKOGANJ, INDORE (MADHYA PRADESH)**

3. **KUSHAL S/O SHANTILAL PARAKH, AGED ABOUT 36 YEARS, OCCUPATION: NOKARI 62-63/1 SOUTH TOKOGANJ, INDORE (MADHYA PRADESH)**

4. **SHREYANSH S/O SHANTILAL PARAKH, AGED ABOUT 28 YEARS, OCCUPATION: STUDENT 62-63/1, SOUTH TUKOGANJ, INDORE (MADHYA PRADESH)**

5. **KUMARI HITESHI D/O KUSHAL PARAKH AGED 8 YEARS MINOR THROUGH NATURAL GUARDIAN FATHER KUSHAL PARAKH S/O SHANTILAL PARAKH, AGED**

ABOUT 36 YEARS, OCCUPATION: NOKARI 62-63/1, SOUTH TUKOGANJ, INDORE (MADHYA PRADESH)

.....RESPONDENTS

(SHRI SANJAY PATWA – ADVOCATE FOR RESPONDENTS NO.1 TO 5)

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

ORDER

This appeal has been filed by the appellantsunder Section 173(1) of Motor Vehicles Act, 1988, against the award dated 08.02.2022 passed by XXVI Member, MACT Indore, in Claim Case No.3184/2017 on account of inadequacy of compensation and seeking enhancement of 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 Smt. Suman Parakh, the Tribunal has awarded a total compensation of Rs.21,47,549/- in favour of the respondents no.1 to 5 along with interest from filing of the claim petition till its realisation.

3. Learned counsel for the appellants submits that compensation as awarded by the Tribunal is on the higher side. He further submitted that the Tribunal has wrongly assessed the income of the deceased. He submitted that according to the income tax return Ex.P-16, deceased received Rs.60,000/- from house property and Rs.5,007/- from short term capital gain i.e. sale of securities liable to STT and cost of acquisition and according to Ex.P-17 income tax return deceased received Rs.60,000/- from house property and Rs.2,38,469/- from short term capital gain. This also exist after the death of the deceased. So this income has not been added in the income of the deceased. Only income of the deceased from profit and gains of business or profession was added. Hence, this income must be deducted from the income of the

deceased. He further submitted that appellants gave Rs.10 lacs to the claimant after the death of the deceased. So, this amount must be deducted from the compensation.

4. On the other hand, learned counsel for the respondents/claimants prays for dismissal of the appeal and filed cross objection under Order 41 Rule 222 of CPC for enhancing the compensation and submitted that Tribunal has grossly erred in not assessing the income of the deceased as per the last income tax return Ex.P-18 while the same was filed and proved along with the previous return Ex.P-16 and Ex.P-17. So, the Tribunal should have assessed the income as per the last return or in alternative should have assessed the average of all the three returns filed as Ex.P-16, Ex.P-17 and Ex.P-18. He further submitted that the Tribunal has grossly erred in deducting 1/4th of the income for personal expenses of the deceased because the claimants are five in number. The Tribunal has grossly erred in not granting loss of consortium to the respondent no.5. Hence, prays for enhancement of compensation.

5. On the other hand, learned counsel for the appellants prays for rejection of the cross objection.

6. Heard the learned counsel for the parties and perused the record.

7. The first argument raised by the appellants is that the Tribunal has committed error in not deducting Rs.10 lacs which was given by the appellants to the claimant after the death of the deceased. So, this amount of Rs.10 lacs must be adjusted in the award.

8. On the other hand, learned counsel for the respondents/claimants opposes the aforesaid contention.

9. After hearing the learned counsel for both the parties and on perusal of the record of the Tribunal, the appellants' witness Sachin Patil in his cross examination in para 15 accepted that Rs.10 lacs was given to the claimants after the death of the deceased. He also admitted that they are taking one rupee premium in per ticket per passenger for insurance.

10. In the case of **Himanchal Road Transportation Corporation Vs.**

Arvind Singh Mann 1991 ACJ 825it has been held as under:-

> "16. The question which arises is as to whether the amount payable or the amount paid under the provisions of the Scheme or by way of ex gratia payment by the appellant can be said to be pecuniary advantage as a result of death in the accident, benefit of which can be given to the tortfeasor. The levy of surcharge under the provisions of Passengers and Goods Taxation Act is a statutory levy and the moment a passenger pays the amount of statutory levy, a statutory contract comes into existence between the passenger and the State. The amount of levy so collected from passenger is kept apart for being dealt with in accordance with the provisions of the Scheme. It is a contribution made by the passenger himself during his lifetime. Purchase of a ticket on the part of a passenger entitles his dependants to receive the benefit of insurance amount under a contract which comes into existence on payment of the price of ticket, which includes the additional levy. This financial benefit is in essence a deferred benefit to a passenger as a result of the contract. On the same principle, on the basis of which receipt of insurance amount, provident fund, pension or gratuity benefits by the dependants of victim are excluded, the amount paid by the State under the Scheme is to be excluded by holding that it is an act of foresight by statutory compulsion by which the passenger entered into a statutory contract with the State, due to which his dependants or heirs acquired the benefit. To take this benefit away from the rightful claimants) and to enure it for the benefit of the tortfeasor is something which rightly shocks the judicial conscience. While the matter was dealt with by the learned single Judge, the State Government explained the policy behind the framing of the Scheme. It was stated that it had been framed with a view to ameliorate the lot of passengers and to minimise their loss and grief on account of the accident in addition to create confidence in them to travel in the vehicles covered by the Scheme. It will be against the public policy to allow the tortfeasor to claim deduction of the amount paid by the State Government from out of a fund under the provisions of the Scheme. Had it been the intention of the legislature, it would have definitely made such a provision by expressly incorporating the same in Section 3-A of the Passengers and Goods Taxation Act.
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> 17. The provision for levying surcharge has been made by the State Government and the fund is also ultimately collected by it. It is not a fund which is administered by the appellant Corporation for the passengers travelling in the vehicles covered by the provisions of the Act who ultimately are to derive the benefit. The appellant being a tortfeasor cannot claim deduction for the payment received by the heirs of a passenger who had by

purchasing ticket paid the amount of surcharge on the basis of a public policy. The Supreme Court in N. Sivammal v. Managing Director, Pandian Roadways Corporation 1985 ACJ 75 (SC), approved an award made by the Tribunal declining to deduct the amount of family pension received by the heirs of deceased under the family benefit scheme. When pecuniary advantage under the family benefit scheme, which the heirs got as a result of death in an accident, has been held not to be a pecuniary advantage liable for deduction, therefore, on the same analogy the amount received by the claimants under the provisions of the Scheme cannot be held to be deductible from the amount of compensation.

18. The amount of ex gratia payment by way of interim relief given by appellant immediately after the accident can be said to be a payment made by a tortfeasor towards the amount of compensation though it is a voluntary payment. It cannot be said to be an amount by way of benevolence. But for the accident, the appellant would not have paid this amount. The appellant is justified in claiming benefit of such a payment, which is made in pursuance to a policy decision taken by its Board of Management."

11. In 2009 the Division Bench of this Court in the case of **Bhanwri Bai and others Vs. Union of India and another 2009 ACJ 1319** it has been held as under:-

"3. After having heard rival submissions of learned counsel for the parties and going through the record, we find that the entire approach of the Tribunal was erroneous and very strange. The question for our determination is whether ex gratia payment would disentitle the appellants (sic from claiming compensation under section 166 of the Motor Vehicles Act, 1988, from the owner/driver of the offending vehicle. The learned counsel for the appellants) submitted that impugned award is unsustainable in law and he placed reliance on decisions reported in State of Andhra Pradesh v. K. Pushpalatha, 2007 ACJ 2038 (AP); A. Lakshmi v. Arjun Associated Pvt. Ltd., 2005 ACJ 704 (AP); Arvind Singh Mann v. Himachal Road Trans. Corpn., 1990 ACJ 647 (HP). On the other hand learned Assistant Solicitor General while supporting the award placed reliance on a decision of the Supreme Court in the case of United India Insurance Co. Ltd. v. Patricia Jean Mahajan, 2002 ACJ 1441 (SC).
4. A careful reading of the decisions on which learned counsel for the appellants has placed reliance would show

that in all cases basically court was dealing with contractual payment like compassionate appointment, insurance money, provident fund, gratuity, etc. These decisions accept the proposition that the Tribunal has to adjudicate a claim petition filed under the provisions of Motor Vehicles Act, 1988, notwithstanding payment of amount supra or of like nature. The case of Patricia Jean Mahajan (supra) is all together on a different point and how it is attracted on its applicability to the facts of present case, we simply confess our inability to appreciate arguments of the learned Assistant Solicitor General. The case of payment of ex gratia amount by the employer came up for consideration before Court of Appeal in the matter of Cunnigham v. Harrison, 1974 ACJ 218 (CA, England). Appellant in that case sustained serious personal injuries in a motor accident. As a result of injuries, there was complete tetraplegia and the claimant was forced to lead a vegetable life fully dependent on others. Appellant at the time of accident was 47 years of age and was working with British Petroleum Co. drawing annualsalary of £ 1,500. The appellant's employer agreed to pay £ 828 per annum for life as an ex gratia amount. The point was whether such payment of ex gratia amount was to be taken in account. Lord Denning, M.R. in his leading opinion said answer was no. He observed:

> "It is an established principle of our law that the damages awarded to an injured person is not to be reduced by reason of any insurance money received by the injured person; See Bradburn v. GreatWestern Railway Co., (1874-80) All ER Rep. 195; nor by reason of a pension to which he has contributed; See Parry v. Cleaver, 1969 ACJ 363 (HL, England); nor by reason of gifts made to relieve his distress; See Redpath v. Belfast & Country Down Railway, (1947) NI 167. Similarly, I think that the damages are not to be reduced by reason of ex gratia payments made by his employer."

In the same judgment he further observed as under:

> "I can find no sound principle for saying what matters should or should not be taken into account in reduction of damages. As each new point comes up, it is decided by the courts according to what is considered the best policy to adopt; and thence forward it governs subsequent cases. In this present case I am clear that any voluntary ex gratia pension paid and payable by the employer is not to be taken into account. *It is an uncovenanted benefit coming to the plaintiff over and above the compensation*

> *recoverable at law. In this case he receives from his employer virtually half-pay for the rest of his days. No one grudges him this money; but there it is. It is voluntary. He gets it and it is not to be taken into account.*"
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> (Emphasis added)

12. In the present case, the appellants have taken one rupee premium in per passenger, then it is not adjusted in Rs.10 lacs. It was given by the appellants to the respondents/claimants after the death of the deceased. So in this regard, the Tribunal has not committed any error. Hence, this finding need not be modified. Therefore, the argument of the counsel for the appellants inthis regard has no substance.

13. Learned counsel for the appellants submitted that Tribunal has committed error in assessing the income of the deceased. He further submitted that according to Ex.P-16 income tax return, income of the deceased from house property other than self-occupied is Rs.60,000/- and income from short term capital gain is Rs.63,105/- etc. He also submitted that according to the income tax return Ex.P-16 profit and gain of business or profession of deceased is Rs.1,29,600/- which should be considered for calculating the compensation. He further submitted that according to Ex.P-17, only Rs.1,36,500/- must be considered for calculating the compensation. He further submitted that the Tribunal has committed error in calculating the total annual income for assessing the compensation. He also submitted that other income exists till today, so they are not calculated.

14. On the other hand learned counsel for the respondents submitted that income from short term capital and gain and other was skilled income of the deceased. She was doing share market work.

15. Considering the argument of both the parties, in the considered opinion of this Court, income from profit and gain of business or profession is only to be taken into consideration while assessing the amount of compensation because other income exists till today. Hence, the Tribunal has committed error in assessing the total income of the deceased written in income tax return

Ex.P-16, Ex.P-17. So this finding is modified. For calculating the compensation, according to income tax return Ex.P-16 and Ex.P-17, Rs.1,29,600/- and Rs.1,36,500/- is taken into consideration.

16. Learned counsel for the respondents submitted that income tax return Ex.P-18 must be considered for assessing the income, but this income tax return was filed after the death of the deceased, so it cannot be considered for assessing the income of the deceased.

17. So, average income of the deceased is Rs.1,29,600/- plus Rs.1,36,500/- =Rs.2,66,100/-. Hence, the annual income of the deceased is Rs.2,66,100/- x 1/2 =Rs.1,33,050/-

18. Learned counsel for the respondent submitted that Tribunal has committed error in deducting 1/3rd for personal expenses because there are five claimants, but considering the evidence adduced by the respondents before the Tribunal, it is found that respondents no.2 to 4 are not dependent upon the deceased. So, in the considered opinion of this Court, Tribunal has rightly deducted 1/3rd of the income for personal expenses. Respondent no.5 is the grand daughter of the deceased and the father of respondent no.5 is alive, so she is not entitled for filial consortium. So, Tribunal has not awarded consortium to respondent no.5.

19. Considering the evidence that came on record, in the considered opinion of this Court, the income of the deceased for calculating the compensation amount is as under:

Income of the deceased	Rs.1,29,600/- + Rs.136,500 /- = Rs.2,66,100/- x1/2 =Rs.1,33,050/-p.a.+ Rs.13,305/- (10% FP)=Rs.1,46,355/- (less 1/3)=Rs.97,570/- x 11 =Rs.10,73,270/-
Consortium	Rs.1,60,000/-
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Total Amount	**Rs.12,63,270/-**

20. Thus, the just and proper amount of compensation in the instant case is **Rs.12,63,270/-** as against the award of the Tribunal of Rs.21,47,549/-. Accordingly, the compensation amount is reduced from Rs.21,47,549/- to **Rs.12,63,270/-.**

21. In the result, the appeal is partly allowed by reducing the compensation amount to a sum of **Rs.12,63,270/-**. The said amount shall bear interest at the same rate as awarded by the Tribunal. The other findings recorded by the Tribunal shall remain intact. The cross objection filed by the claimants/respondents is dismissed.

(HIRDESH)
JUDGE

RJ