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

**BEFORE
HON'BLE SHRI JUSTICE HIRDESH
ON THE 7th OF MARCH, 2024**

MISC. APPEAL No. 2698 of 2023

BETWEEN:-

**THE NEW INDIA ASSURANCE LTD. MANAGER
BHARATPURI UJJAIN AND TP HUB SAKET INDORE
(MADHYA PRADESH)**

.....APPELLANT

(SHRI MONESH JINDAL, LEARNED COUNSEL FOR THE APPELLANT) .

AND

- 1. KAMALSINGH SISODIYA S/O GOVERDHANSINGH
SISODIYA, AGED ABOUT 40 YEARS, OCCUPATION:
AT PRESENT NOTHING R/O CHINTAMAN
JAVASIYA UJJAIN (MADHYA PRADESH)**
- 2. SMT. TAMMU @ TAMUBAI W/O KAMALSINGH
SISODIYA, AGED ABOUT 37 YEARS, OCCUPATION:
HOUSEWIFE CHINTAMAN JAVASIYA TEHSIL AND
DISTRICT UJAJIN (MADHYA PRADESH)**
- 3. MAHESH VYAS S/O MANOHARLAL VYAS 42/4
SHIVGANJ YADAV MANDI UJJAIN (MADHYA
PRADESH)**
- 4. SHARAD SHARMA S/O DAYAL SHARAM BANGLA
NUMBER 35, VEER PARK ROAD, NEEMUCH AND
AT PRESENT R/O UTKARSH PARADISE, 30
PITHAMPUR DIST. DHAR (MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI HIMANSHU PALIWAL, LEARNED COUNSEL FOR THE
RESPONDENTS NO.1 & 2)***

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

ORDER

This appeal by the insurance company under section 173(1) of the Motor Vehicles Act is arising out of the award dated 07.02.2023 passed by 8th MACT, Ujjain in claim case no.161/2020 challenging quantum of compensation and seeking reduction.

2. The date of accident, negligence and the issue of liability are not in dispute in this appeal and the findings recorded by the Tribunal in this regard are not in question. As per the finding of the Tribunal, for the death of Chetan, the Claims Tribunal has awarded a total compensation of Rs.16,29,040/- in favour of claimants/respondents No.1 & 2 along with interest from the date of filing of claim petition till its realization.

3. This appeal has been filed by the insurance company mainly on the ground that Tribunal has committed an error in holding that 16 years old boy (deceased) is an unskilled labour. He submits that the compensation awarded by the Tribunal is on the higher side. He further submits that it is true that Motor Vehicles Act is a social welfare Act, however, its provisions clearly indicate that the compensation must be just and proper and it cannot be a bonanza or as a source of profit but the same should not be a pittance. The Tribunal has committed error in weighing various factors and quantifying the amount of compensation which should be just.

4. On the other hand, learned counsel for the respondents has supported the impugned award and prayed for dismissal of the appeal.

5. Heard learned counsel for both parties and perused the record.

6. Undisputedly, Shubham was aged 16 to 17 years at the time of accident and he was bachelor. So far as the contention raised by the counsel for the appellant/insurance company that Tribunal has committed an error in holding the deceased who is aged 16 years as an unskilled labour, he has placed

reliance in the decision of the Apex Court in the case of **Syed Basheer Ahamed and others vs. Mohd. Jameel and another** reported in **2009 ACJ 690** in which in para-9 it is held as under:

9. Section 168 of the Act enjoins the Tribunal to make an award determining the amount of compensation which appears to be just. However, the objective factors which may constitute the basis of compensation appearing as just, have not been indicated in the Act. Thus, the expression 'which appears to be just' vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, or to ignore the settled principles relating to determination of compensation. Similarly, although the Act is a beneficial legislation, it can neither be allowed to be used as a source of profit, nor as a windfall to the persons affected nor should be punitive to the person(s) liable to pay compensation. The determination of compensation must be based on certain data, establishing reasonable nexus between the loss incurred by the dependents of the deceased and the compensation to be awarded to them. In nutshell, the amount of compensation determined to be payable to the claimant(s) has to be fair and reasonable by accepted legal standards.

7. Learned counsel for the appellant has further placed reliance in the case of **Meena Devi vs. Nunu Chand Mahto @ Nemchand Mahto & others - SLP (Civil) No.5345/2019 dated 13.10.2022** in which the Apex Court has dealt with payment of compensation to a child who was aged 12

years.

8. In the present case, the deceased was aged 16 to 17 years at the time of accident. The contention of the counsel for the appellant is that the deceased was a child and he did not work as a labour. As per section 2(ii) of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (for short 'the Act of 1986'), a child means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more. It is true that child employment has been prohibited by various Acts in our country and the employment of a child below the age of 14 years is certainly prohibited. In the present case the deceased was above 16 years of age, so as per the definition of the Act of 1986 he does not come under the purview of a child. It is also true that some persons at the age of 16 or 17 are also doing labour work and contributing towards subsistence of their family in our country. Perusal of the record it is found that in para-25 of the impugned award the Tribunal has assessed the age of the deceased as more than 16 years and in the present scenario in our country the persons who are more than 16 years of age are capable to do labour work, therefore, the Tribunal has not committed any error in holding the deceased as an unskilled labour.

9. In view of the above, in the considered opinion of this Court, for the death of a person more than 16 years of age in a motor accident, the Tribunal has awarded just and proper amount of compensation in favour of the claimants which does not call for any interference by this Court in this appeal. Accordingly, the appeal being devoid of merit is hereby dismissed.

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