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**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE HIRDESH  
ON THE 3<sup>rd</sup> OF NOVEMBER, 2023  
MISC. APPEAL No. 3458 of 2008**

**BETWEEN:-**

1. SMT.ARCHANA TIWARI W/O LATE SHAIENDRA TIWARI, AGED ABOUT 27 YEARS, OCCUPATION- HOUSE WIFE, H.NO.1035, OLD KACHHPURA SCHOOL, ANAND KUNJ GARHA PS.JABALPUR (MADHYA PRADESH)
2. KU. SAKSHI, LATE SHAIENDRA TIWARI, AGED ABOUT 9 YEARS, OCCUPATION: THROUGH NATURAL GUARDIAN- MOTHER. R/O H.NO.1035 OLD KACHHPURA, SCHOOL ANAND KUNJ GARHA, PS.JABALPUR (MADHYA PRADESH)
3. KU. RITULATE SHAIENDRA TIWARI, AGED ABOUT 5 YEARS, OCCUPATION: TH.ING. MOTHER H.NO.1035 OLD KACHHPURA SCHOOL ANAND KUNJ GARHA P.S.JABALPUR (MADHYA PRADESH)
4. SMT. MAMTA TIWARI, JAWAHARLAL TIWARI, AGED ABOUT 50 YEARS, H.NO.1035 OLD KACHHPURA SCHOOL, ANAND KUNJ GARHA PS. JABALPUR (MADHYA PRADESH)
5. JAWAHARLAL TIWARI S/O RAMAVTAR TIWARI, AGED ABOUT 56 YEARS, H.NO.1035 OLD KACHHPURA SCHOOL ANAND KUNJ GARHA, PS.JABALPUR (MADHYA PRADESH)

.....APPELLANTS

(BY SHRI RAVISH DEOLIA - ADVOCATE )

**AND**

1. DARBARILAL S/O TUNDULAL CHOUDHARY, AGED ABOUT 37 YEARS, H.NO.3, TANTABADI, P.S.BADI, DISTT.NAGAPUR (MHARASHTRA) (DRIVER-TRUCK NO.CG-04-6012)
2. HARMIT SINGH BHATIA, S/O AMOLAK SINGH

**B H A T I A , TATIBAND, RAIPUR, C.G.  
(CHHATTISGARH) (OWNER-TRUCK NO.CG-04-  
6012)**

3. **UNITED INDIA INSURANCE CO.LTD. RAJKIRAN  
BUILDING, IN-FRONT OF ASHOKA HOTEL  
WRIGHT TOWN, JABALPUR (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI ABHINAV KHERDIKAR - ADVOCATE)***  
.....

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

**ORDER**

Though this matter is listed today for orders on interim applications, however, with consent of learned counsel for the parties the matter is heard finally.

2. This Misc.Appeal under section 173 of the Motor Vehicles Act, 1988 has been filed by the appellants/claimants for enhancement of amount of compensation challenging the award dated 30.4.2008 passed by the XIth Motor Accidents Claims Tribunal, Jabalpur [hereinafter referred to as the "Tribunal] whereby the Tribunal has awarded sum of Rs.2,58,650/- with interest at the rate of 6% p.a. from the date of claim petition till realization.

3. Brief facts of the case are that deceased-Shailendra Tiwari was coming to Jabalpur from Nagpur by Car No.MP-20/CA-1836 on 19.12.2006 and near village Bamohri he met with an accident due to rash and negligent driving of respondent No.1, who was driving Truck No.CG-04/6012. As a result of said accident the deceased received grievous injuries and eventually he died on 20.12.2006 during treatment in the Hospital. The appellants/claimants filed claim petition under section 166 of the Motor Vehicles Act before the Tribunal at Jabalpur. The Tribunal registered the case and after recording of

evidence awarded compensation of Rs.2,58,650/-, which as per appellants is on much lower side.

4. Hence, this appeal challenging the impugned award on the following grounds:-

(a) The Tribunal wrongly calculated compensation on the basis of salary of Rs.3000/- while witness, namely, Ashsis Diwakar has clearly stated that deceased was getting salary of Rs.8000/-. The deceased was Manager in the firm of Diwakar Brothers, which fact is clearly established from the statement of Ashish Diwakar.

(b) The second ground raised by the appellant is that Tribunal has wrongly held that deceased was negligent to the extent of 30% for the accident while the respondent No.1/driver of Truck No.CG-04/6012 has not been examined. There is no evidence in respect of contributory negligence. The Tribunal hypothetically presumed that deceased himself was responsible for contributory negligence. There was no room for Tribunal to hold that deceased was negligent to the extent of 30%.

Therefore, appellants/claimants prayed to allow the appeal and enhance the amount of compensation to the extent of Rs.8,00,000/- in the ends of justice.

5. On the other hand, learned counsel for the respondent/Insurance Company contended that Claims Tribunal has rightly awarded compensation and rightly assessed contributory negligence of deceased to the extent of 30% and further argued in support of the findings recorded by the Tribunal.

6. Heard learned counsel for the parties and perused the record. The Tribunal assessed negligence of deceased to the extent of 30%. In paragraph 17 of the award the Tribunal found that had deceased driven and parked the car carefully, then there was possibility that accident might not have occurred. In

this respect, on perusal of statement of Ashish Diwakar (AW.3) in examination-in-chief, it is reflected that he with deceased-Shailendra Tiwari was coming to Jabalpur from Nagpur by Alto Car No.MP-20/CA-1836. The car was driven by Shailendra Tiwari. As soon as when they reached near turning of village Bamodi-Dhuma, then Shailendra Tiwari parked the vehicle on the road side. From opposite side the driver of Truck No.CG-04/6012 by driving it negligently dashed against their stationery car. He denied the suggestion on behalf of learned counsel for the Insurance Company that deceased-Shailendra had driven the car negligently and accident occurred due to his negligence. So from perusal of record of the Tribunal it is clearly established that offending vehicle hit the car when it was parked on the road side. So finding of the Tribunal that there was contributory negligence of deceased to the extent of 30% is based on presumption and not correct in the eye of law. Therefore, finding of the Tribunal in this regard is not sustainable and hence, finding that deceased was responsible to the extent of 30% for contributory negligent is set aside.

7. Learned counsel for the appellants further submitted that Tribunal committed error in holding that deceased was earning Rs.3,000/- per month at the time of accident. He further submitted that deceased was posted as a Manager and earning Rs.8,000/- per month. From perusal of record, it is clear that Ashish Diwakar (AW.3) stated in examination-in-chief that deceased was working in firm, namely, Diwakar Brothers and was being paid Rs.8000/- per month. He produced office order (Exhibht-P/15), in which, it is mentioned that Shailendra Tiwari was working as a Manager and was getting Rs.8,000/- per month. But, from perusal of this document it was found that there is no document produced by the appellant that he has received amount of salary of

Rs.8,000/-. Even, there is no Bank statement showing that amount of salary is being credited in the account. So according to this document (Exhibit-P/15) it is not duly established that deceased was receiving salary of Rs.8,000/- per month. Thus, this Court of the opinion that deceased was not earning Rs.8,000/-. So, the Tribunal has correctly assessed the income of the deceased.

8. According to mark-sheet of deceased, the date of birth of deceased is 09.9.1973. At the time of accident i.e. on 09.12.2006 the deceased was healthy person and aged about 33 years. In view of decision in the case of *Sarla Verma Vs. DTC*, (2009) 6 SCC 121, taking into consideration the age of deceased between 31-35 years, the multiplier of 16 would be applicable.

9. In the case of *National Insurance Company Ltd. Vs. Pranay Sethi*, (2017) 16 SCC 680 it has been held that if the deceased is below 40 years of age, then 40% of income be added towards future prospects. In the case of *Munusamy and others Vs. Managing Director, Tamil Nadu State Trans. Corpn. Ltd.*, 2018 ACJ 740 the Apex Court held that claimants are entitled to addition of 40% of the income of the deceased towards future prospects in the light of decision in case of Pranay Sethi (supra).

10. So, monthly income of deceased was Rs.3,000/-. Annual income of deceased would have been Rs.3,000/- X 12 = Rs.36,000/-. Adding 40% of annual income for future prospects would come to Rs.36,000/- X 40% = Rs.14,400/-. The future prospects would Rs.36,000/- Rs.14,400/- = Rs.50,400/- [Rupees Fifty Thousand Four Hundred only].

11. In the present case there are 5 claimants. The appellants No.1 to 3 are wife and daughters of deceased. The appellants No.4 & 5 were mother and father of the deceased respectively. From statement of appellant No.5

(Jawaharlal Tiwari) it is clear that he stated that he is in service in Ordnance Factory. So, appellants No.4 & 5 are not solely dependent upon deceased. Thus, according to pleadings and evidence deposed by the appellants/claimants there are only three dependents of deceased, namely, appellants No.1 to 3.

12. According to the decision in the case of *Sarla Verma (supra)* one-third of income of deceased, must be deducted towards personal living expenses i.e. Rs.50,400/- less one-third (Rs.16,800/-). So, dependency income in the present case would be Rs.33,600/- (Rs.50,400/- less Rs.16,800/-). If multiplier of 16 is applied, then amount of compensation would come to Rs.5,37,600/- [Rupees Five Lacs Thirty Seven Thousand Six Hundred only].

13. In aforesaid sum, on adding compensation in respect of other conventional heads like spousal consortium and parents filial consortium according to *United India Insurance Co.Ltd. Vs. Satinder Kaur and others*, (2021) 11 SCC 780. Therefore, in respect of 5 claimants Rs.40,000/- each would be granted towards consortium the same would come to Rs.2,00,000/- [Rupees Two lacs]. Further, Rs.15,000/- is granted towards funeral expenses and Rs.15,000/- towards loss of estate. Under other conventional heads the amount of compensation would be Rs.2,30,000/-.

14. Thus, the total amount of compensation would come to Rs.5,37,600/- plus Rs.2,30,000/- = Rs.7,67,600/- [Rupees Seven Lacs Sixty Seven Thousand only]. On reducing the amount of compensation already awarded by the Tribunal, the enhanced amount of compensation, to which the appellants would be entitled to, comes to Rs.5,08,950/- [Rupees Five Lacs Eight Thousand Nine Hundred Fifty only]. The enhanced amount shall carry interest as awarded by the Tribunal from the date of filing of claim petition till its

realization.

15. The aforesaid calculation of determination of compensation is given in a tabular form hereunder:-

|   |   |                                   |
|---|---|-----------------------------------|
| (i) Monthly income of the deceased              | - | Rs.3,000/-                        |
| (ii) Annual income of deceased                  | - | Rs.36,000/-                       |
| (iii) 40% of annual income for future prospects | - | Rs.50,400/-                       |
| (iv) Deducting 1/3rd towards personal expenses  | - | Rs.33,600/-                       |
|   |   | (Rs.50,400/- less Rs.16,800/-)    |
| (v) Multiplier applied                          | - | 16                                |
| (vi) Compensation (Rs.33,600 X 16)              | - | Rs.5,37,600/-                     |
| (v) Consortium for five claimants (40,000 X 5)  | - | Rs.2,00,000/-                     |
| (vi) Funeral expenses                           | - | Rs.15,000/-                       |
| (vii) Loss of estate                            | - | Rs.15,000/-                       |
|   |   | -----                             |
|   |   | Total compensation                |
|   |   | Rs.7,67,000/-                     |
|   |   | Less Awarded amount-Rs.2,58,650/- |
|   |   | Enhanced amount                   |
|   |   | - Rs.5,08,950/-                   |

16. It is made clear that liability of payment of amount of compensation would be that of respondent No.3/Insurance Company.

17. In the result, the appeal is partly allowed and to the extent indicated hereinabove.

**(HIRDESH)  
JUDGE**