

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)
ON THE 4TH OF MARCH, 2024
MISC. APPEAL No. 3590 OF 2010**

BETWEEN:-

- 1. SMT. MAYABAI W/O LATE MURAT KORI,
AGED ABOUT 40 YEARS, R/O VILLAGE TIKARIYA,
GOSALPUR, TEHSIL SIHORA, DISTRICT JABALPUR
(M.P.)**
- 2. MAHENDRA KUMAR S/O LATE MURAT KORI,
AGED ABOUT 21 YEARS, R/O VILLAGE TIKARIYA,
GOSALPUR, TEHSIL SIHORA, DISTRICT JABALPUR
(M.P.)**
- 3. CHANDRA PRAKASH S/O LATE MURAT KORI,
AGED ABOUT 19 YEARS, R/O VILLAGE TIKARIYA,
GOSALPUR, TEHSIL SIHORA, DISTRICT JABALPUR
(M.P.)**
- 4. LAXMI PRASAD S/O LATE MURAT KORI,
AGED ABOUT 18 YEARS, R/O VILLAGE TIKARIYA,
GOSALPUR, TEHSIL SIHORA, DISTRICT JABALPUR
(M.P.)**
- 5. SATYENDRA KUMAR S/O LATE MURAT KORI,
AGED ABOUT 15 YEARS, MINOR THROUGH
GUARDIAN MOTHER SMT. MAYABAI W/O LATE
MURAT KORI R/O VILLAGE TIKARIYA,
GOSALPUR, TEHSIL SIHORA, DISTRICT JABALPUR
(M.P.)**

6. SMT. RAMBAI W/O RAMSWAROOP KORI,
AGED ABOUT 62 YEARS, R/O VILLAGE TIKARIYA,
GOSALPUR, TEHSIL SIHORA, DISTRICT JABALPUR
(M.P.)

7. RAMSWAROOP KORI S/O LATE GOLIRAM
KORI, AGED ABOUT 65 YEARS, R/O VILLAGE
TIKARIYA, GOSALPUR, TEHSIL SIHORA, DISTRICT
JABALPUR (M.P.)

.....APPELLANTS

(BY SHRI R.S. SAINI - ADVOCATE)

AND

1. NEELU D/O VENKTYESH PALOO, AGED
ABOUT 25 YEARS, R/O SARVODAYA NAGAR, NEAR
MARGHATAI, POLICE STATION LORDGANJ,
DISTRICT JABALPUR (M.P.) (DRIVER OF
OFFENDING VEHICLE)

2. AJIT SINGH S/O LATE SADHU SINGH R/O
1127, MADAN MAHAL ROAD, JABALPUR (M.P.)
(OWNER OF OFFENDING VEHICLE)

3. NATIONAL INSURANCE COMPANY LIMITED,
500, MADHATAL, JBALPUR (M.P.) (INSURER OF
OFFENDING VEHICLE)

.....RESPONDENTS

(APPEAL AGAINST RESPONDENT NOS. 1 AND 2 STANDS DISMISSED,
VIDE ORDER DATED 19/08/2016)

(SHRI KAPIL ROHRA – ADVOCATE FOR RESPONDENT NO.3)

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

ORDER

Heard on admission.

Admit.

With the consent of learned counsel for the appellants, heard final arguments.

This is an appeal filed by the appellants/claimants under Section 173(1) of the Motor Vehicles Act, 1988 against the award dated 30/03/2010 passed by 17th Additional Motor Accident Claims Tribunal, Jabalpur (M.P.) in MACC No.32/2008. By the impugned award, the learned Claims Tribunal awarded a total sum of Rs.3,07,000/- (Three Lakhs Seven Thousands) with interest @ 8% per annum to the appellants/claimants for the death of Murat Kori, aged about 47 years, who died in motor vehicle accident. According to claimants i.e. appellants herein, the compensation awarded by the learned Claims Tribunal is on lower side and hence, needs to be enhanced.

2. Since, this Appeal is for the enhancement in the compensation amount awarded by the Claims Tribunal, hence the question that arises for consideration is whether any case for enhancement in compensation awarded by the learned Claims Tribunal on facts and evidence adduced, is made out and if so to what extent?

3. It is not necessary to narrate the entire facts in detail, such as how the accident occurred, who was negligent in driving the offending vehicle, who is liable for paying compensation etc. It is for the reason that firstly all these findings are recorded in favour of appellants/claimants by the Tribunal. Secondly, the findings though recorded in favour of claimants are not under challenge at the instance of

any of the respondents such as owner/driver or insurance company either by way of filing an appeal or cross-objection. In this view of the matter, there is no justification to burden this order by detailing facts on all these issues.

4. Learned counsel for the appellants submits that in a motor accident which took place on 16/03/2008, Murat Kori aged about 47 years died leaving behind wife, sons and parents. As the deceased was an unskilled labour, therefore, learned Tribunal assessed the income of deceased @ Rs.2,500/- (Two Thousands Five Hundred) per month, which comes to Rs.30,000/- (Thirty Thousands) per annum and keeping in view the number of dependents, learned Claims Tribunal deducted 1/4 towards personal expenses i.e. Rs.7,500/-(Seven Thousand Five Hundred), therefore, yearly dependency on family comes to Rs.22,750/-(Twenty Two Thousand Five Hundred) per year . Keeping in view the age of deceased also applied the multiplier of 13 and awarded a sum of Rs.2,92,000/- (Two Lakhs Ninety Two Thousands) towards loss of dependency and awarded Rs.5,000/- (Five Thousand) towards loss of consortium, Rs.2,000/- (Two Thousand) towards funeral expenses, Rs.2,500/-(Two Thousand Five Hundred) towards loss of estate and Rs.5,000/- (Five Thousand) towards mental shock and pain. Learned Tribunal awarded total sum of Rs.3,07,000/- (Three Lakhs Seven Thousand).

5. Learned counsel for the appellants submits that learned Tribunal has assessed the monthly income of the deceased only Rs.2,500/-(Two Thousand Five Hundred), which is on lower side, which should be Rs.3,000/-(Three Thousand) per month. Learned counsel for appellants also submits that learned Tribunal has not added 30% of the assessed

income as loss of future prospect in the light of the principle laid down in the case of **National Insurance Company Ltd. vs. Pranay Sethi & ors (2017) 16 SCC 680 in Para No. 59.4**. It is also submitted that pay and recover condition should be imposed on Insurance Company. It is also submitted that looking to the number of dependents, learned Tribunal has wrongly deducted 1/4th amounts towards personal expenses on deceased himself; whereas it should be 1/5th. It is also submitted that learned Tribunal has not awarded any parental consortium to the appellant Nos. 2 to 5, who are the children and filial consortium to the parents of the deceased, which should be awarded to the tune of Rs.40,000/-(Forty Thousand)each and in the head spousal consortium only Rs.5,000/-(Five Thousand) has been awarded, which should be enhanced to the Rs.40,000/-(Forty Thousands). Learned counsel for appellants also submitted that learned Tribunal has not properly awarded in the other conventional heads. In support of his contentions, learned counsel for appellants has placed reliance on the Judgment of Full Bench of Hon'ble Apex Court in the case of **Rani and Others Vs. National Insurance Company Ltd. and Others, 2018 ACJ 2430** Accordingly, it is prayed that the appeal be allowed and awarded amount be enhanced substantially and pay and recover order should be passed against Insurance Company.

6. Per contra, learned counsel for respondent No.3 submits that the amount awarded by the learned Tribunal is just and proper and no case for enhancement is made out. It is prayed that the appeal be dismissed.

7. I have heard the submissions made by learned counsel for the parties and perused the record.

8. From the perusal of record, it reveals that the learned tribunal has assessed the monthly income of the deceased as Rs.2,500/-(Two

Thousand Five Hundred), which seems to be on lower side. Looking to the fact that the alleged incident occurred on 16/03/2008, hence, in the considered opinion of this Court, it would be appropriate to assess the monthly income of deceased as Rs.3,000/- (Three Thousand) per month. From the perusal of impugned award, it also reveals that learned Tribunal has not added any amount towards future prospect in the assessed income. Looking to the age of the deceased, it should be added @ 25% of the assessed income, as principle laid down by Hon'ble Apex Court in the case of *Pranay Sethi (supra)* and looking to the number of dependents, deduction should be 1/5 in the head of personal expenses, which the deceased would have spent on himself.

9. Thus, considering the monthly income of the deceased as Rs.3,000/- (Three Thousand) per month and as per the principle laid down in the case of *National Insurance Company Ltd. vs. Pranay Sethi & ors (2017) 16 SCC 680*, 25% of the assessed income is to be added towards loss of future prospect, which comes to Rs.3,750/- (Six Thousand Seven Hundred Fifty). 1/5 is to be deducted towards personal expenses of the deceased, which comes to Rs.750/- (Seven Hundred Fifty), therefore, monthly dependency of dependents comes to Rs.3,000/- (Three Thousand). Thus, yearly income will come to Rs.36,000/- (Thirty Six Thousands) and thereafter, multiplier of 13 will be applied for the purpose of computation of amount towards loss of dependency, which comes to Rs.4,68,000/- (Four Lakhs Sixty Eight Thousands). It reveals from the impugned award that learned tribunal has awarded meager amount in the heads of loss of state and expenses on funeral expenses, which also deserves to be enhanced to the tune of Rs.15,000/- (Fifteen Thousand) in both heads.

10. It also appears that the learned Claims Tribunal has not awarded any filial consortium to the appellant Nos. 6 and 7 being parents of the deceased and not awarded parental consortium to children (appellant Nos. 2 to 5) and not properly awarded consortium to wife of deceased (appellant No.1), which should be awarded as Rs.40,000/-(Forty Thousands) each in the light of the principle laid down in the case of **Janabai wd/o Dinkarrao Ghorpade vs. ICICI Lombord Insurance Company Ltd. (2022) 10 SCC 512 and Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram & ors. (2018) 18 SCC 130.**

11. In view of above discussion, appellants/claimants shall be entitled for the following amount of compensation :-

Rs.4,68,000/-	Towards loss of dependency
Rs.2,80,000/-	Towards loss of filial, parental and spousal consortium to appellants ((Rs.40,000x7)
Rs.15,000/-	Towards loss of estate
Rs.15,000/-	Towards funeral expenses

Rs.7,78,000/-	Total

12. Thus, the appellants/claimants will be entitled for a total sum of Rs.7,78,000/- (Seven Lakhs Seventy Eight Thousands) instead of Rs.3,07,000/- (Three Lakhs Seven Thousand). Thus, there shall be enhancement to the tune of Rs.4,71,000/- (Four Lakhs Seventy One Thousands), which shall fetch interest @ 6% per annum from the date of filing of claim petition before the Tribunal till the date of presentation of the appeal (except delay of 17 days in filing of the appeal) before this Court.

13. This appeal has been filed by delay of 17 days and due to fault of claimant and his counsel at various occasions, common conditional order

was passed and condonation of delay in filing of the appeal was allowed vide order dated 24/11/2020. Hence, interest on the enhanced amount will be paid only from 24/11/2020 till date of actual payment.

14. So far as the arguments of learned counsel for appellants regarding applicability of principle of “pay and recover” is concerned, it reveals that tribunal has exonerated the Insurance Company and directed the respondent Nos. 1 and 2 to pay the awarded amount jointly or severally, on the ground that the offending vehicle was being driven without a valid permit and non-applicant No.1 was driving the vehicle without any valid driving license.

15. Since it is proved in the case that the offending vehicle was being driven without a valid permit and non-applicant No.1 was driving the vehicle without driving license and that finding of the tribunal has not been challenged by the respondent Nos. 1 and 2 before this Court. Hence, in the light of judgments of Hon’ble Apex Court in the case of **National Insurance Company Ltd. Vs. Challa Bharathamma & Others, (2004) 8 SCC 517, Pappu & Others Vs. Vinod Kumar Lamba & Another, (2018) 3 SCC 208, Amrit Paul Singh & Another Vs. Tata AIG General Insurance Company Limited and Others, (2018) 7 SCC 558** and in the case of **Rani & Others Vs. National Insurance Company Limited & Others, 2018 ACJ 2430**, respondent No.3/Insurance Company is liable to pay first the claimants and then recover from the owner of the offending vehicle. Hence, in the considered opinion of this Court learned Tribunal has committed error in completely exonerating the Insurance Company, therefore, the impugned order is modified to that extent and respondent No.3/Insurance Company is directed to deposit the

amount of compensation with liberty to recover the same from respondent No.2/owner of the vehicle.

16. This Misc. Appeal has been filed on 16/08/2010 and claim case was filed before the concerned Tribunal on 25/03/2008. Appellant has paid only Rs.30/- (Thirty) as court fees. Hence, appellant is directed to pay the court fees on the enhanced amount of Rs.4,71,000/- (Four Lakhs Seventy One Thousands) within a period of 30 days from the date of receipt of certified copy of this order, otherwise this order will not be executable.

17. Other terms and condition of the award shall remain intact. With the aforesaid, appeal stands disposed of.

18. Records of the claims Tribunal be sent back alongwith the copy of this order for information and necessary compliance.

No order as to costs.

(AMAR NATH (KESHARWANI))
JUDGE

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