

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

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 22ND OF APRIL, 2024

MISC. APPEAL No. 3416 of 2017

Between :-

**1. NANNE LODHI S/O LATE
RAMCHARAN LODHI, AGED ABOUT 55
YEARS, OCCUPATION: NOTHING
RAJESH TIWARI S HOUSE
GANGASAGAR NEAR SITA RAM
AKHADA THANA MADAN MAHAL
(MADHYA PRADESH)**

**2. SMT. AMOL RANI W/O NANNE
LODHI, AGED ABOUT 50 YEARS,
OCCUPATION: HOUSE WIFE R/O
RAJESH TIWARIS HOUSE,
GANGASAGAR, NEAR SITA RAMS
AKHADA, THANA MADAN MAHAL,
DIST. JABALPUR (MADHYA PRADESH)**

**3. ANIL LIDHI S/O LATE PREM SINGH
LODHI, AGED ABOUT 10 YEARS,
OCCUPATION: MINOR THROUGH
NATURAL GUARDIAN IE GRAND
FATHER NANNE LODHI R/O RAJESH
TIWARIS HOUSE, GANGASAGAR,
NEAR SITA RAMS AKHADA, THANA
MADAN MAHAL, DIST. JABALPUR
(MADHYA PRADESH)**

**4. REKHA LODHI D/O NANNE LODHI,
AGED ABOUT 24 YEARS, R/O RAJESH
TIWARIS HOUSE, GANGASAGAR,
NEAR SITA RAMS AKHADA, THANA**

**MADAN MAHAL, DIST. JABALPUR
(MADHYA PRADESH)**

...APPELLANTS

(BY SHRI VINEET KUMAR MISRHA - ADVOCATE)

AND

**1. RAM PRASAD S/O KUDDA PRASAD
ADIWASI, AGED ABOUT 35 YEARS,
VILLAGE CHEEMADHANA THANA
DEVRI SAGAR (MADHYA PRADESH)**

**2. AMIT JAIN CONTRACTOR S/O SHRI
DASRATHLAL, AGED ABOUT 38
YEARS, JHANKU WARD, INFRONT OF
POLICE THANA DEVRI DIST.
(MADHYA PRADESH)**

**3. UNITED INDIA INSURANCE CO.LTD.
1415 DIVISIONAL OFFICE WRIGHT
TOWN JABALPUR (MADHYA
PRADESH)**

....RESPONDENTS

(NONE)

AND

MISC. APPEAL No. 3417 of 2017

Between :-

**1. NANNE LODHI S/O LATE
RAMCHARAN LODHI, AGED ABOUT 55
YEARS, OCCUPATION: NOTHING
RAJESH TIWARI S HOUSE
GANGASAGAR NEAR SITA RAM**

**AKHADA THANA MADAN MAHAL
(MADHYA PRADESH)**

**2. SMT. AMOL RANI W/O NANNE
LODHI, AGED ABOUT 50 YEARS,
OCCUPATION: HOUSE WIFE R/O
RAJESH TIWARIS HOUSE,
GANGASAGAR, NEAR SITA RAMS
AKHADA, THANA MADAN MAHAL,
DIST. JABALPUR (MADHYA PRADESH)**

**3. ANIL LIDHI S/O LATE PREM SINGH
LODHI, AGED ABOUT 10 YEARS,
OCCUPATION: MINOR THROUGH
NATURAL GUARDIAN IE GRAND
FATHER NANNE LODHI R/O RAJESH
TIWARIS HOUSE, GANGASAGAR,
NEAR SITA RAMS AKHADA, THANA
MADAN MAHAL, DIST. JABALPUR
(MADHYA PRADESH)**

**4. REKHA LODHI D/O NANNE LODHI,
AGED ABOUT 24 YEARS, R/O RAJESH
TIWARIS HOUSE, GANGASAGAR,
NEAR SITA RAMS AKHADA, THANA
MADAN MAHAL, DIST. JABALPUR
(MADHYA PRADESH)**

...APPELLANTS

(BY SHRI VINEET KUMAR MISRHA - ADVOCATE)

AND

**1. RAM PRASAD S/O KUDDA PRASAD
ADIWASI, AGED ABOUT 35 YEARS,
VILLAGE CHEEMADHANA THANA
DEVRI SAGAR (MADHYA PRADESH)**

**2. AMIT JAIN CONTRACTOR S/O SHRI
DASRATHLAL, AGED ABOUT 38
YEARS, JHANKU WARD, INFRONT OF**

POLICE THANA DEVRI DISTT.
(MADHYA PRADESH)

3. UNITED INDIA INSURANCE CO.LTD.
1415 DIVISIONAL OFFICE WRIGHT
TOWN JABALPUR (MADHYA
PRADESH)

....RESPONDENTS

(NONE)

MISC. APPEAL No. 3415 of 2017

Between :-

1. NANNE LODHI S/O LATE
RAMCHARAN LODHI, AGED ABOUT 55
YEARS, OCCUPATION: NOTHING
RAJESH TIWARI S HOUSE
GANGASAGAR NEAR SITA RAM
AKHADA THANA MADAN MAHAL
(MADHYA PRADESH)

2. SMT. AMOL RANI W/O NANNE
LODHI, AGED ABOUT 50 YEARS,
OCCUPATION: HOUSE WIFE R/O
RAJESH TIWARIS HOUSE,
GANGASAGAR, NEAR SITA RAMS
AKHADA, THANA MADAN MAHAL,
DIST. JABALPUR (MADHYA PRADESH)

3. ANIL LIDHI S/O LATE PREM SINGH
LODHI, AGED ABOUT 10 YEARS,
OCCUPATION: MINOR THROUGH
NATURAL GUARDIAN IE GRAND
FATHER NANNE LODHI R/O RAJESH
TIWARIS HOUSE, GANGASAGAR,
NEAR SITA RAMS AKHADA, THANA
MADAN MAHAL, DIST. JABALPUR
(MADHYA PRADESH)

**4. REKHA LODHI D/O NANNE LODHI,
AGED ABOUT 24 YEARS, R/O RAJESH
TIWARIS HOUSE, GANGASAGAR,
NEAR SITA RAMS AKHADA, THANA
MADAN MAHAL, DIST. JABALPUR
(MADHYA PRADESH)**

...APPELLANTS

(BY SHRI VINEET KUMAR MISRHA - ADVOCATE)

AND

**1. RAM PRASAD S/O KUDDA PRASAD
ADIWASI, AGED ABOUT 35 YEARS,
VILLAGE CHEEMADHANA THANA
DEVRI SAGAR (MADHYA PRADESH)**

**2. AMIT JAIN CONTRACTOR S/O SHRI
DASRATHLAL, AGED ABOUT 38
YEARS, JHANKU WARD, INFRONT OF
POLICE THANA DEVRI DISTT.
(MADHYA PRADESH)**

**3. UNITED INDIA INSURANCE CO.LTD.
1415 DIVISIONAL OFFICE WRIGHT
TOWN JABALPUR (MADHYA
PRADESH)**

....RESPONDENTS

(NONE)

Reserved on -22.04.2024

Pronounced on – 25.04.2024

These misc. appeals having been heard and reserved for orders, coming on for pronouncement this day, this court passed the following:

ORDER

This order will govern misc. appeal No. 3416/2017, 3415/2017 and 3417/2017 filed under Section 173(1) of the Motor Vehicles Act, 1988 (in short "Act") by the appellants/claimants assailing the award passed by the VI Additional Motor Accident Claims Tribunal, Jabalpur in claim Case No. 173/2015 on 11.08.2017.

2. Claim case No. 173/2015 was filed for death of child Sahitya Lodhi aged about 8 years, claim case No. 174/2015 for death of Sandhya Lodhi and claim case No. 175/2015 for death of Prem Singh Lodhi in road traffic accident on 11.05.2015.

2.1. In all the claim cases common facts are that on 11.05.2015 Prem Singh Lodhi with his wife Sandhya Lodhi and son Sahitya Lodhi riding on his motor cycle was going to his in-laws house at village Bijora near Dultara Tiraha at NH 26 Sagar Narsinghpur road a dumper MP 15G 2817 (offending vehicle) driven by its driver rashly and negligently hit motor cycle of Prem Singh Lodhi from rear side. All the three persons on motor cycle came under dumper and died on the spot due to injuries suffered by them. Incident was reported to police station Devri District Sagar where crime No. 162/2015 under Section 304-A was registered and investigated. Claim

in all above cases claiming themselves to be the legal heirs of the deceased filed claim petitions for compensation.

3. Claim petitions were opposed by the respondents on the ground that respondent No. 1/driver of the offending vehicle was not having valid and effective driving license on the date of accident. No permit and fitness was issued for the offending vehicle. On the date of accident offending vehicle was driven by respondent No.1 without valid and effective driving license and permit and fitness of the offending vehicle which was against the terms and conditions of the insurance policy therefore, insurance company is not liable to pay compensation.

4. Learned Claims Tribunal framed various issues on the basis of the pleadings of the parties. After recording the evidence and affording opportunity of hearing to the parties. Common award for all the claim cases was passed.

5. Learned counsel for the appellants/claimants took exception to the impugned award on the ground that income of the deceaseds taken by the claims tribunal for computation of dependency amount is not in consonance with the circular issued by the Labour Department with regard to the minimum wages prevalent on the date of accident i.e. on 11.05.2015. Impugned award has also been assailed for not awarding any amount in the head of future prospects and loss of estate. Therefore, prayer has been made for enhancement of the compensation amount.

6. *Per contra*, learned counsel for the respondent/insurance company supported the award passed by the Claims Tribunal and prayed for its dismissal of this misc. appeals.

7. Heard the learned counsel for the parties and peruse the record. From perusal of the impugned award, it is clear that income of the deceased Prem Singh Lodhi and Sandhya Lodhi has taken as Rs.4500/- per month without resorting the circular issued by the Labour Department with regard to the minimum wages to be paid.

8. **In Sapna and Others vs. Mangilal and Another, 2021 ACJ 957**, Coordinate Bench of this Court in para No.8 has held as under:-

“8.Having heard the learned counsel for parties and on perusal of the record, it is noticed that the appellant had deposed before the tribunal that the deceased was earning Rs.8,000/- per month, but no document in support of which was produced. The tribunal had noted that the deceased was about 20 years of age and was a labourer, therefore, considering the minimum wages and dearness allowance for the relevant period, the tribunal has assessed the income of the deceased as Rs.6000/-. No notification/circular of the concerned Labour Officer was taken note of by the tribunal while mentioning the daily wages of Rs.6000/-. The circular dated 7/4/2018 issued by the Labour Officer, Barwani applicable to the period from 01/4/2018 to 30/9/2018 produced by the appellants reveals that the monthly wages on the basis of daily wages along with dearness allowance fixed by the concerned Labour Officer was Rs.7325/-. Hence, the tribunal ought to have fixed the monthly income on the basis of the said circular.”

8.1 Coordinate Benches of this Court in the cases of **Bhim Singh vs. Jagmelsingh in MA No.5350 of 2022 dated 07th July, 2023, Shankar and Others vs Dinesh and Others in MA No.2057 of 2021 dated 08th September, 2023 and Sohanlal and Others vs. Noorasingh and Others** in MA No.7014 of 2019 dated 22.08.2023 has also determined income on the basis of minimum wages notified under the Minimum Wages Act, 1948.

8.3 M.A.No.205/2011 Hon'ble Apex Court as well as Coordinate Benches of this Court has consistently determined the income on the basis of Minimum Wages duly notified under Minimum Wages Act.

8.4 It is correct that as per section 3 & other provisions of Minimum Wages Act, 1948, minimum wages thereunder are fixed & notified for employees employed in an employment specified in the Act, i.e. in respect of scheduled employment under the Act. But, in view of principles laid down in decisions referred to in preceding paras, in this court's considered opinion, in absence of other evidence on record, to obviate uncertainty & for sake of reasonable uniformity & consistency, it would be just & proper to apply yardstick of Minimum Wages duly notified under Minimum Wages Act, 1948 for determining compensation under the Motor Vehicles Act.

8.5 In view of section 57 of Indian Evidence Act, 1872, judicial notice can be taken of Minimum Wages duly notified under Minimum Wages Act, 1948. Hence, the same need not to be proved separately.

8.6 In the light of exposition of law in the above judgments as referred above, the procedure adopted by the learned Claims Tribunal for assessing the income of the injured which is based merely on surmises is incorrect and cannot be approved.

9. In the present case, income of the deceased Prem Singh Lodhi and Sandhya Lodhi as unskilled labourer is taken as Rs.6239/- per month as per the circular notification dated 1.4.2015 which was prevalent on the date of accident i.e. on 11.5.2015. It is undisputed that on the date of accident Prem Singh Lodhi was 30 years of age and Sandhya Lodhi was 28 years of age. As per the directions contained in paragraph 59.4 in case of **National Insurance Company Ltd. vs. Pranay Sethi 2 017(16) SCC 680** these appeals are entitled for increase of 40% towards future prospects in their total income. In the judgment of **National Insurance Company Ltd. (Supra)** it has also been held that Rs.15,000/- will also be awarded in the head of loss of estate and it will be increased by 10% after lapse of period of three years. Thus, now in this head Rs.16,500/- is payable.

10. In view of the aforesaid discussion appellants/claimants in MA No. 3416/2017, and 3417/2017 are entitled to following amount -

1	Income	Rs. 6239/- per month
2	Future prospect	Rs. 2496/ (40%)
3	Deduction towards personal expenses	2912/- (1/3 of 6239 +2496=8735)
4	Total annual income	5823 (8735-2912) x12 = 69876

5	Multiplier	17
6	Loss of dependency	69876 x17=1187892
7	Loss of estate	Rs.16,500/-
8	Total compensation	Rs.12,04,392/-

11. Just and proper amount of compensation in the MA No. 3416/2017 and MA No. 3417/2017 is Rs.12,04,392/- as against award of the Tribunal of Rs.6,62,000/- awarded by learned Claims Tribunal for death of Sandhya Lodhi and Prem Singh Lodhi.

12. **MA No. 3415/2017** relates to the death of 8 years old child Sahitya Lodhi. Learned counsel for the appellants relying upon the judgment of Supreme Court in the case of **Kurvan Ansari alias Kurvan Ali vs. Shyam Kishore Murmu & Anr. in Civil Appeal No. 6902/ 2021 dated 16.11.2021** submits that compensation awarded for death of the deceased Sahitya Lodhi is also therefore, compensation amount may be enhanced in the light of above judgment.

13. From perusal of the impugned award relating to minor deceased Sahitya Lodhi, it is clear that learned Claims Tribunal has taken notional income of the child as per Rs.15,000/- per year and applying multiplier of 15 awarded Rs.2,25,00/- for loss of dependency and rs. 25,000/- in the head of funeral expenses. Thus, total award of Rs. 2,50,000/- has been passed. In case of **Purvan Ansari (Supra)** deceased boy was aged about 7 years at the time of incident. In this case also learned Claims Tribunal has awarded for loss of dependency as Rs.2,25,000/- and Rs. 15,000/- for funeral

expenses. But Hon'ble Apex Court took notional income of the child as Rs.25,000/- and after applying multiplier of 15 awarded Rs.3,75,000/- as loss of dependency. In the instant appeal the deceased child was of 8 years old. In the light of aforesaid judgment notional income of the child is taken as Rs.25,000/- and after applying multiplier of 15 loss of dependency comes to Rs. 3,75,000/- for which appellants are entitled as against Rs. 2,25,000/- awarded by the Claims Tribunal. Thus, just and proper amount of compensation in MA No. 3415/2017 comes to Rs.3,75,000/- on adding Rs. 16,500/- in the head of funeral expenses.

14. Resultantly, the appeals are partly **allowed** by enhancing the amount of compensation as mentioned herein above. Enhanced amount shall carry interest at the same rate as awarded by the Tribunal. The other terms and conditions of the impugned award shall remain intact. If the appellants have valued the appeal less than the amount enhanced, they will have to further pay court fee according to the amount enhanced within the period of 60 days from the date of order and only thereafter the amount so enhanced shall be released by the respondents on receipt of certificate.

15. Accordingly, these appeals are disposed of.

16. Let a copy of this order be kept in the MA No. 3417/2017 and MA No. 3415/2017 also.

(BINOD KUMAR DWIVEDI)

JUDGE

Akanksha