

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 17th OF APRIL, 2023

MISC. APPEAL No. 155 of 2019

BETWEEN:-

1. **MANOJ KUMAR S/O LATE SURAJ SINGH SAHU, AGED ABOUT 40 YEARS, R/O VILLAGE BANDHA POST NAGAN DEORI, P.S. DHUMA, TAHSIL LAKHNADOUN, DISTRICT SEONI M.P, TEMPORARY ADDRESS- HOUSE NO. 25, CHANDRIKA HOMES AMANPUR MADANMAHAL JABALPUR (MADHYA PRADESH)**

2. **SMT. GEETA SAHU W/O SHRI MANOJ KUMAR SAHU, AGED ABOUT 38 YEARS, R/O VILLAGE BANDHA POST NAGAN DEORI, P.S. DHUMA, TAHSIL LAKHNADOUN, DISTRICT SEONI M.P, TEMPORARY ADDRESS- HOUSE NO. 25, CHANDRIKA HOMES AMANPUR MADANMAHAL JABALPUR (MADHYA PRADESH)**

3. **HARIOM SAHU S/O SHRI MANOJ KUMAR SAHU, AGED ABOUT 18 YEARS, R/O VILLAGE BANDHA POST NAGAN DEORI, P.S. DHUMA, TAHSIL LAKHNADOUN, DISTRICT SEONI M.P, TEMPORARY ADDRESS- HOUSE NO. 25, CHANDRIKA HOMES AMANPUR MADANMAHAL JABALPUR (MADHYA PRADESH)**

4. **SMT. GULABA BAI W/O LATE SURAJ SINGH SAHU, AGED ABOUT 55 YEARS, R/O VILLAGE BANDHA POST NAGAN DEORI, P.S. DHUMA, TAHSIL LAKHNADOUN, DISTRICT SEONI M.P, TEMPORARY**

**ADDRESS- HOUSE NO. 25, CHANDRIKA
HOMES AMANPUR MADANMAHAL
JABALPUR (MADHYA PRADESH)**

.....APPELLANTS

(BY SHRI UDAY KUMAR- ADVOCATE)

AND

- 1. H.D.F.C. AGRO JOURNAL INSURANCE
COM. LTD. IN FRONT OF INCOME TAX
OFFICE JABALPUR (MADHYA PRADESH)
(INSURER OF DUMPER NO.- MP49G1175)**

- 2. ARVIND SAHU S/O BHAGWAT SAHU R/O
BAJRANG WARD GOTEGAO TEHSIL AND
THANA GOTEGAO, DISTT. NARSINGHPUR
(MADHYA PRADESH) (OWNER OF
DUMPER NO. MP49G1175)**

- 3. MUKESH CHAND S/O NANDLAL SAHU,
AGED ABOUT 51 YEARS, R/O BAJRANG
WARD GOTEGAO TEHSIL AND THANA
GOTEGAO, DISTT. NARSINGHPUR
(MADHYA PRADESH) (DRIVER OF
DUMPER NO. MP49G1175)**

.....RESPONDENTS

(BY SHRI MOHD. SIDDEEQUE- ADVOCATE)

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

JUDGMENT

Heard on **I.A. No. 5039/2019**, an application for dismissal of the
appeal on the ground that Court Fee has not been paid.

2. Per contra, it is submitted by the counsel for the appellant that the claim of the appellant Nos. 1, 3 and 4 has been rejected on the ground that they were not the dependents of the deceased.

3. In the memo of appeal, it is mentioned that no enhancement for the appellant Nos. 1, 3 and 4 is prayed because they are unable to pay heavy Court Fees. It is further mentioned that the appellant No. 2 is entitled to receive more compensation and she is ready to pay the Court Fee on the enhanced amount whereas the appellant has also prayed for grant of compensation of Rs.10,00,000/- for the appellant Nos. 1, 3 and 4.

4. It is submitted by the counsel for the appellants that Claims Tribunal has held that since the deceased was a bachelor, therefore, only appellant No. 2, who is mother of the deceased can be said to be dependent. Whereas under Section 166 of the Motor Vehicle Act all the legal representative can maintain the claim petition. It is further submitted that the judgment passed by the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Others**, reported in (2017) 16 SCC 680 is *per incuriam* as it has not taken note of the judgment passed by the Supreme Court in the case of **Lata Wadhwa and Others Vs. State of Bihar and Others**, reported in (2001) 8 SCC 197. It is also submitted that the judgment passed by the Supreme Court in the case of **Smt. Manjuri Bera Vs. Oriental Insurance Company Ltd. and another**, reported in 2007 (2) ACCD 863 (SC) has also not been taken note of. The High Court of Himachal Pradesh in the case of **Oriental Insurance Company Limited Vs. Gurnam Singh and Others**, reported in 2014 ACJ (1) 554 and Patna High Court in the case of **National Insurance Company Ltd.**

Biharsarif (Opposite Party No. 3), through Sri Anjani Kumar, A.O. cum-Duly Constituted Attorney Vs. Devaki Paswan, Son of Late Chamani Paswan & Ors., reported in **2014 ACJ (2) 1101** have held that the deductions are provided only in II scheduled made under Section 163-A of the Motor Vehicles Act and, therefore, neither multiplier nor deduction is applicable if the case is filed under Section 166 of the Motor Vehicles Act. It is further submitted that the Supreme Court in the case of **Pranay Sethi (supra)** has ignored the statutory provisions of law, therefore, the said judgment is *per incuriam*. It is further submitted that the judgment passed in the case of **Pranay Sethi (supra)** has been passed primarily to provide for future prospects and any other observation made by the Constitutional Bench cannot be treated as a law of land.

5. So far as the question of payment of Court Fee is concerned, it is submitted that as per the Court Fees (Madhya Pradesh Amendment) Act, 2012 in Schedule-II to the Principle Act, the words 2 1/2 % of the **enhanced amount claimed** in appeal subject to a maximum of Rs.1,00,000/- have been substituted. The word “enhanced amount claimed” means that the amount which is enhanced by the Appellate Court and not the amount claimed by the appellant in the appeal. Thus, the Court Fee is payable only after the entitlement of the appellant is adjudicated by the Appellate Court and not at the time of the presentation of the appeal. It is further submitted that various Courts are passing different orders. Some of the Co-ordinate Benches had exempted the appellant to pay the Court Fee at the time of final hearing whereas some of the Co-ordinate Benches are directing that the Court Fee should be paid at the time of presentation of the appeal. Therefore,

there are conflicts of opinion between the Single Benches. Thus, this question is required to be referred to the Larger Bench.

6. Per contra, it is submitted by the counsel for the respondents that a Division Bench of this Court in the Case of **Nitin Jain and Another Vs. State of M.P. and Others**, decided on 08.12.2015 passed in **W.P. No. 2818/2015 (PIL)** has held that the Court Fee is to be calculated at the time of presentation of the appeal to the High Court. Similarly, a Co-ordinate Bench of this Court in the case of **Smt. Rashmi Mongare & Others Vs. Sunil Chaudhari & Others**, decided on 14.06.2021 passed in **M.A. No. 1058/2021** has held that the Court Fee is payable at the time of presentation of the appeal and the Madhya Pradesh Amendment in Court Fees Act, 2012 has also been considered in detail. The counsel for the respondents has also relied upon the judgment passed by the Co-ordinate Bench in the case of **Maiku Singh and Others Vs. Anup Singh and Others**, reported in **2022 (4) MPLJ 285**.

7. Heard the learned counsel for the parties.

8. So far as the request to refer the matter to Larger Bench for a decision as to whether the Court Fee is payable at the time of presentation of appeal or it is payable after the just compensation is adjudicated is concerned, the counsel for the appellant could not point out any ground which may require the reference of said question to the Larger Bench. It is fairly conceded by the counsel for the appellants that in none of the orders by which the appellants were granted exemption from payment of Court Fee till the final disposal of the appeal, any reasons were assigned.

9. The Co-ordinate Bench of this Court in the case of **Maiku Singh**

and Others (supra) has held as under:-

“5. From the wordings of the provisions of Article 11 of Schedule II of Court fees Act” “2.5 percent of the enhanced amount claimed in appeal” it is clear that Court fees will be paid on that enhanced amount which is claimed by the appellant in his appeal memo and not on the amount which will be determined by the Court after adjudication of the claim of the appellant and the Court fees is payable at the time of presentation of the appeal not after judgment.

6. Section 4 of the Court Fees Act, 1870 bars the Court from receiving a plaint/appeal if it does not bear the proper Court fees. Although section 149, Civil Procedure Code acts as an exception to the said bar and enables the Court to permit the plaintiff to pay the deficit Court fees at a subsequent stage. But this section also does not give unfettered power to the Court for giving time to appellant for paying Court fee.

7. Hon’ble Apex Court in the case of *A.Nawab John and ors. Vs. V.N. Subramaniam, 2012 MPLJ Online (S.C.) 82= (2012) 7 SCC 738* in para 23 of its judgment observed as thus:-

“The section 149, Civil Procedure Code does not confer an absolute right in favour of a plaintiff to pay the Court fee as and when it pleases the plaintiff. It only enables a plaintiff to seek the indulgence of the Court to permit the payment of Court fee at a point of time later than the presentation of the plaint. The exercise of the discretion by the Court is conditional upon the satisfaction of the Court that the plaintiff offered a legally acceptable explanation for not paying the Court

fee within the period of limitation.”

8. Order VII, Rule 11 of Civil Procedure Code also provides that the plaint shall be rejected (c) “where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so.”

9. Although, this Court in the case of *M.A. No. 851/2015, Arun Kumar Dubey vs. Vijay Kumar Gujrati and Others* and *M.A. No. 88/2018, Smt. Meera Sahu vs. Deepchand* gave the permission to the appellants of these cases that they will be permitted to pay Court fees on the enhanced amount after judgment in the appeal. But in these cases coordinate bench of this Court did not lay down any principle that appellants are required to pay Court fee only on the amount enhanced by the Court in the appeal and that the Court fee will be paid after adjudication of the appeal by the Court. The orders are limited for these cases only.

10. On the other hand the Division Bench of this Court in the case of *Dr. Hajarilal Agrawal vs. State of M.P. and ors.*, 2005 (2) *M.P.L.J.* 65 = 2006 (4) *MPHT* 237 turning down the prayer of appellant that appellant may be allowed to make payment of Court fee at the time of final decision of the appeal on compensation which may be determined by the Court and held - Court fees is payable on valuation of appeal. The amount for which adjudication is sought not on determined, on the initial stage where Court-fee is required to be paid.

11. Hon'ble Apex Court in the case of *K.C. Skaria vs. Govt. of State of Kerala and anr.*, reported in 2006(2) *M.P.L.J. (S.C.)* 70 = *AIR* 2006 *SC* 811 held that non-payment of Court fees cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that person

suing did not know the exact amount due to him as that will open the floodgates for converting several types of money claims into suits for accounts to avoid payment of Court fees at the time of institution.

12. From the above discussion, it is clear that the appeal is not maintainable without payment of Court fees on the claimed enhanced amount i.e. Rs. 5,00,000/-, as also held by this Court in the case of *Ramratan Singh vs. Janakchand Rana*, 2017 MPLJ Online 135 = M.A.No. 781/2015 vide order dated 6-9-2017 and coordinate Bench of this Court in the case of *Smt. Rashmi Mongare and others vs. Sunil Chaudhari and others*, 2021 MPLJ Online 62 = M.A. No. 1058/2021 vide order dated 14.06.2021. If the claimants are unable to pay the Court fee on account of indigency, they can always seek the leave to file an appeal as an indigent person under Order 44 of the Code of Civil Procedure, 1908.”

10. Thus, some of the Co-ordinate Benches of this Court has granted exemption from payment of Court Fee till final disposal, but no reasons were assigned whereas the Co-ordinate Benches of this Court in the case of **Maiku Singh and Others (supra)** and **Smt. Rashmi Mongare (supra)** have given a specific reasons as to why the Court Fee is payable at the time of presentation of the appeal and not after the appeal is decided and just compensation is adjudicated.

11. Even otherwise, the Division Bench of this Court in the case of **Nitin Jain (supra)** has held as under:-

“In view of the above, Registry is directed to appropriately calculate the court fees on the appeal at the time of presentation to the High Court in accordance with Schedule II Article 11 (a)(i) of the Court Fees Act (M.P. Amendment) Act, 2012 w.e.f. 09/01/2013.”

12. Thus, the question as to whether the Court fee is payable at the time of presentation of appeal or at the time of final hearing of the appeal or after the adjudication of just compensation has already been decided and **it has been held that the Court Fee is payable at the time of presentation of appeal.**

13. The next contention of the counsel for the appellants that the judgment passed by the Supreme Court in the case of **Pranay Sethi (supra)** is *per incuriam* because it has been passed in ignorance of Section 166 of Motor Vehicles Act which do not provide for any deduction under any head, therefore it is not a good law.

14. This Court was surprised and shocked to hear such an argument.

15. The Supreme Court in the case of **Pranay Sethi (supra)** has considered each and every aspect of the matter in detail. For assessing the just compensation, a uniform guideline has been issued. The counsel for the appellant could not point out that how this court can hold the judgment passed by a Supreme Court as *per incuriam*. Furthermore, the concept of *per incuriam* has also been taken note of by the Supreme Court in the case of **Pranay Sethi (supra)**.

16. So far as the merits of the case are concerned, it is held that the appellants No.1, 3 and 4 who are the father, brother and grandmother of the deceased are not the dependants of the deceased who was the bachelor. It is submitted by the counsel for the appellant that since Section 166 of Motor Vehicles Act speaks of the legal representatives and not the dependants and thus, the Claims Tribunal should not have held that the father, mother and grandmother of the deceased who was bachelor son of the appellant Nos.1 and 2 are not the dependants but in

fact they are the legal representatives and, therefore, they should have been awarded compensation amount.

17. Heard the learned counsel for the appellants on this issue.

18. Undisputedly, the deceased was a bachelor son. Section 8 of the Hindu Succession Act provides for General Rules of succession in the case of males which reads as under:-

“8. General rules of succession in the case of males.-The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter —

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.”

19. Thus, it is clear that the property of male Hindu dying intestate shall devolve according to the provisions of this Chapter, firstly, upon the heirs, being the relatives specified in class I of the Schedule. Class I of the schedule provides that Son, daughter, widow, mother, son of a predeceased son, daughter of a predeceased son, son of a predeceased daughter, daughter of a predeceased daughter, widow of a predeceased son, son of a predeceased son of a predeceased son, daughter of a

predeceased son of a predeceased son, widow of a predeceased son of a predeceased son, son of the predeceased daughter of a predeceased daughter, daughter of predeceased daughter of a predeceased daughter, daughter of a predeceased son of a predeceased daughter, daughter of the predeceased daughter of a predeceased son.

20. Since the deceased was a bachelor, therefore, except mother, no other Class-I heir is available. It is well established principle of law that first the property of a Hindu male shall devolve firstly upon the heirs being the relatives specific in the Class I of the schedule and if there is no heir of Class I, then upon the heirs being relatives specified in Class II of the schedule.

21. The Supreme Court in the case of **Pranay Sethi (supra)** has relied upon the judgment passed by the Supreme Court in the case of **Sarla Verma (Smt.) and Others Vs. Delhi Transport Corporation and Another**, reported in (2009) 6 SCC 121 has held as under:-

“37. The principles relating to determination of liability and quantum of compensation are different for claims made under Section 163-A of the MV Act and claims under Section 166 of the MV Act. (See *Oriental Insurance Co. Ltd. v. Meena Variyal*) Section 163-A and the Second Schedule in terms do not apply to determination of compensation in applications under Section 166. In *Trilok Chandra* this Court, after reiterating the principles stated in *Susamma Thomas*, however, held that the operative (maximum) multiplier, should be increased as 18 (instead of 16 indicated in *Susamma Thomas*), even in cases under Section 166 of the MV Act, by borrowing the principle underlying Section 163-A and the Second Schedule.”

22. The counsel for the appellants could not point out as to how the

father, brother and grandmother of the deceased can be treated as his legal representative even in accordance of Section 8 of the Hindu Succession Act. Although it is made clear that the compensation on account of death of a person cannot be held to be a property of a male Hindu dying intestate but the provisions of Section 8 of Hindu Succession Act have been quoted to meet out the argument advanced by the appellant that the Supreme Court committed a material illegality by holding that in case of a bachelor only his mother would be considered as dependant.

23. No other argument is advanced by the counsel for the parties.

24. As the appellants have not prayed for time to pay the deficit Court fee, accordingly, **I.A. No. 5039/2019** is hereby **allowed**.

25. The appeal is **dismissed** for want of payment of Court Fee.

(G.S. AHLUWALIA)
JUDGE

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