

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

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 21st OF MARCH, 2023**

MISCELLANEOUS APPEAL No. 783 of 2020

BETWEEN:-

1. MST. GAYATRI TIWARI W/O
LATE KAMLESHWAR
PRASAD TIWARI, AGED
ABOUT 39 YEARS,
OCCUPATION: HOUSEWIFE
R/O. VIVEKANAND NAGAR,
NEAR UPPAL MOTORS
WORKSHOP, BARA,
HUZOOR, DISTRICT REWA
(MADHYA PRADESH)
2. PRAMOD KUMAR TIWARI
S/O LATE KAMLESHWAR
PRASAD TIWARI, AGED
ABOUT 25 YEARS, R/O.
VIVEKANAND NAGAR,
NEAR UPPAL MOTORS
WORKSHOP, BARA,
HUZOOR, DISTRICT REWA
(MADHYA PRADESH)
3. KU. RAMA TIWARI D/O
LATE KAMLESHWAR
PRASAD TIWARI, AGED
ABOUT 21 YEARS,
OCCUPATION: HOUSE
WORK R/O. VIVEKANAND
NAGAR, NEAR UPPAL
MOTORS WORKSHOP,
BARA, HUZOOR, DISTRICT
REWA (MADHYA PRADESH)
4. KU. PRACHI TIWARI D/O
LATE KAMLESHWAR
PRASAD TIWARI, AGED
ABOUT 18 YEARS,
OCCUPATION: STUDENT
R/O. VIVEKANAND NAGAR,
NEAR UPPAL MOTORS

**WORKSHOP, BARA,
HUZOOR, DISTRICT REWA
(MADHYA PRADESH)**

.....APPELLANTS

(BY SHRI ARUBENDRA SINGH PARIHAR - ADVOCATE)

AND

- 1. PREMLAL GOUTAM S/O
LATE BADRI PRASAD
GOUTAM, AGED ABOUT 38
YEARS, R/O. VILLAGE
MOUDAHA, POLICE
STATION SABHAPUR,
DISTRICT SATNA (MADHYA
PRADESH)**
- 2. SANTOSH MISHRA S/O
LATE RAMNATH MISHRA,
AGED ABOUT 35 YEARS, R/O
MANDAKNI VIHAR, KOTHI
ROAD, WARD NO.2, POLICE
STATION CIVIL LINES
SATNA, DISTRICT SATNA
(MADHYA PRADESH)**
- 3. DIVISIONAL MANAGER,
UNITED INDIA INSURANCE
CO.LTD. SEMARIYA
CHOWK SATNA, DISTRICT
SATNA (MADHYA
PRADESH)**

.....RESPONDENTS

(RESPONDENT NO.3 BY SHRI T.S. LAMBA - ADVOCATE)

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

ORDER

Heard on **I.A. No.1751/2020**, an application under Section 5 of
Limitation Act.

- 2. The appeal was filed with delay of 46 days.**

3. For the reasons mentioned in the application, the same is **allowed**. The delay in filing the appeal is hereby **condoned**.

4. This Miscellaneous Appeal under Section 173 of Motor Vehicles Act has been filed against the Award dated 29/08/2019 passed by Second Additional Motor Accident Claims Tribunal, Rewa, District Rewa (M.P.) in Claim Case No.2000443/2016.

5. Since the factum of accident is not in dispute, therefore it is sufficient to mention that the deceased – Kamleshwar Prasad Tiwari died in a vehicular accident on 22/04/2016.

6. Challenging the Award passed by the Claims Tribunal, it is submitted by the counsel for the appellants that the Claims Tribunal should not have deducted the family pension which the appellant No.1 is getting on account of death of her husband and has also not granted consortium to the other appellants.

7. *Per contra*, it is submitted by the counsel for the respondents that in order to assess just compensation, any amount which is received by the claimants on account of death of the deceased is liable to be deducted. It is submitted that family pension is received by the wife only on account of her husband, therefore the Claims Tribunal has rightly deducted the amount of family pension which is being received by the appellant No.1.

8. Heard the learned counsel for the parties.

9. The contention of the counsel for the appellants is that the Claims Tribunal should not have deducted the family pension which is being received by the appellants on account of the death of the husband of appellant No.1, for the reason that the family pension is payable to

the wife even otherwise than the accidental death.

10. Considered the submissions made by the counsel for the appellants.

11. It is true that the wife of a deceased employee would get the family pension even if the death of an employee takes place in a normal course, but said analogy cannot be made applicable in the motor accident claim cases.

12. During the lifetime of an employee, he is entitled for salary only and not pension and similarly, during the lifetime of an employee, his wife is not entitled for pension. The family pension is payable only after the death of an employee. However, for calculating the loss of income, the salary which was otherwise payable to the employee had he not died in a vehicular accident, has to be taken into consideration.

13. If the salary of the deceased is taken into consideration for assessing the loss of dependency and at the same time, the family pension received by his wife is not deducted, then it would create a very awkward situation. This aspect can be understood in a very simple manner. If the monthly salary of an employee is Rs.30,000/-, then after his retirement he will be entitled for a pension of Rs.15,000/- and after death of the employee, his wife would be entitled for family pension at the admissible rate. If the family pension is not excluded from the loss of dependency, then it would mean as under:-

*Salary of the deceased employee – personal expenses + family pension
+ future prospects*

14. In the present case, the Claims Tribunal has taken the monthly salary of the deceased as Rs.48,196/- and therefore his yearly income

comes to Rs.5,78,352/-. Future prospect @ 30% would come to Rs.1,73,505.60. The yearly income of the deceased after including future prospect comes to Rs.7,51,857.60. Since the deceased is survived by four legal representatives, therefore his personal expenses are taken as $\frac{1}{4}^{\text{th}}$ which comes to Rs.1,87,964.40. Therefore, yearly loss of income of the claimants come to Rs.5,63,893/-.

15. The appellant No.1 is getting monthly family pension of Rs.25,000/-, therefore yearly family pension comes to Rs.3,00,000/-. Accordingly, in case family pension is not deducted then yearly loss of dependency would come to Rs.5,63,893 + Rs.3,00,000 = Rs.8,63,893/-, whereas the deceased was getting salary of Rs.48,196/- per month and his yearly income was only Rs.5,78,352/-.

16. Just compensation does not mean unjust enrichment. Loss of dependency means loss of actual income on account of death of the breadwinner.

17. Under these circumstances, the amount of family pension which is being received by the appellant No.1 is liable to be deducted from the loss of yearly income assessed on the basis of monthly salary + future prospects of the deceased.

18. Under these circumstances, this Court is of the considered opinion that no error was committed by the Claims Tribunal by deducting the monthly family pension which is being received by the appellant No.1. However, the counsel for the appellants is right in submitting that the Claims Tribunal has awarded the consortium only to the appellant No.1. Whereas, appellants No.2, 3 & 4 are the children of the deceased and they are also entitled for consortium.

19. Accordingly, the compensation amount is enhanced by further amount of **Rs.1,20,000/- (Rupees One Lakh Twenty Thousand Only)**. The other conditions of the Award shall remain the same.

20. With aforesaid modification, the Award dated 29/08/2019 passed by Second Additional Motor Accident Claims Tribunal, Rewa, District Rewa (M.P.) in Claim Case No.2000443/2016, is hereby **affirmed**.

21. Accordingly, the appeal is **disposed of**.

(G.S. AHLUWALIA)
JUDGE

shubhankar