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**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE HIRDESH  
ON THE 2<sup>nd</sup> OF NOVEMBER, 2023  
MISC. APPEAL No. 1487 of 2022**

**BETWEEN:-**

1. **AYSHA BE W/O LATE MOHD. HAJIK @ HAJJU KHAN, AGED ABOUT 45 YEARS, OCCUPATION: SERVICE, BARGHAT ROAD BEHIND HANUMAN MANDIR, KANHIWADA TEHSIL, DISTRICT SEONI (MADHYA PRADESH)**
2. **AKAMAL KHAN S/O MOHD. AFROJ KHAN, AGED ABOUT 14 YEARS, OCCUPATION: STUDENT, MINOR THROUGH GUARDIAN AYSHA BE W/O LATE MOHD. HAJIK @ HAJJU KHAN R/O BARGHAT ROAD BEHIND HANUMAN MANDIR KANHIWADA TEHSIL SEONI DISTRICT SEONI (MADHYA PRADESH)**
3. **ARKAN KHAN S/O MOHD. AFROJ KHAN, AGED ABOUT 7 YEARS, OCCUPATION STUDENT: MINOR THROUGH GUARDIAN AYSHA BE W/O LATE MOHD. HAJIK @ HAJJU KHAN R/O BARGHAT ROAD BEHIND HANUMAN MANDIR KANHIWADA TEHSIL SEONI DISTRICT SEONI (MADHYA PRADESH)**

**.....APPELLANTS**

***(BY SHRI NEELAM KUMAR SHAH - ADVOCATE)***

**AND**

1. **MOHINDER S/O SAJJAN SINGH, AGED ABOUT 45 YEARS, VILLAGE GHALOTI, LUDHIYANA (PUNJAB)**
2. **NATIONAL INSURANCE COMPANY LTD. BRANCH OFFICE LIC CHOWK, NAGPUR ROAD, CHHINDWARA TEHSIL AND DISTRICT CHHINDWARA (MADHYA PRADESH)**

**.....RESPONDENTS**

***(RESPONDENT NO.1 BY SHRI ASHOK SHAH- ADVOCATE)  
(RESPONDENT NO.2 BY SHRI D.N.SHUKLA - ADVOCATE)***

.....

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

**ORDER**

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

2. This appeal by the appellants/claimants under section 173(1) of Motor Vehicles Act is arising out of an award dated 06.12.2021 passed by the Member Motor Accidents Claims Tribunal, Seoni on account of inadequacy of amount of compensation awarded in respect of death of Mohd.Hajik @ Hajju Khan and seeking enhancement of amount of compensation.

3. The date of accident, negligence and issue of liability are not disputed. The findings of the Tribunal in this regard are also not in question. As per findings of the Tribunal, on account of death of Mohd.Hajik @ Hajju Khan the amount of compensation awarded by it is Rs.1,11,000/- with interest.

4. Learned counsel for the appellants contended that compensation awarded by the Tribunal is inadequate and it has made grave legal error in awarding total compensation of only Rs.1,11,000/-, which is bad in law and very meager. He submitted that prior to accident, the deceased was aged about 46 years, was fit & healthy person, he was holding the charge of Secretary of Gram Panchayat, Umarwada and earning Rs.24,653/- per month. The appellants were totally dependants upon deceased, but these facts have not been appreciated by the Tribunal and it proceeded to pass an award for very meager sum. The impugned award is illegal and arbitrary. He further submitted that Tribunal has wrongly assessed that claimants are not dependants upon the deceased and erroneously observed that deceased was not serving as a Secretary of Gram Panchayat and was not earning Rs.24,653/- per month. The

Tribunal has calculated the compensation by over-looking the settled principles of law and awarded very meager sum and hence, this appeal praying for enhancement of award and grant of just and proper compensation.

5. On the other hand, learned counsel for the respondent-Insurance Company contended that the Tribunal has rightly awarded the compensation and supported the findings recorded by the Tribunal in the impugned award.

6. Heard learned counsel for the parties and perused the record. The first ground of counsel for appellants is that the Tribunal has wrongly assessed that the deceased was not serving as a Secretary of Gram Panchayat and earning Rs.24,653/- per month.

7. On perusal of pleadings of the appellants/claimants it is found that it has been pleaded that deceased was working as Secretary of Gram Panchayat, Umarwada and at the time of accident his pay was Rs.24,653/- per month. The wife of deceased, namely, Aysha Bee stated in her examination-in-chief that at the time of accident her husband was working as Secretary of Gram Panchayat, Umarwada and is getting Rs.24,653/-. She has produced pay slip (Exhibit-P/13). Babulal (AW.3), who is working as Peon in Gram Panchayat, Umarwada, stated in his examination-in-chief that deceased was working as Secretary in Janpad Panchayat, Barghat and Gram Panchayat, Umarwada. The deceased was receiving regular pay at the time of accident and his pay was Rs.24,653/- per month and his pay slip is brought as Exhibit-P/13. She also produced original document of salary statement and posting order issued by the establishment which are Exhibits-P/14 & P/15. It is true that in his cross-examination, AW.3 has admitted that he has not brought documents relating to his appointment and pay. His evidence and documents, like Exhibits-P/13, P/14 & P/15, are the orders of establishment. These documents relating to pay of

deceased and salary certificate, in my considered opinion, are more than sufficient to prove that deceased was serving as Secretary of Gram Panchayat, Umarwada and earning Rs.24,653/- per month. There is absolutely nothing on record to disbelieve evidence of these witnesses. No rebuttal or controverting evidence has also been brought on record.

8. In the case of **Sanobanu Nazirbhai Mirza Vs. Ahmedabad Municipal Transport Service**, (2013) 16 SCC 719 the Apex Court has held that when there is sufficient evidence on record produced by the claimant about his income, without assigning any reason for not accepting the said evidence on record, the tribunal and the High Court in that case, has committed an error by not taking the notional income of the deceased for assessment of compensation. Here, in this case, it has to be held that in the face of evidence produced by the appellants/claimants the Tribunal should have not rejected the plea that at the time of accident the deceased was not Secretary of Gram Panchayat and was earning Rs.24,653/- per month.

9. Learned counsel for the appellant submitted that Tribunal has wrongly assessed that widow of the deceased was working since beginning and she is earning separately, and as such, she is not dependant upon the income of her deceased-husband.

10. It is true that Aysha Be is working as a Teacher and her gross salary is Rs.43000/-. In this regard it will also be material to consider the relevant provisions of the Motor Vehicles Act. Section 166 of the Act lays down the category of persons who can apply for the compensation. It categorizes the legal representatives in case of death. It is important to note that section nowhere uses the word 'dependent'. So also the word 'dependent' is

not defined under the Act. Meaning thereby, when a person falls under the category of 'legal representative', he can be the claimant. The word 'legal representative' has not been defined under the Motor Vehicles Act. Section 2(11) of the Civil Procedure Code lays down the meaning of said word. There are number of judgments opining that meaning given to the 'legal representative' under Civil Procedure Code can be borrowed while interpreting the provisions of Motor Vehicles Act. Some of them are **Smt.Manjuri Bera Vs. The Oriental Insurance Company Ltd. & anr.** (2007) 10 SCC 643 and **Gujarat State Road Transport Corporation Vs. Ramanbhai Prabhatbhai and another**, (1987) 3 SCC 234. Widow is certainly one of the heir, on which property of a Hindu devolves as per intestate succession. It has been judicially recognized that- (a) age of the deceased, (b) income of the deceased and number of dependents are three factors to be considered while fixing the quantum of compensation. From his earning the deceased will spend on himself and on his near relatives/dependents. So when a person dies in a vehicular accident, the dependents losses the amount contributed by the deceased towards them. The Apex Court in order to have uniformity has laid down some guidelines how to calculate contribution to personal expenses and contribution towards dependents. It depends upon the status of the deceased (married/unmarried) and on number of dependents.

11. In the present case, appellant/claimant No.1-Aysha Be is widow of the deceased. It is true that she is an earning lady. Where both the spouses are earning members, there is reason to believe that both the spouses must be contributing expenses towards family consisting of children and both husband & wife. But, in the present case the Tribunal has held that claimant is earning widow of the deceased, so she is not dependent upon the deceased is not

correct.

12. In the case of **National Insurance Company Vs. Birender and others**, (2020) 11 SCC 356 the Apex Court decided whether major sons of the deceased who are married and gainfully employed or earning, can claim compensation and held that their claim would be maintainable under section 166(1)(c ) of the Act. However, the quantum of compensation would depend on the extent of their dependency on the deceased parent.

13. In the present case widow of deceased is an earning lady. She is not totally dependent upon the earning of the deceased. So in the considered opinion of this Court, she is entitled to get compensation, but her dependency is one half of the earning of deceased. According to the pay slip (Exhibit-P/13) the deceased was earning Rs.24,653/-. If half of the income of the deceased is deducted towards personal living expenses, then monthly dependency of the widow would come to Rs.12,326/- [Rupees Twelve Thousand Three Hundred Twenty Six only]. The annual dependency would be Rs.1,47,912/- [Rupees One lac Forty Seven Thousand Nine Hundred Twelve only].

14. On perusal of record of the Tribunal, the appellants/claimants filed photocopy of Samagra portal, in which, age of deceased-Mohd.Hajik is mentioned as 57 years. So according to the decision of **National Insurance Company Ltd. Vs. Pranay Sethi**, (2017) 16 SCC 680 wherein the Apex Court held that while determining the income, an addition of 50% of actual salary to the income of the deceased would be made towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40-50 years. In case the deceased was between age of 50-60 years, the addition

should be 15%. The actual salary should be read as actual salary less tax.

15. In the present case, according to 'Samagra portal' filed by the appellants/claimants before the Tribunal the age of deceased is between 50-60 years. Then 15% of actual salary must be added towards future prospects. Thus, 15% of annual dependency would be assessed at Rs.147,912 X 15% = Rs.22,187/-. If this amount is added towards future prospects then dependency would come to Rs.1,47,912 plus Rs.22,187/- making a total of Rs.1,70,099/- [Rupees One lac Seventy Thousand Ninety Nine only].

16. According to the decision in the case of **Sarla Verma Vs. DTC**, (2009) 6 SCC 121 multiplier looking to the age of deceased between 50-60 years, the multiplier of 7 in this case would be applicable. If multiplier of 7 is applied to total dependency of Rs.1,70,099/-, then dependency income would arrive at Rs.11,90,693/- [Rupees Eleven Lacs Ninety Thousand Six Ninety Three only].

17. The appellants/claimants would be further entitled for amount under conventional heads viz. Loss of consortium would be Rs.44,000/-, Loss of funeral expenses at Rs.16,500/- and Loss of estate at Rs.16,500/-. Thus, the total amount of compensation would come to Rs.12,67,693/- [Rs.11,90,693/- Rs.44,000/- Rs.16,500/- Rs.16,500/-]. Hence, appellants would be entitled to the total amount of compensation of Rs.12,67,693/- which is rounded off to Rs.12,67,700/- [Rupees Twelve Lacs Sixty Seven Thousand Seven Hundred only].

18. The above calculation in respect of determination of compensation is given hereunder in a tabular form:-

|  |   |             |
|--|---|-------------|
| (i) Monthly income of deceased         | - | Rs.24,653/- |
| (ii) Monthly dependency of widow (1/2) | - | Rs.12,326/- |

|  |   |                       |
|--|---|-----------------------|
| (iii) Annual dependency of widow               | - | Rs.1,47,912/-         |
| (iv) 15% towards future prospects              | - | Rs.22,187/-           |
| (v) Annual income considering future prospects |   | -Rs.1,70,099/-        |
| (vi) Multiplier applied                        | - | 7                     |
| (vii) Total dependency income of widow         | - | Rs.11,90,693/-        |
| (viii) Loss of consortium                      | - | Rs.44,000/-           |
| (ix) Funeral expenses                          | - | Rs.16,500/-           |
| (x) Loss of estate                             | - | Rs.16,500/-           |
| (xi) Total compensation                        | - | 12,67,700/-           |
| (xii) Enhanced amount of compensation          | - | <b>Rs.11,56,700/-</b> |

19. So, out of total amount of total compensation of Rs.12,67,700/- if the amount of compensation already granted by the Tribunal is reduced, the balance amount would be enhanced amount of compensation. Hence, from Rs.12,67,700/- less Rs.1,11,000/-, the enhanced amount of compensation would be Rs.11,56,700/- [Rupees Eleven Lacs Fifty Six Thousand Seven Hundred only]. Consequently, the appellants would be entitled to enhanced compensation of Rs.11,56,700/-. The enhanced amount shall carry interest as awarded by the Tribunal from the date of filing of the claim till its realization.

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

**(HIRDESH)  
JUDGE**