

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

**BEFORE**

**HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)**

**ON THE 09th OF FEBRUARY, 2024**

**MISCELLANEOUS APPEAL NO.1814 of 2022**

**BETWEEN:-**

**THE ORIENTAL INSURANCE COMPANY  
LIMITED D.O.II, JABALPUR CHAMBERS  
BHAWAN, CIVIC CENTER, MARHATAL,  
JABALPUR (MADHYA PRADESH) NOW TO BE  
REPRESENTED BY DEPUTY MANAGER T.P. HUB,  
1561, DR. BARAT ROAD RUSSEL CHOWK,  
JABALPUR (MADHYA PRADESH)**

**.....APPELLANT**

***(SHRI GULAB CHAND SOHANE - ADVOCATE)***

**AND**

**1. SMT. PRAMILA SEN W/O LATE SHRI  
JITENDRA SEN, AGED 24 YEARS, R/O VIVEK BAL  
VIHAR SCHOOL KE PASS, KANDELI, P.S. TEHSIL  
AND DISTRICT NARSINGHPUR (MADHYA  
PRADESH)**

**2. KU. GAURI SEN D/O LATE SHRI JITENDRA  
SEN AGED 2 YEARS THROUGH NATURAL  
GUARDIAN MOTHER SMT. PRAMILA SEN R/O  
VIVEK BAL VIHAR SCHOOL KE PASS, KANDELI,  
P.S. TEHSIL AND DISTRICT NARSINGHPUR  
(MADHYA PRADESH)**

**3. SMT. MAMTA SEN W/O MOOLCHAND SEN,  
AGED 62 YEARS, R/O VIVEK BAL VIHAR**

**SCHOOL KE PASS, KANDELI, P.S. TEHSIL AND DISTRICT NARSINGHPUR (MADHYA PRADESH)**

**4. MOOLCHAND SEN S/O SHRI MUNNA LAL SEN, AGED 64 YEARS R/O VIVEK BAL VIHAR SCHOOL KE PASS, KANDELI, P.S. TEHSIL AND DISTRICT NARSINGHPUR (MADHYA PRADESH)**

**5. ASHOK LODHI S/O SHRI GOVIND LODHI VILLAGE JHAMER (SANKAL) P.S. THEMI, TEHSIL GOTEGAON, DISTRICT NARSINGHPUR**

**6. RAJENDRA KUMAR KATIYA AGED 35 YEARS S/O HAKAM SINGH KATIYA, ADDRESS AT PRESENT VILLAGE BARONDA SAHAJPUR P.S. AND TEHSIL GOTEGAON, DISTRICT NARSINGHPUR**

**.....RESPONDENTS**

***(SHRI GULJAR RAJPUT – ADVOCATE FOR THE RESPONDENT NOS.1 TO 4/CLAIMANTS)***

***(NONE FOR THE RESPONDENT NOS.5 & 6, THOUGH SERVED)***

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

**ORDER**

Heard on admission.

Admit.

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

This Miscellaneous Appeal under Section 173(1) of the Motor Vehicles Act 1988 has been filed by the appellant/Insurance Company being aggrieved with the award dated 03/02/2022 passed by learned Motor Accident Claims Tribunal, Narsinghpur (M.P.) in Motor Accident

Claim Case No.29/2020, whereby, the learned Tribunal has awarded a sum of Rs.34,65,344/- (Thirty four lakhs sixty five thousand three hundred forty four) with interest @ 6% from the date of filing of petition till the date of payment.

2. Brief facts of the case are that on 05/02/2020 deceased Jitendra Sen was going to Narsinghpur on a motorcycle and when he reached at Khamtara, Narsinghpur (NH-26), respondent No.5/non-applicant No.1 who was driving Maruti Car bearing registration No.MP-23-L-6969 rashly and negligently dashed the motorcycle of deceased, due to which he sustained head injury. Thereafter, deceased was brought to Government Hospital, Narsinghpur, where he died during treatment. Thereafter, respondent Nos.1 to 4 / claimants filed a claim petition before the learned Tribunal, Narsinghpur averring that the claimant No.1/respondent No.1 is the wife of deceased, claimant No.2/respondent No.2 is daughter of deceased and claimant Nos. 3 & 4/respondent Nos. 3 & 4 are parents of the deceased. At the time of incident deceased, who was aged about 32 years, was a healthy person and was posted as Group Credit Officer at Fullerton India Credit Company Ltd., from where he earned Rs.18,500/- (Eighteen thousand five hundred) per month and claimants were dependent on the income of the deceased and now the claimants have been deprived of that income. Thus, by way of filing claim petition claimants, claimed a sum of Rs.96,00,000/- (Ninety six lakhs) as compensation on account of death of Jitendra Sen, who died in motor vehicle accident.

3. Respondent No.5 & 6/non-applicant Nos.1 & 2 (owner and driver of the offending vehicle) by filing written statement denied the

averments mentioned in the claim petition. However, it was alleged that on the date of incident the offending vehicle was insured with appellant, therefore, if any amount of compensation is found to be awarded, then it is the appellant/insurance company who will be liable to pay the compensation.

4. Appellant/insurance company in its written statement denied the averments mentioned in the claim petition and pleaded that the alleged incident occurred due to negligence on the part of deceased himself. It was also alleged that at the time of incident the offending vehicle was being driven in violation of the terms and conditions of the policy. At the time of incident, the respondent No.5 was not having valid driving license to drive the offending vehicle, hence, appellant/insurance company has no liability to pay any compensation and prays for dismissal of the petition against the insurance company.

5. Learned Claims Tribunal framed the issues and recorded the evidence and after considering the evidence placed on the record and considering the argument advanced by the learned counsel for the parties, awarded compensation amount to the tune of Rs.33,65,344/- (Thirty three lakhs sixty five thousand three hundred forty four) holding the appellant and respondent Nos.5 & 6 liable to pay the compensation jointly and severally. Being aggrieved by the impugned award, appellant/Insurance Company has preferred the present miscellaneous appeal.

6. Learned counsel for the appellant submits that the learned Tribunal awarded a sum of Rs.33,65,344/- (Thirty three lakhs sixty five thousand three hundred forty four), breakup of which is as under :-

Rs.33,55,344/-	Towards loss of dependency
Rs.15,000/-	Towards loss of estate
Rs.40,000/-	Towards loss of consortium to wife
Rs.40,000/-	Towards loss of filial consortium
Rs.15,000/-	Towards funeral expenses

7. Learned counsel for the appellant further submitted that the learned Tribunal erred in treating the parents of the deceased as dependent and deducted 1/4th amount towards personal expenses of the deceased which he (deceased) spends on himself, without any evidence. In this regard learned counsel drew the attention of this Court towards Para-28 of the impugned award, in which learned Tribunal has considered the father of deceased (respondent No.3) as dependent on deceased. Learned counsel restricted his arguments only upon the deduction of personal expenses of deceased. It is prayed that the appeal be allowed and amount of compensation be reduced to that extent.

8. Learned counsel for the respondent Nos.1 to 4 / claimants supports the impugned award and prays for dismissal of appeal.

9. I have heard the arguments advanced by the learned counsel for the parties and perused the record.

10. In the case of **Sarla Verma & Others Vs. Delhi Transport Corporation and Another, AIR 2009 SC 3104** Hon'ble Apex Court has held that father will not be considered as dependent on the son in absence of any evidence to the contrary.

11. From perusal of record it is evident that respondent No.1 Smt. Pramila Sen has examined herself as (AW-1) before the Tribunal and she has not stated in her statement that her father-in-law Moolchand was also dependent on her husband, hence in absence of any cogent evidence

it could not be presumed that father of deceased was also dependent on the income of the deceased. Since no evidence with regard to dependency of respondent No.4/father of deceased has been placed on record, therefore, it cannot be presumed that respondent No.4/father of deceased was also dependent on the deceased. Therefore, learned Tribunal committed error in holding that the respondent No.4/father of the deceased was also dependent on the income of the deceased and also committed error in deducting 1/4th amount towards personal expenses of the deceased, which ought to have been 1/3rd looking to the number of dependents. Other findings of the learned Tribunal has not been challenged by the learned counsel for the appellant. However, from perusal of record it is evident that other findings recorded by the learned tribunal are based on due appreciation of evidence, which requires no interference.

**12.** As the learned Tribunal has found, considering the monthly income of the deceased @ Rs.16,644/- (Sixteen thousand six hundred forty four) per month and 40% of the assessed income is to be added towards future prospect keeping in view the law laid down by Hon'ble Apex Court in the case of **National Insurance Co. Ltd. Vs. Pranay Seth & Others, 2017(4) MACD 1375**, which comes to Rs.23,301/- (Twenty three thousand three hundred one). As discussed above 1/3rd is to be deducted towards personal expenses of the deceased, which comes to Rs.15,534/- (Fifteen thousand five hundred thirty four). Thus, yearly income will come to Rs.1,86,408/- (One lakh eighty six thousand four hundred eight) and thereafter keeping in view the age of deceased multiplier of 16 will be applied for the purpose of computation of

amount towards loss of dependency, which comes to Rs.29,82,528/- (Twenty nine lakhs eighty two thousand five hundred twenty eight).

13. In the light of the principle laid down in the cases 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** parents of the deceased (respondent Nos.3 & 4) are entitled to be awarded loss of consortium under the head of filial consortium. Thus, under the head of loss of filial consortium a sum of Rs.40,000/- (Forty thousand) each is awarded to parents of deceased i.e. respondent Nos. 3 & 4).

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

Rs.29,82,528/-	Towards loss of dependency
Rs.15,000/-	Towards loss of estate
Rs.40,000/-	Towards loss of consortium to wife
Rs.40,000/-	Towards loss of parental consortium to one child
Rs.15,000/-	Towards funeral expenses
Rs.80,000/-	Towards loss of filial consortium (40,000 X 2)

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**Rs.31,72,528/- Total**  
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15. Thus, the respondent Nos. 1 to 4/claimants shall be entitled for a total sum of Rs.31,72,528/- (Thirty one lakhs seventy two thousand five hundred twenty eight) instead of Rs.34,65,344/- (Thirty four lakhs sixty five thousand three hundred forty four).

**16.** In above terms the impugned award passed by the learned Claims Tribunal is modified. Other terms and conditions of the award shall remain intact.

**17.** With the aforesaid, appeal filed by the appellant is disposed of.

**18.** Let record of the Claims Tribunal be sent back alongwith copy of this order for information and necessary action.

**(AMAR NATH (KESHARWANI))  
JUDGE**

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