

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

BEFORE

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 13th OF MARCH, 2024

MISC. APPEAL No. 4052 of 2022

BETWEEN:-

- 1. PRAGYA TIWARI D/O LATE RAMKISHOR TIWARI, AGED ABOUT 13 YEARS, MINOR THROUGH NATURAL GUARDIAN SHRI NATHURAM TIWARI (TAU) S/O SHRI SITARAM TIWARI**
- 2. NATURAL GUARDIAN (NANA) RAJARAM KATARE S/O SHRI GHANSHYAMDAS KATARE, AGED ABOUT 64 YEARS, OCCUPATION: AGRICULTURIST**

APPELLANT NO.1 AND 2 ARE RESIDENT OF WARD NO.12 BADA GAON DHASAN JAMUNYAKHERA TIKAMGARH (M.P.)

JAIBAI W/O LATE SITARAM TIWARI (SINCE DIED) THROUGH LRS. APPELLANT NO.1

.....APPELLANTS

(BY SHRI PAWAN CHOUDHARY – ADVOCATE)

AND

- 1. ANWAR KHAN S/O GAFUR KHAN R/O 273 ISLAMABAD P.S. KADURA TEHSIL KALPI, DISTRICT JALON (U.P.)**
- 2. BASANTLAL S/O PRABHUDAYAL KUSHWAHA R/O VILLAGE RAJPUR P.S. RAJPUR DISTT. KANPUR DEHAD (U.P.)**
- 3. THE NEW INDIA INSURANCE COMPANY LIMITED, THROUGH BRANCH MANAGER NEAR RAILWAY STATION SAGAR DISTT. SAGAR (M.P.)**

.....RESPONDENTS

(NONE FOR RESPONDENTS NO.1 AND 2 THOUGH SERVED)

(SHRI ASHISH KUMAR VAIDYA – ADVOCATE FOR RESPONDENT NO.3)

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

ORDER

Heard on admission.

Admit.

With the consent of parties, heard final arguments.

The appellant/claimant has filed this Appeal under Section 173 of the Motor Vehicles Act, 1988 for enhancement of the compensation amount being aggrieved with the award dated 25.11.2021 passed by Fourth Motor Accident Claims Tribunal, District Sagar (M.P.) in MACC No.127/2018 by which the learned Claims Tribunal awarded a total sum of Rs.876400/- (Eight Lakhs Seventy Six Thousand Four Hundred) with 6% interest to the appellant/claimant by way of compensation for the death of Smt. Mithlesh Tiwari who died in motor vehicle accident.

2. According to claimants, the compensation awarded by the learned Tribunal is on lower side, hence need to be enhanced. So the question that arises for consideration is whether any case for enhancement of compensation awarded by the Tribunal on facts/evidence adduced is made out and if so to what extent?

3. It is not necessary to narrate the entire facts in detail, such as how the accident occurred, who was negligent in driving the offending vehicle, who is liable for paying compensation etc. It is for the reason that all these findings are recorded in favour of claimants by the Tribunal. Secondly, the findings though recorded in favour of claimants are not under challenge at the instance of any of the

respondents such as owner/driver or insurance company either by way of cross-appeal or cross-objection. In this view of the matter, there is no justification to burden the judgment by detailing facts on all these issues.

4. As observed supra, it is a death case. On 01.11.2017, Smt. Mithlesh Tiwari, met with a motor vehicle accident and died, giving rise to file claim petition by legal representatives (appellants herein), out of which this appeal arises seeking enhancement of compensation for her death. The case was contested by the respondents. Parties adduced evidence. The Claims Tribunal by impugned award partly allowed the claim petition filed by claimants and, as stated supra, awarded a sum of Rs.8,76,400/- (Eight Lakhs Seventy Six Thousand Four Hundred).

5. It is submitted by the counsel for the appellants that the tribunal has assessed the income of the deceased at Rs.3,000/- per month which should be assessed at Rs.7,125/- (Seven Thousand One Hundred Twenty Five) per month of an un-skilled labour as per the Minimum Wages Act. It is further submitted that the deceased was working as Anganwadi Worker and was also running beauty parlour and used to earn Rs.20,000/- (Twenty Thousand) per month which has not been considered by the tribunal. No other findings of the tribunal has been challenged by the counsel for the appellants. It is prayed that the appeal be allowed and amount of compensation be enhanced substantially.

6. Learned counsel for the respondent No.3/Insurance company submits that the amount awarded by the learned Tribunal is just and

proper and no case for enhancement is made out. Hence prays for dismissal of the appeal.

7. I have heard learned counsel for the parties and perused the record.

8. Learned tribunal has assessed monthly income of the deceased at Rs.3,000/- whereas it is pleaded in the claim petition that she was an Anganwadi Worker and also use to run Beauty Parlour and was earning Rs.20,000/- (Twenty Thousand) per month but no documentary evidence has been filed on record in that regard. In the case of *Rajendra Singh vs. National Insurance Company Ltd. (2020)7 SCC 256* Hon'ble Apex Court has assessed income of a non-working house wife at Rs.5,000/- (Five Thousand) per month, hence relying on the above principle of law laid down by the Hon'ble Apex Court in *Rajendra Singh (supra)*, in the considered opinion of this Court, income of the deceased should be assessed at Rs.5,000/- (Five Thousand) per month.

9. Learned tribunal has considered the age of the deceased as 35 years on the date of incident in para 31 of the impugned award, which is supported by post mortem report Ex.P-22, hence looking to the age of the deceased on the date of incident, multiplier of 16 seems to be correct. 40% future prospect should be added in assessed income, in view of the principle of law laid down by the Hon'ble Apex Court in the case of *National Insurance Company Limited Vs. Pranay Sethi & others, (2017) 16 SCC 680*.

10. Thus, when the income of the deceased is taken as Rs.5,000/- (Five Thousand) per month and 40% is added towards future prospects keeping in view the law laid down by Hon'ble Apex Court

in the case of *Pranay Sethi (Supra)* yearly income of the deceased comes to Rs.84,000/- (Eighty Four Thousand).

11. Learned claims tribunal has erred by not deducting any amount towards personal expenses of the deceased which she would have spent on herself. Though the insurance company has not filed any cross-appeal or cross-objection in this regard but this Court is not debarred from its right to exercise its jurisdiction in examining any legal position for or against any of the parties as held by the Division Bench of this Court in the case of *Ram Singh & ors. vs. Ashok Sharma & ors. 2002 (5) MPLJ 328*.

12. Looking to the fact that appellant Pargya Tiwari is the sole dependant on the deceased hence, 1/2 is to be deducted towards personal expenses from the assessed income, in the light of the principle of law laid down by the Apex Court in the case of *Smt. Sarla Verma Vs. Delhi Transport Corporation (2009) 6 SCC 121* which comes to Rs.42,000/- (Forty Two Thousand) and after applying multiplier of 16, keeping in view the age of deceased, amount towards loss of dependency comes to Rs.6,72,000/- (Six Lakhs Seventy Two Thousand).

13. It reveals from the impugned award that the tribunal has awarded Rs.40,000/- (Forty Thousand) under the head of consortium, Rs.15,000/- (Fifteen Thousand) under the head of funeral expenses and Rs.15,000/- (Fifteen Thousand) under the head of loss of estate which appears to be just and proper and needs no interference.

14. Thus, the appellant No.1/claimant shall be entitled for the following amount of compensation :-

Rs.6,72,000/-	Towards loss of dependency
Rs.40,000/-	Towards loss of consortium
Rs.15,000/-	Towards loss of estate
Rs.15,000/-	Towards funeral expenses

Rs.7,42,000/- Total

15. Thus, the appellant No.1/claimant is entitled for a total sum of Rs.7,42,000/- (Seven Lakhs Forty Two Thousand) instead of Rs.8,76,400/- (Eight Lakhs Seventy Six Thousand Four Hundred). The award amount be paid within a period of two months, if not earlier paid, from the date of receipt of certified copy of this order.

16. It is further directed that the award amount with interest as mentioned in para no.13 of this order well be deposited in the name of appellant No.1-Pragya Tiwari under guardianship of Shri Nathuram Tiwari S/o Shri Sitaram Tiwari, who is paternal uncle (Tau) of appellant No.1, in fixed deposit in a nationalized bank till appellant No.1-Pragya Tiwari attains the age of majority. The quarterly interest accrued on the amount deposited in the fixed deposit shall be paid to guardian Shri Nathuram Tiwari for will being and upbringing of appellant No.1-Pragya Tiwari. It is also directed that the principal amount shall not be disbursed till the appellant No.1-Pragya Tiwari attains the age of majority or without the leave of the concerned tribunal.

17. Other terms and conditions of the award shall remain intact.

18. Accordingly, appeal disposed.

(AMAR NATH (KESHARWANI))
JUDGE