

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

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 10<sup>th</sup> OF MAY, 2023**

**MISC. APPEAL No. 4465 of 2022**

**BETWEEN:-**

**NATIONAL INSURANCE COMPANY LTD.  
THROUGH DEPUTY MANAGER 1ST FLOOR  
BRAHMANAND CHAMBER OPPOSITE M.P.  
SHAH ARTS AND SCIENCE COLLEGE  
SURENDRA NAGAR, DISTRICT SURENDRA  
NAGAR PRESENTLY KHANDELWAL  
BUILDINGH STATION ROAD, BALAGHAT  
TASHIL AND DISTRICT BALAGHAT (M.P.)  
T.P. HUB (MADHYA PRADESH)**

**.....APPELLANT**

**(BY MS.AMRIT KAUR RUPRAH - ADVOCATE )**

**AND**

- 1. SMT. ASHWINI SINHA W/O  
GAUTAMLAL SINHA, AGED ABOUT 34  
YEARS, CASTE KALAR, R/O OLD  
ADDRESS WARD NO. 10, BHARVELI,  
PRESENT ADDRESS WARD NO. 4,  
BHAGAT SINGH CHOWK, HIRAPUR,  
POST BHARVELI, TAHSIL AND  
DISTRICT BALAGHAT (MADHYA  
PRADESH)**
- 2. DEVENDRA SINHA S/O LATE  
GAUTAMLAL SINHA, AGED ABOUT 17  
YEARS, OCCUPATION: MINOR  
THROUGH MOTHER AND NATURAL  
GUARDIAN SMT ASHWINI SINHA  
CASTE KALAR, R/O OLD ADDRESS  
WARD NO. 10, BHARVELI, PRESENT  
ADDRESS WARD NO. 4, BHAGAT SINGH  
CHOWK, HIRAPUR, POST BHARVELI,  
TAHSIL AND DISTRICT BALAGHAT**

**(MADHYA PRADESH)**

3. **KU. DRONI SINHA D/O LATE GAUTAMLAL SINHA, AGED ABOUT 11 YEARS, OCCUPATION: MINOR THROUGH MOTHER AND NATURAL GUARDIAN SMT ASHWINI SINHA CASTE KALAR, R/O OLD ADDRESS WARD NO. 10, BHARVELI, PRESENT ADDRESS WARD NO. 4, BHAGAT SINGH CHOWK, HIRAPUR, POST BHARVELI, TAHSIL AND DISTRICT BALAGHAT (MADHYA PRADESH)**
4. **KHUBLAL SINGH S/O TETKU RAM SINHA, AGED ABOUT 73 YEARS, CASTE KALAR, R/O OLD ADDRESS WARD NO. 10, BHARVELI, PRESENT ADDRESS WARD NO. 4, BHAGAT SINGH CHOWK, HIRAPUR, POST BHARVELI, TAHSIL AND DISTRICT BALAGHAT (MADHYA PRADESH)**
5. **MANGALI SINHA W/O KHUBLAL SINHA, AGED ABOUT 66 YEARS, CASTE KALAR, R/O OLD ADDRESS WARD NO. 10, BHARVELI, PRESENT ADDRESS WARD NO. 4, BHAGAT SINGH CHOWK, HIRAPUR, POST BHARVELI, TAHSIL AND DISTRICT BALAGHAT (MADHYA PRADESH)**
6. **PRAVEEN KUMAR LABANA S/O GHABARCHAND LABANA(BANJARA) R/O VILLAGE BHANDA, POLICE STATION RAM SAGDA, DISTRICT DOONGARPUR(RAJASTHAN) (VEHICLE DRIVER)**
7. **M/S A1 ACID PRIVATE LIMITED, A-2, CORPORATE HOUSE, SHIVALIC CENTRE, BODAKDEV, AHMEDAABAD (GUJARAT)**

**.....RESPONDENTS*****(BY SHRI TIRATH PRASAD JAISWAL - CAVEAT)*****MISC. APPEAL No. 5950 of 2022****BETWEEN:-**

1. **SMT. ASHWANI SINHA W/O GOUTAMLAL SINGH, AGED ABOUT 34 YEARS, OCCUPATION: CASTE KALAR OLD ADDRESS WARD NO. 10 BHARVELI AT PRESENT R/O WARD NO. 14 BHAGAT SINGH CHOWK HIRAPUR POST BHARVELI TAHSIL AND DISTRICT BALAGHAT (MADHYA PRADESH)**
  
2. **DEVENDRA SINHA S/O GOUTAM LAL SINHA, AGED ABOUT 11 YEARS, OCCUPATION: MINOR THROUGH GUARDIAN MOTHER ASHIVANI SINHA CASTE KALAR R/O OLD ADDRESS WARD NO. 10 BHARVELI AT PRESENT R/O WARD NO. 14 BHAGAT SINGH CHOWK HIRAPUR POST BHARVELI TAHSIL AND DISTRICT BALAGHAT (MADHYA PRADESH)**
  
3. **KU. DRONI SINHA D/O GOUTAM LAL SINHA, AGED ABOUT 5 YEARS, OCCUPATION: MINOR THROUGH GUARDIAN MOTHER ASHIVANI SINHA CASTE KALAR R/O OLD ADDRESS WARD NO. 10 BHARVELI AT PRESENT R/O WARD NO. 14 BHAGAT SINGH CHOWK HIRAPUR POST BHARVELI TAHSIL AND DISTRICT BALAGHAT (MADHYA PRADESH)**
  
4. **KHUBLAL SINHA S/O TETKURAM SINHA, AGED ABOUT 67 YEARS, R/O OLD ADDRESS WARD NO. 10 BHARVELI AT PRESENT R/O WARD NO. 14 BHAGAT SINGH CHOWK HIRAPUR POST BHARVELI TAHSIL AND**

**DISTRICT BALAGHAT (MADHYA PRADESH)**

5. **MANGLI SINHA W/O KHUBLAL SINHA, AGED ABOUT 60 YEARS, R/O OLD ADDRESS WARD NO. 10 BHARVELI AT PRESENT R/O WARD NO. 14 BHAGAT SINGH CHOWK HIRAPUR POST BHARVELI TAHSIL AND DISTRICT BALAGHAT (MADHYA PRADESH)**

**.....APPELLANTS*****(BY SHRI TIRATH PRASAD JAISWAL - ADVOCATE )*****AND**

1. **PRAVEEN KUMAR LABANA S/O GHABARCHAND LABANA BANJARA OCCUPATION: VEHICLE DRIVER MANDA POLICE STATION RAMSAGDA DISTRICT DUNGARPUR (RAJASTHAN)**
2. **M/S A1 ACID PRIVATE LTD. A-2 CORPORATE HOUSE SHIVALIK BUSINESS CENTRE BODAKDEV AHMADABAD (GUJRAT) (GUJARAT)**
3. **NATIONAL INSURANCE COMPANY LTD. FIRST FLOOR BRAMHANAND CHAMBER OPPOSITE M.P. SHAH ARTS AND SCIENCE COLLEGE SURANDRA NAGAR DISTRICT SURENDRANAGAR PERMANENT R/O KHANDELWAL BUILDING STATION ROAD BALAGHAT TAHSIL AND DISTRICT BALAGHAT (MADHYA PRADESH)**

**.....RESPONDENTS*****(MS.AMRIT KAUR RUPRAH – ADVOCATE FOR THE RESPONDENT NO.3)***

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*These appeals coming on for admission this day, the court passed the following:*

**ORDER**

By this common order, M.A.No.5950/2022 shall also be decided.

2. Both these misc.appeals have been filed under section 173 of Motor Vehicles Act against the award dated 16.08.2022 passed by Member, Motor Accident Claims Tribunal, Balaghat in MACC No.10/2016.

3. M.A.No.4465/2022 has been filed by the Insurance Company; whereas M.A.No.5950/2022 has been filed by the claimants for enhancement of compensation amount.

4. The facts necessary for disposal of the present appeals in short, are that on 30.12.2015, the deceased Gautamlal along with his friend Bhawani Singh was going on a motorcycle. They were dashed from behind by the Driver of the Tanker bearing registration no.GJ 01 CT 6614, as a result both fell down on the ground and they were run over by the aforesaid Tanker crushing their heads.

5. It is the case of the claimants that deceased Gautamlal was aged about 41 years and he was working in S.K.Project Hindustan Zinc Limited Dariba, Tahsil Railmagra, District Rajsamand (Rajasthan) on the post of Mining Mit and was getting the monthly salary of Rs.55,585/-. The non-applicant no.1 was the Driver, who was holding the valid driving licence; whereas the non-applicant no.2 was the Owner of the vehicle and the non-applicant no.3 is the Insurance Company. The accident took place on account of rash and

negligent driving of the non-applicant no.1. The Tanker was carrying hazardous goods and accordingly a claim petition was filed for compensation for a sum of Rs.1,37,73,380/- .

6. The non-applicants no.1 and 2 were proceeded ex parte and did not file their written statement. The non-applicant no.3 filed its written statement and denied the accident as well as disputed the salary drawn by deceased Gautamlal. It was pleaded that since the Tanker was carrying hazardous goods, therefore, the same could have been driven by a person holding the licence to drive the goods vehicle meant for hazardous substances. The Tanker was being driven without any permit and fitness and exorbitant claim has been made. The deceased himself was going on motorcycle and accordingly the Driver, Owner as well as the Insurance Company of the motorcycle have not been impleaded.

7. The Claims Tribunal, after framing issues and recording evidence, allowed the claim petition and awarded Rs.64,34,960/- and the appellant was also made jointly and severally responsible along with the non-applicants no.1 and 2.

### **M.A.No.4465/2022**

8. Challenging the award passed by the Claims Tribunal, it is submitted by the counsel for the appellant/Insurance Company that the Driver of the offending Tanker was merely holding the driving licence to drive heavy transport vehicle but he was not holding any driving licence to drive the vehicle meant for transporting hazardous substances. It is further submitted that the non-applicant no.2 had

paid an amount of Rs.20,00,000/- to the legal representatives of the deceased Gautamlal, which could have been adjusted.

9. Per contra, it is submitted by the counsel for the claimants that no separate licence is required for driving a vehicle carrying hazardous substances. The only requirement is that the educational qualification of the driver should not be less than 10<sup>th</sup> pass and should have 5 years of experience in transporting hazardous substances. It is further submitted that so far as the amount of Rs.20,00,000/-, which has been paid by the non-applicant no.2/respondent no.7 to the legal representatives of the deceased Gautamlal is concerned, the said amount was the amount of Insurance Policy, which was got done by the non-applicant no.2. The deceased Gautamlal was the employee of non-applicant no.2 and therefore, if any insurance amount has been paid, then it is not liable to be adjusted in the compensation amount awarded by the Claims Tribunal.

10. Heard the learned counsel for the parties.

11. Section 3 of the Motor Vehicles Act, 1988 requires that no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle.

12. Section 10 of Motor Vehicles Act, 1988 provides that a licence should be given to drive a motor vehicle of one or more of the following classes of vehicles :-

1. Motorcycle without gear;

2. Motorcycle with gear;
3. Invalid carriage;
4. Light Motor Vehicle;
5. Transport Vehicle;
6. Road-roller;
7. Motor vehicle of a specific description

13. Counsel for the appellant could not point out any provision of law requiring that a special category of licence shall be issued for driving the vehicles carrying dangerous hazardous goods. There are certain restrictions.

14. Rules 9, 131 and 132 of Central Motor Vehicles Rules, 1989 deals with educational qualification for drivers of goods carriages carrying dangerous or hazardous goods, responsibility of the consignor for safe transport of dangerous or hazardous goods and responsibility of the Transporter or owner of goods carriage.

15. Rules 9, 131 and 132 of the Central Motor Vehicles Rules, 1989 read as under :-

**“9. Educational qualifications for drivers of goods carriages carrying dangerous or hazardous goods.—**[(1) One year from the date of commencement of Central Motor Vehicles (Amendment) Rules, 1993, any person driving a goods carriage carrying goods of dangerous or hazardous nature to human life shall, in addition to being the holder of a driving licence to drive a transport vehicle, also has the ability to read and write at least one Indian language out of those [specified in the VIII Schedule of the Constitution]and English and also possess a certificate of having successfully passed a course



consisting of following syllabus and periodicity connected with the transport of such goods:

Period of training	3 days	
Place of training	At any institute recognised by the State Government	
Syllabus		
A	Defensive driving Questionnaire Cause of accidents Accidents' statistics Driver's personal fitness Car condition Braking distance Highway driving Road/ Pedestrian crossing Railway crossing Adapting to weather	Duration of training for A & B—1st and 2nd day
	Head-on collision Rear-end collision Night driving Films and discussion	
B.	Advanced driving skills and training (i) Discussion Before starting	— Checklist — outside/below/near vehicle — product side — inside vehicle
	During driving	— correct speed/gear — signalling — lane control — overtaking/giving side — speed limit/safe distance — driving on slopes
	Before stopping condition	— safe stopping place, signalling, road width,
	After stopping	— preventing vehicle movement — wheel clocks — vehicle attendance
	Night driving	— mandatory lighting requirements — headlamp alignment — use of dipped beam
	(ii) Field test/training	— 1 driver at a time
C	Product safety UN Panel	—UN classification — Hazchem Code — Toxicity, flammability, other definitions
		Duration of training for (C) Third day.

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Product information	<ul style="list-style-type: none"> <li>— Tremcards</li> <li>— CIS/MSDS</li> <li>— Importance of temperature Pressure, level</li> <li>— Explosive limits</li> <li>— Knowledge about equipment</li> </ul>
Emergency Procedure	<ul style="list-style-type: none"> <li>— Communication</li> <li>— Spillage handling</li> <li>— Use of PPE</li> <li>— Fire fighting</li> <li>— First Aid</li> <li>— Toxic release control</li> <li>— Protection of wells, rivers, lakes, etc.</li> <li>— Use of protective equipment</li> <li>— Knowledge about valves, etc.</li> </ul>

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(2) The holder of a driving licence possessing the minimum educational qualification or the certificate referred to in sub-rule (1), shall make an application in writing on a plain paper alongwith his driving licence and the relevant certificate to the licensing authority in whose jurisdiction he resides for making necessary entries in his driving licence and if the driving licence is in Form 7, the application shall be accompanied by the fee as is referred to in Serial No. 8 of the Table to rule 32.

(3) The licensing authority, on receipt of the application referred to in sub-rule (2), shall make an endorsement in the driving licence of the applicant to the effect that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature to human life.

(4) A licensing authority other than the original licensing authority making any such endorsement shall communicate the fact to the original licensing authority.

**131. Responsibility of the consignor for safe transport of dangerous or hazardous goods.—(1)**

It shall be the responsibility of the consignor intending to transport any dangerous or hazardous

goods listed in Table III, to ensure the following, namely:—

(a) the goods carriage has a valid registration to carry the said goods;

(b) the vehicle is equipped with necessary first-aid, safety equipment and antidotes as may be necessary to contain any accident;

(c) that the transporter or the owner of the goods carriage has full and adequate information about the dangerous or hazardous goods being transported; and

(d) that the driver of the goods carriage is trained in handling the dangers posed during transport of such goods.

(2) Every consignor shall supply to the owner of the goods carriage, full and adequate information about the dangerous or hazardous goods being transported as to enable such owner and its driver to,—

(a) comply with the requirements of rules 129 to 137 (both inclusive) of these rules; and

(b) be aware of the risks created by such goods to health or safety of any person.

(3) It shall be the duty of the consignor to ensure that the information is accurate and sufficient for the purpose of complying with the provisions of rules 129 to 137 (both inclusive) of these rules.

**132. Responsibility of the transporter or owner of goods carriage.**—(1) It shall be the responsibility of the owner of the goods carriage transporting any dangerous or hazardous goods to ensure the following, namely:—

(a) that the goods carriage has a valid registration to carry the said goods and the said carriage is safe for the transport of the said goods; and

(b) the vehicle is equipped with necessary first-aid, safety equipment, tool box and antidotes as may be necessary to contain any accident.

(2) Every owner of a goods carriage shall, before undertaking the transportation of dangerous or hazardous goods in his goods carriage, satisfy himself that the information given by the consignor

is full and accurate in all respects and corresponds to the classification of such goods specified in rule 137.

(3) The owner of a goods carriage shall ensure that the driver of such carriage is given all the relevant information in writing as given in Annexure V of these rules in relation to the dangerous or hazardous goods entrusted to him for transport and satisfy himself that such driver has sufficient understanding of the nature of such goods and the nature of the risks involved in the transport of such goods and is capable of taking appropriate action in case of an emergency.

(4) The owner of the goods carriage carrying dangerous or hazardous goods, and the consignor of such goods shall lay down the route for each trip which the driver shall be bound to take unless directed or permitted otherwise by the Police Authorities. They shall also fix a time table for each trip to the destination and back with reference to the route so laid down.

(5) It shall be the duty of the owner to ensure that the driver of the goods carriage carrying dangerous or hazardous goods holds a driving licence as per provisions of rule 9 of these rules.

(6) Notwithstanding anything contained in rules 131 and 132, it shall be sufficient compliance of the provisions of these rules if the consignor transporting dangerous or hazardous goods and the owner of the goods carriage or the transporter, abides by these conditions within six months after the date of coming into force of the Central Motor Vehicles (Amendment) Rules, 1993.”

16. Thus, for driving a goods carriage carrying vehicles of dangerous or hazardous goods, the driver should have a driving licence to drive a transport vehicle with ability to read and write atleast Indian language out of those specified in 8<sup>th</sup> Schedule of Constitution and he should also possess a certificate of having

successfully passed a course consisting of syllabus and periodicity connected with transport of such goods. The syllabus has been provided in Rule 9 of Rules, 1989 Rules itself. Similarly, Rule 131 of Rules, 1989 requires that the driver of the goods carriage is trained in handling the dangers posed during transport of such goods.

17. As per Section 10 of Motor Vehicles Act, 1988, a licence can be granted to drive a motor vehicle for a specified description. When certain additional qualification are required for a driver to drive a goods carriage carrying hazardous or dangerous goods, then such a vehicle would be of a specified description requiring its licence or endorsement, as required under section 11 of Motor Vehicles Act, 1988.

18. There is nothing on record to show that the driver of the offending Tanker was having all the qualifications and training as required under Rule 9 of Central Motor Vehicles Rules, 1989. The driving licence has been filed as Ex.NA 1. According to this licence, the Driver was having the driving licence to drive transport vehicles. There is no endorsement that he had a licence of driving goods carriage carrying dangerous or hazardous goods. The verification report of licence of the Driver is Ex.N.A.11. According to this verification report, the Driver of the vehicle was authorized to drive motorcycle, LMV, LMV (cab), transport vehicle, PSV (Public Services vehicle) badge type of vehicles only.

19. Thus, it is clear that non-applicant no.1 was not having driving licence to drive the goods carriage carrying hazardous or dangerous

substances. However, he was having the driving license to drive transport vehicles. Accordingly, the driver was not having valid driving licence. However, the liability of the Insurance Company shall be considered in the subsequent paragraphs.

20. It is next contended by the counsel for the appellant that the non-applicant no.2/respondent no.7 has paid Rs.20,00,000/- to the legal representatives of the deceased and thus the said amount is liable to be adjusted in the compensation awarded by the Claims Tribunal.

21. Per contra, it is submitted by the counsel for the claimants that admittedly an amount of Rs.20,00,000/- was paid by the respondent no.7/non-applicant no.2 but submitted that the said amount was paid towards the employees' insurance, which was got done by the respondent no.7/non-applicant no.2 and, therefore, the said amount is not liable to be adjusted.

22. Heard the learned counsel for the parties.

23. So far as the payment of Rs.20,00,000/- by the non-applicant no.2/respondent no.7 is concerned, the said fact has not come on record. However, it has been admitted by the counsel for the claimants that an amount of Rs.20,00,000/- has been paid by the respondent no.2.

24. The appellant had filed an application under section 167 of Motor Vehicles Act before the Claims Tribunal pointing out that

Giarilal (D.W.3) has admitted that compensation under the Employees Compensation Act has been paid and accordingly, it was prayed that the claim petition filed under section 166 of Motor Vehicles Act be dismissed.

25. A reply to the application under section 167 of Motor Vehicles Act was filed by the claimants in which it was admitted that the non-applicant no.2/respondent no.7 had paid an amount of Rs.20,00,000/- by way of interim relief to the legal representatives of deceased Gautamlal.

26. Thus, from the reply it is clear that an amount of Rs.20,00,000/- was paid by the non-applicant no.2/respondent no.7. In addition to that Commissioner, Employees' Compensation had directed for payment of the insurance claim, therefore, the contention of the counsel for the claimants that an amount of Rs.20,00,000/- was given towards employees insurance claim, is incorrect.

27. Accordingly, it is held that an amount of Rs.20,00,000/-, which was paid by the respondent no.7/non-applicant no.2 is liable to be adjusted.

### **M.A.No.5950/2022**

28. It is submitted by the counsel for the appellants that the Claims Tribunal has wrongly calculated the monthly income of the deceased as Rs.33,816/-, future prospects @ 40%, should have awarded in place of 30%, funeral expenses to the tune of Rs.15,000/- should

have been awarded and each legal representatives of the deceased is entitled for consortium.

29. The appeal has been valued at Rs.2,00,000/-.

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

31. In the light of the judgment passed by the Supreme Court in the case of *United India Insurance Co.Ltd. Vs. Satinder Kaur alias Satwinder Kaur and others*, reported in *(2021) 11 SCC 780*, it is held that the appellants are entitled for filial consortium; whereas children are entitled for parental consortium and the wife is entitled for spouse consortium. The present appeal has been filed by widow, 2 children and parents of the deceased. Thus, all the five persons are entitled for consortium.

32. The Claims Tribunal has awarded consortium to the wife only. Thus, it is held that the appellants no.2, 3, 4 and 5 are also entitled for the consortium @ 40,000/-.

33. It is submitted by the counsel for the appellants that in the light of the judgment passed by the Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi*, reported in *(2017) 16 SCC 680*, the customary expenses should be enhanced in every 3 years, therefore, the award of Rs.16,5000/- towards the funeral expenses and loss of estate is on the lower side.



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

35. The Supreme Court in the case of ***Pranay Sethi (supra)*** has held as under :-

*“59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”*

36. This enhancement in conventional head relates to the date of accident, which will take place after 3 years of date of judgment passed in the case of ***Pranay Sethi (supra)*** and not if an award is passed after 3 years of the judgment passed in the case of ***Pranay Sethi (supra)***. For enhancement of conventional heads by 10% in every 3 years the date of accident is material and not the date of award passed by the Claims Tribunal. The enhancement by 10% would apply only when the accident takes place after 3 years of the judgment passed in the case of ***Pranay Sethi (supra)***.

37. It is next contended by the counsel for the appellants that the future prospects @ 40% should have been awarded in place of 30%.

38. This submission made by the counsel for the appellants is not correct. The Supreme Court in the case of ***Pranay Sethi (supra)*** has held as under :-

*“59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased 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 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.”*

39. Where the age of the deceased is more than 40 years and below 50 years, then the future prospects @ 30% is to be awarded. The Claims Tribunal has rightly awarded future prospects @ 30% since the age of the deceased is 41 years.

40. It is next contended by the counsel for the appellants that Claims Tribunal has wrongly taken the monthly salary of the deceased as Rs.38,816/-.

41. In paragraph 33 of the impugned award, the Claims Tribunal has considered the various heads, which can be included in the monthly salary and held that basic pay, VDA, UGA, HRA, CA, Medical allowance and PF can be added and thereafter the Claims Tribunal has come to a conclusion that the monthly salary of the deceased would be 38,816/- and has not taken into consideration an amount of Rs.19,194/- and Rs.1433/-, which were paid to the deceased by way of overtime and production intensive.

42. Counsel for the appellants could not point out as to how the non-inclusion of overtime and production intensive in the salary of deceased Gautamlal can be said to be bad in law.

43. No other argument is advanced by the counsel for the appellants.

44. Accordingly, the claimants are entitled for the following compensation amount :-

S.NO.	HEAD	AMOUNT
1.	Monthly Income	Rs.38,816/-
2.	30 % of Monthly Income	Rs.11,644.80=Rs.11,644/-
3.	Total Monthly Income	Rs.50,460/-
4.	Personal Expenses @1/4	Rs.12,615/-
5.	Total monthly loss of Income	Rs.37,845/-
6.	Yearly loss of dependency	Rs.4,54,140/-
7.	Multiplier @ 14%	Rs.63,57,960/-
8.	Funeral expenses	Rs.15,000/-
9.	Loss of Estate	Rs.15,000/-
10.	Consortium	Rs.2,00,000/-
11.	Total	Rs.65,87,960/-
12.	Advance paid by non-applicant no.2 (to be deducted)	Rs.20,00,000/-
13.	After deducting Rs.20,00,000/-	Rs.45,87,960/-
14.	Awarded by Claims Tribunal	Rs.64,34,960/-
15.	To be reduced by	Rs.18,47,000/-

45. Accordingly, the amount is reduced by a sum of Rs.18,47,000/-. The Insurance Company has already been exonerated but under the facts and circumstances of the case, the principle of pay and recover would apply.

46. Accordingly, it is directed that the Insurance company shall pay the compensation amount with liberty to recover the same from the Driver and the Insured.

47. With aforesaid modification, the award dated 16.08.2022 passed by Member, Motor Accident Claims Tribunal, Balaghat in MACC No.10/2016 is hereby **affirmed**.

48. Accordingly, M.A.No.5950/2022 is **dismissed**; whereas M.A.No.4465/2022 is **allowed to the extent mentioned above**.

**(G.S.AHLUWALIA)**  
**JUDGE**

TG/-