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

**BEFORE
HON'BLE SHRI JUSTICE HIRDESH
ON THE 10th OF JANUARY, 2024**

MISC. APPEAL No. 5120 of 2022

BETWEEN:-

**ICICI LOMBARD GENERAL INSURANCE COMPANY
LIMITED HAVING OFFICE AT 5TH FLOOR, MAPLE HIGH
STREET, OPPOSITE ASHIMA MALL, HOSHANGABAD
ROAD, BHOPAL (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI ADITYA NARAYAN SHARMA - ADVOCATE)

AND

- 1. RUKMANI BAI W/O KISHORE VISHKARMA, AGED ABOUT 44 YEARS, VILLAGE BHAIKHEDI, JAMUNIYA HATESINGH, DISTRICT SEHORE (MADHYA PRADESH)**
- 2. KAPIL VISHKARMA S/O KISHORE VISHKARMA, AGED ABOUT 26 YEARS, R/O VILLAGE BHAIKHEDI, JAMUNIYA HATESINGH, DISTRICT SEHORE (MADHYA PRADESH)**
- 3. MANISH VISHKARMA S/O KISHORE VISHKARMA, AGED ABOUT 24 YEARS, R/O VILLAGE BHAIKHEDI, JAMUNIYA HATESINGH, DISTRICT SEHORE (MADHYA PRADESH)**
- 4. BASANTI BAI S/O KISHORE VISHKARMA, AGED ABOUT 77 YEARS, R/O VILLAGE BHAIKHEDI, JAMUNIYA HATESINGH, DISTRICT SEHORE (MADHYA PRADESH)**
- 5. GOPILAL VISHKARMA S/O MANDROOP VISHKARMA, AGED ABOUT 79 YEARS, R/O VILLAGE BHAIKHEDI, JAMUNIYA HATESINGH, DISTRICT SEHORE (MADHYA PRADESH)**
- 6. RAKESH SINGH KUSHWAH S/O RADHESHYAM KUSHWAH OCCUPATION: THROUGH MANISH KUMAR JAIN R/O HOUSE NO.26, ABHINAV**

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ENCLAVE, CHHATTISGARH COLONY, PRAKASH
NAGAR, AYODHYA NAGAR, BYPASS ROAD,
BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

(RESPONDENTS NO.1 TO 3 BY SHRI R.N.SHAH)

*This appeal having been heard and reserved for order, coming on for pronouncement this day, **JUSTICE HIRDESH** passed the following:-*

ORDER

This appeal under section 173(1) of the Motor Vehicles Act, 1988 has been filed by appellant-ICIC Lombard General Insurance Co.Ltd. (hereinafter referred to as the “Insurance Company”) being aggrieved by award dated 02.8.2022 passed by 16th Additional Motor Accidents Claims Tribunal, Bhopal (for brevity “the Tribunal”) in Claim Case No.1530/2020 whereby the Tribunal has awarded compensation on account of death of deceased-Kishore Vishwakarma in motor accident which allegedly took place on 05.8.2020.

2 . Brief facts of the case are that respondent No.1 to 5 who are claimants filed claim petition under section 166 of the Motor Vehicles Act claiming compensation of Rs.1,26,00,000/- for the death of deceased-Kishore Vishwakarma who is husband of respondent No.1 and father of respondents No.2 & 3 and son of respondents No.4 & 5. The claimants averred that on the fateful day the deceased was travelling on his motorcycle when offending vehicle bearing registration No.MP-04/CU-1377 which was owned and driven by respondent No.6 (Rakesh Singh Kushwaha) allegedly in rash and negligent manner hit the deceased who fell down from bike and sustained fatal injuries and could not survive and consequently passed away.

3 . The owner and driver of the offending vehicle filed his written statement and denied the averments made in claim petition and pleaded that he

had valid and effective driving licence at the time of accident and vehicle was insured, therefore, he is not liable to make payment of amount compensation.

4 . The present appellant/Insurance Company contested the matter before the Tribunal and denied the allegations made in claim petition and further pleaded that driver of the offending vehicle was not having effective driving licence and no information of accident was given to the Insurance Company. So, it be exonerated from the liability of payment of compensation.

5 . The Tribunal after framing issues and appreciating the oral and documentary evidence adduced by the rival parties awarded total amount of compensation of Rs.15,98,500/- under different heads alongwith interest.

6 . Being aggrieved by the impugned award the appellant/Insurance Company has preferred instant appeal on the grounds that offending vehicle has been falsely implicated in the accident in question. The amount awarded is on higher side and needs to be suitably reduced.

7. Learned counsel for the appellant/Insurance Company submitted that Tribunal has not appreciated the objections raised and documents on record in right perspective and the impugned award is contrary to the facts available on record. He further submitted that offending vehicle has been implicated in the matter to get the compensation. In the absence of any reliable eye witness to the accident and also the fact that claimant had failed to establish the negligence on the part of the driver the claim petition was not maintainable. He also raised an objection that quantum of award passed by the Tribunal is shockingly on higher side and deserves to be modified. He further submitted that respondents/claimants No.2 & 3 are major sons and are not entitled for compensation. They cannot be treated to be dependent of the deceased. The dependency ought to have been reduced two-third (2/3) in place of three-fourth

(3/4) in terms of decision in the case of Sarla Verma and, therefore, the Tribunal erred in assessing the income of the deceased at Rs.9,200/- per month, when there is no evidence in this regard. It ought to have been as Rs.36,000/- per annum. The Tribunal also erred in granting of 25% towards future prospects. The deceased was 50 years of age and hence, according to decision in the case of Pranay Sethi, towards future prospects only 10% would be applicable. So the Insurance Company prayed for setting aside impugned award or in the alternatively to reduce the same.

8. On the other hand learned counsel for the respondents/claimants has supported the award passed by the Tribunal and prayed for dismissal of instant appeal.

9 . Considered the arguments advanced by learned counsel for the parties and gone through the record of the Tribunal. The first argument raised by learned counsel for the appellant/Insurance Company is that offending vehicle has been falsely implicated in the matter to get the compensation. He submitted that in the absence of reliable eye witness to the accident and also the fact that claimant failed to establish negligence on the part of driver the claim petition was not maintainable and liable to be dismissed. On perusal of record of the Tribunal eye witness-Akash Mebada in his evidence before the Tribunal by way of affidavit under Order 18 Rule 4 CPC has stated that when he was going to his house from Nandan Petrol Pump on 05.8.2020 at about 07.30 p.m. he saw that on Sehore-Ashtha highway road Maruti Suzuku Swift bearing MP-04/CU-1377 dashed a motorcycle No.MP-37/MI-8713 from the back side. The driver of the offending vehicle was driving the same in rash and negligent manner. He further stated that late he came to know that deceased-Kishore

Vishwakarma died on midway while taking him for treatment. On perusal of cross-examination of this witnesses it is found that he remained intact in his statement and hence, there is no reason to disbelieve him. The FIR was lodged promptly and driver of the offending vehicle did not dare to enter into the witness box to rebut the evidence of PW.2- Akash Mebada. So, considering the evidence of eye witness and the criminal record of the aforesaid accident, it is duly proved that on the date of accident on account of rash and negligent driving by the respondent/driver the accident occurred which dashed the deceased, as a result of which deceased died. So, the argument that offending vehicle was falsely implicated in the matter to get compensation has no substance and, therefore, not accepted.

10 . Learned counsel for the appellant/Insurance Company further submitted that the Tribunal awarded compensation on the higher side. He stated that Tribunal erred in assessing the income of the deceased at Rs.9200/- per month, which is on higher side. In this regard on perusal of the evidence adduced before the Tribunal it is found that deceased was semi skilled labour and Tribunal has assessed the income of the deceased as per notification issued by the Labour Department, Government of Madhya Pradesh. So, the income of the deceased has rightly been assessed. Therefore, no interference in respect of assessment of income of deceased is called for. Further, it is also submitted that Tribunal has erroneously given 25% of future prospects in place of 10%. In this regard on perusal of record of Tribunal it is apparent that in the case of *National Insurance Co.Ltd. Vs. Pranay Sethi and other*, AIR 2017 SC 5157 the Apex Court held that in the case of self employed or fixed salary and if age is below 40 years, then towards future prospects 40% would be applicable and if it is between 40-50 then towards future prospects the same should be 25%

and if age is between 50-60 years then it would be 10%. In the present case, the deceased was 50 years and, therefore, according to decision in the case of Pranay Sethi (supra) 25% has been assessed towards future prospects. Hence, Tribunal has not erred, but rightly assessed under the head of future prospects. So arguments in this regard has no substance and, therefore, cannot be accepted.

11. Learned counsel for the appellant/Insurance Company further submitted that Tribunal has erroneously deducted one-fourth (1/4th) towards personal living expenses. He further submitted that claimants are major and hence, they are not dependents on the income of the deceased. Therefore, one-third (1/3rd) be deducted towards personal living expenses. But, in the case of *National Insurance Co. Ltd. Vs. Birender & Others*, (2020) 11 SCC 356 in Para 15 has held as under :-

“15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs 1,00,000 and Rs 1,50,000 per annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.”

12 . So far as the argument of learned counsel for the appellant is concerned that deduction of 1/4th towards personal living expenses is correct. In the present case there are five dependents of the deceased, i.e. wife, two sons and two parents (mother & father). The Insurance Company failed to prove that Claimants No.2 & 3 are not totally dependents upon the income of the deceased. So, as per the law laid down in the case of *Sarla Verma Vs. DTC*, 2009 (6) SCC 121 in case there are more than 4 dependents, then deduction should be made by taking 1/4th of income. Hence, Tribunal has rightly assessed the deduction towards personal living expenses.

13 . The appellant/Insurance Company also submitted that Tribunal awarded higher compensation towards consortium, funeral expenses and loss of estate. Considering the decision in the case of *United India Insurance Co.Ltd. Vs. Satinder Kaur @ Satvinder Kaur and others*, 2020 SCC Online SC 410 and *Megma General Insurance Co.Ltd. Vs. Nanu Ram @ Chahururah and others*, 2018 ACJ 2782 wherein the Apex Court held that in legal parlance, “consortium” is a compendious term which encompasses “spousal consortium, parental consortium and filial consortium. So considering the award of the Tribunal it is found that Tribunal has rightly awarded compensation under the heads of spousal consortium, parental consortium and filial consortium. Non interference is warranted in this regard.

14. Thus, in the result, the appeal fails and is hereby dismissed.

(HIRDESH)
JUDGE

