

HIGH COURT OF MADHYA PRADESH

Bench: Justice Amar Nath (Kesharwani)

Date of Decision: 24th May 2024

MISCELLANEOUS APPEAL NO. 1510 OF 2023

SMT. SAVITRI SINGH RAJPUT AND OTHERS ...APPELLANTS

VERSUS

SHAH COAL PVT. LTD. ...RESPONDENTS

Legislation:

Section 173(1) of the Motor Vehicles Act, 1988

Subject: Appeal for enhancement of compensation awarded by the Motor Accident Claims Tribunal in a case involving the death of Rampal Singh Rajput in a motor vehicle accident.

Headnotes:

Motor Vehicles Act – Enhancement of Compensation – Appeal – Appellants sought enhancement of compensation awarded by Claims Tribunal for death in a motor vehicle accident – Tribunal had awarded Rs. 9,40,000 with interest – Appellants claimed deceased’s income was Rs. 30,000 per month as a transporter and contractor, not Rs. 6,000 as assessed by Tribunal – Tribunal’s assessment based on lack of documentary evidence and unproven ownership of truck – High Court considered deceased a skilled labourer and adjusted monthly income to Rs. 10,000 – Recalculated total compensation to Rs. 17,15,500 with interest. [Paras 1-20]

Assessment of Income – Evidence – Tribunal’s income assessment – Held – Tribunal erred in assessing monthly income as Rs. 6,000 based on insufficient evidence – High Court adjusted income to Rs. 10,000,

recognizing deceased as a skilled labourer based on driving license for heavy transport vehicle. [Paras 11-12]

Dependency and Multipliers – Personal Expenses – Held – Tribunal incorrectly deducted 1/3rd for personal expenses – High Court corrected deduction to 1/4th considering number of dependents – Multiplier of 13 applied correctly. [Paras 13-14]

Conventional Heads – Consortium and Funeral Expenses – Held – Tribunal awarded consortium and funeral expenses lower than statutory guidelines – High Court enhanced awards under these heads per Supreme Court guidelines. [Paras 16-18]

Decision – Enhancement of Compensation – High Court enhanced total compensation from Rs. 9,40,000 to Rs. 17,15,500 – Directed equitable distribution among dependents and specified terms for fixed deposits for minor dependents – Interest on enhanced amount at 6% per annum from claim petition filing date to actual payment. [Paras 19-22]

Referred Cases:

- Gurpreet Kaur & others v. United India Insurance Company Ltd. 2022 SCC OnLine SC 1778
- National Insurance Company Limited v. Pranay Sethi & others (2017) 16 SCC 680
- Smt. Sarla Verma v. Delhi Transport Corporation (2009) 6 SCC 121
- Chandra Alias Chanda Alias Chandaram & Another v. Mukesh Kumar Yadav & Others (2022) 1 SCC 198
- Manusha Sreekumar & Others v. United India Insurance Co. Ltd. 2022 SCC OnLine SC 1441

Representing Advocates:

- Advocate for appellants: [Name]

- Advocate for respondents: [Name]

ORDER

Amar Nath (Kesharwani), J. - This miscellaneous appeal has been filed by the appellants/claimants under Section 173(1) of the Motor Vehicles Act, 1988 being aggrieved by the award dated 15.11.2022 passed by Motor Accident Claims Tribunal, Waidhan Distt. Singrauli (M.P.) in MACC No.05/2021 by which the claims tribunal has awarded a total sum of Rs.9,40,000/- (Nine Lakhs Forty Thousand) with prevailing Bank rate of interest to the appellants/claimants for death of Rampal Singh Rajput, who died in motor vehicle accident.

2. Since this appeal is for enhancement in the compensation amount awarded by the learned Claims Tribunal, hence the question that arises for consideration is whether any case for enhancement in compensation awarded by the claims tribunal on facts and 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 firstly all these findings are recorded in favour of appellants/claimants by the Tribunal. Secondly, the findings though recorded in claimants' favour are not under challenge at the instance of any of the respondents such as owner/driver or insurance company either by way of filing an appeal or cross-objection. In this view of the matter, there is no justification to burden this order by detailing facts on all these issues.

4. The learned Tribunal assessed the income of deceased @ Rs.6,000/- (Six Thousand) per month. From the assessed income, learned tribunal deducted 1/3th towards personal expenses of the deceased. For the purpose of computing the amount of loss of dependency, learned tribunal added 25% towards future loss of income and keeping in view the age of deceased applied the multiplier of 13 and awarded a sum of Rs.7,80,000/-

(Seven Lakhs Eighty Thousand) towards loss of dependency. Learned tribunal also awarded a sum of Rs.15,000/- (Fifteen Thousand) towards funeral expenses, a sum of Rs.40,000/- (Forty Thousand) towards loss of consortium to wife and Rs.40,000/- (Forty Thousand) each to three minor children towards loss of love & affection.

5. Learned counsel for the appellants submitted that the learned tribunal committed error in assessing the income of the deceased as Rs.6,000/- (Six Thousand) per month, whereas the deceased was working as transporter and contractor and used to earn Rs.30,000/- (Thirty Thousand) per month. It is submitted that the deceased was owner of truck bearing registration No.MP- 53/HA-0718 which was purchased on loan and the deceased was paying EMI Rs.22,528/- (Twenty Two Thousand Five Hundred Twenty Eight) per month which is evident from the deposition of Vikas Kumar Sharma (PW-3). The tribunal has committed error in discarding the evidence of Vikas Kumar Sharma (PW-3). To support his contention, learned counsel drew attention of this Court towards Ex.P-16 which is summary of loan for vehicle No.MP-53/HA-0718 of Shriram Transport Finance Company Ltd. Mumbai. It is also submitted that the deceased was also maintaining a family comprising of wife and four children and also owned a motorcycle, therefore, looking to all such factors, tribunal has wrongly assessed the income of the deceased as Rs.6,000/- (Six Thousand) per month. In support of his submissions, learned counsel for the appellants/claimants has placed reliance on the judgment of Hon'ble Apex Court in the case of **Gurpreet Kaur & others vs. United India Insurance Company Ltd. 2022 SCC OnLine SC 1778** (passed in Civil Appeal No.6981-82 of 2022). It is also submitted that the tribunal has made 1/3rd deduction towards personal expenses of the deceased from the assessed income which should have been 1/4th looking to the number of dependents of the deceased. It is also submitted

that amount awarded under the head of consortium is on lower side 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**. Accordingly, it is prayed that the appeal be allowed and amount of compensation be enhanced substantially.

6. Per contra, learned counsel for the respondent No.3-Insurance Company submitted that though it is claimed by the appellants/claimants that the deceased was owner of truck but no registration card of truck has been filed by the appellants/claimants. Apart from that, if the deceased was earning Rs.30,000/- (Thirty Thousand) per month, then it was incumbent upon the appellants/claimants to file income tax return, however, no such ITR has been filed by the appellants/claimants. Further, drawing attention of this Court towards para 22 of the impugned award and contended that the appellants/claimants were BPL card holders but BPL card has not been produced with an intent to exaggerate the income of the deceased. On these grounds, it is submitted that the amount awarded by the learned Tribunal is just and proper and no case for enhancement is made out and prayed for dismissal of the appeal with cost.

7. I have heard learned counsel for the parties; perused the record and gone through the citation relied upon by the learned counsel for the appellants/claimants.

8. Appellants have not filed any documentary proof regarding income of deceased. In the claim petition, monthly income of deceased was mentioned as Rs.30,000/- (Thirty thousand). The occupation of deceased was mentioned as Transporter and Contractor, but no license for running of the business of Transporter or Contractor was filed and proved by the claimants before the learned Tribunal during the course of evidence. It is also not pleaded in the claim petition that the deceased was the registered

owner of the vehicle which was being used in the business of transport. Appellant No.1-wife of deceased Smt. Savitri Singh (AW-1) has also not stated in her examination-in-chief filed on affidavit under Order 18 Rule 4 of the CPC that there was any vehicle which was registered in the name of her husband. Claimants have also not filed any registration certificate of the vehicle bearing registration No.MP-53-HA-0718, which alleged to have been said in the owner-ship of deceased. Smt. Savitri Singh Rajput (AW-1) herself has not stated in her examination-in-chief that her husband was the registered owner of the vehicle bearing registration No.MP-53-HA-0718. Appellants have also not filed any registration certificate of the motorcycle in the name of deceased. Hence, it is not proved that deceased was maintaining a motorcycle for his personal use.

9. Appellants have examined Vikas Kumar Sharma (AW-3) to prove the fact that deceased has got the vehicle bearing registration No.MP-53-HA-0718 financed from Shri Ram Transport Finance Corporation Ltd. and paid Rs.22,528/- (Twenty two thousand five hundred twenty eight) monthly installment for repayment of loan and filed the copy of statement (Ex.P-16). Vikas Kumar Sharma (AW-3) in Para-6 of his cross-examination has admitted that he has not brought any I.D. related to the account of Rampal. He has stated that he has not brought any documents which bears the signature of deceased. Vikas Kumar Sharma (AW-3) in Para-7 of his cross-examination has suggested on behalf of insurance company that he is placing the "summary of loan" of some other person namely "Rampal" in this case, claiming that same is related to deceased Rampal Singh Rajput of the instant case, though, it is denied by Vikas Kumar Sharma (AW-3).

10. As per Ex.P-16 which is "summary of loan" of vehicle No.MP-53-HA-0718, sanction date of loan is 11/05/2020 and loan amount was only

Rs.2,35,000/- (Two lakh thirty five thousand) and first installment was due on 15/06/2020 and last one is 15/05/2021 and date of incident is 14/10/2020. As per Ex.P-16, vehicle No.MP-53-HA-0718 is the 2009 model. Whether, deceased was the first purchaser of the said vehicle or it was purchased subsequently by previous owner, is not clear in the case. Registration certificate of the said vehicle has also not been filed by the claimants by which it could be found proved that the deceased was the owner of the truck bearing registration No.MP-53-HA-0718. Hence, in absence of any pleading or cogent evidence regarding ownership of truck bearing registration No.MP-53-HA-0718, it could not be said that deceased was the registered owner of the truck bearing registration No.MP-53-HA-0718 and he also had a motorcycle for his own use. Hence, the citation upon which reliance is placed by learned counsel for the appellants in the case of Gurpreet Kaur (supra) is of no assistance to the appellants.

11. Now, we shall consider that whether income of the deceased as assessed by the learned Tribunal is proper or not. It reveals from the impugned award that the learned Tribunal has assessed the monthly income of deceased as Rs.6,000/- (Six thousand) per month, whereas driving license of the deceased (Ex.P-15C) is enclosed with the record of the learned Tribunal, which shows that the deceased was having a driving license to ply the 'heavy transport vehicle', hence the deceased can be considered as a skilled labourer. In this regard reliance is placed on the judgments passed by Hon'ble Apex Court in the cases of **Chandra Alias Chanda Alias Chandaram & Another Vs. Mukesh Kumar Yadav & Others, (2022) 1 SCC 198** (Para-9) and **Manusha Sreekumar & Others Vs. Unittd India Insurance Co. Ltd., 2022 SCC OnLine SC 1441** (Para-20).

12. The date of incident is 14/10/2020. Considering the deceased as a skilled labourer, in the considered opinion of this Court the income of the deceased for an incident which took place in the year 2020, ought to have been taken as Rs.10,000/- (Ten thousand) per month.

13. The deceased left behind five dependents i.e. his wife and four children, however, learned Tribunal considered the appellant No.2 Shivam Singh as major and did not found him dependent on the deceased and deducted 1/3rd towards personal expenses of the deceased, which is erroneous. Even if it is assumed that appellant No.2 Shivam Singh was major and was not dependent on the deceased, then too, there were four persons who were dependent on the deceased, therefore, keeping in view the law laid down by Hon'ble Apex Court in the case of **Smt. Sarla Verma Vs. Delhi Transport Corporation (2009) 6 SCC 121** and Pranay Sethi (supra) the deduction towards personal expenses of the deceased should be 1/4th instead of 1/3rd.

14. It reveals from the impugned award that learned Tribunal added 25% towards loss of future prospects, which appears to be just and proper keeping in view the law laid down by Hon'ble Apex Court in the case of Pranay Sethi (supra). Similarly, looking to the age of deceased at the time of incident, the multiplier of 13 as applied by the learned Tribunal also appears to be just and proper, which requires no interference.

15. Thus, considering the monthly income of the deceased @ Rs.10,000/- (Ten thousand) per month, 25% is added towards loss of future prospect, which comes to Rs.12,500/- (Twelve thousand five hundred), thus the yearly income will come to Rs.1,50,000/- (One lakh fifty thousand). Out of the aforesaid amount 1/4th is to be deducted towards personal expenses of the deceased, then yearly dependency comes to Rs.1,12,500/- (One lakh twelve thousand five hundred) and thereafter multiplier of 13 will be

applied for the purpose of computation of amount towards loss of dependency, which comes to Rs.14,62,500/-(Fourteen lakhs sixty two thousand five hundred).

16. It also reveals from the impugned award that learned Tribunal awarded Rs.40,000/- (Forty thousand) towards loss of consortium to wife and Rs.40,000/- (Forty thousand) each towards loss of parental consortium to three minor children i.e. appellant Nos.3, 4 & 5, but no amount has been awarded in the head of parental consortium to appellant No.2, which should be awarded. No amount under the head of loss of estate has been awarded by the learned Tribunal, which should also be awarded in the light of judgment passed by Hon'ble Apex Court in the case of Pranay Sethi (supra).

17. With regard to figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses Hon'ble Apex Court in the case of Pranay Sethi (supra) in Para 59(8) has held as under :-

59(8) "Responsible 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."

18. So, keeping in view the law laid down by Hon'ble Apex Court in the case of Pranay Sethi (supra), a sum of Rs.16,500/- (Sixteen thousand five hundred) each is awarded under the head of funeral expenses and loss of estate. Similarly, a sum of Rs.44,000/- (Forty four thousand) is awarded under the head of loss of spousal consortium to the wife of deceased and Rs.44,000/- (forty four thousand) each is awarded to four children i.e. appellant Nos.2 to 5 towards loss of parental consortium.

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

| | |
|----------------|---|
| Rs.14,62,500/- | Towards loss of dependency |
| Rs.16,500/- | Towards funeral expenses |
| Rs.16,500/- | Towards loss of estate |
| Rs.44,000/- | Towards loss of spousal consortium |
| Rs.1,76,000/- | Towards loss of parental consortium (44,000 X 4) |
| Rs.17,15,500/- | Total |

20. Thus, the appellants/claimants will be entitled for a total sum of Rs.17,15,500/- (Seventeen lakhs fifteen thousand five hundred) instead of Rs.9,40,000/- (Nine lakhs forty thousand). Thus, there shall be enhancement to the tune of Rs.7,75,500/- (Seven lakhs seventy five thousand five hundred), which shall fetch interest @ 6% per annum from the date of filing of claim petition till the date of actual payment. The enhanced amount be paid within 60 days from the date of receipt of certified copy of this order.

21. Learned Tribunal in Para-27.2 of the impugned award has observed that a sum of Rs.1,00,000/- (One lakh) each be given to appellant Nos.3

to 5 and there is no direction regarding payment of any amount to appellant No.2, as he was major at the time of incident, but the reason for not allocating any share in award amount to the appellant No.2 by the learned Tribunal does not appear to be reasonable and correct. Though, the appellant No.2 was major at the time of incident, but there is no evidence on record to show that he was independent. Since the appellant No.2 is also the legal heir of deceased, so he is also entitled to get share in award amount. Hence, it is directed to the learned Tribunal that amount be disbursed in a way that appellant Nos.2 to 5 should get Rs.2,00,000/- (Two lakhs) each and remaining amount will be paid to the appellant No.1. It is also directed that since appellant Nos. 2 & 3 are major, a sum of Rs.1,00,000/- (One lakh) each be paid to them by the saving bank account and Rs.1,00,000/- (One lakh) each be deposited in fixed deposit in a nationalized bank for a period of one year. It is also directed that the amount which is to be paid to appellant Nos.4 & 5 be deposited in fixed deposit account in a nationalized bank under the guardianship of their mother i.e. appellant No.1 Smt. Savitri Singh Rajput till they attain the majority. The quarterly interest accrued on the amount deposited in the fixed deposit shall be paid to guardian for well being and upbringing of appellant Nos.4 & 5. It is made clear that the principal amount shall not be disbursed till the appellant Nos. 4 & 5 attain the age of majority or without the leave of the concerned Tribunal. The amount which has to be paid to the appellant No.1 out of awarded amount, 50% of that be paid to the appellant No.1 in saving bank account and 50% amount be deposited in the fixed deposit in a nationalized bank in her name for a period of three years. Other terms and condition of the award shall remain intact. 22. With the aforesaid, appeal stands disposed of.

23. Records of the learned Tribunal be sent back alongwith the copy of this order for information and necessary compliance.

No order as to costs.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.