IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL

MISCELLANEOUS APPEAL No.1554 OF 2020

BETWEEN:-

1. **SMT. VERSHA YADAV W/O LATE VIJAY YADAV, AGED ABOUT 20 YEARS, OCCUPATION: HOUSEWIFE VILL. PATHRIYA JAAT P.S. CIVIL LINE SAGAR DIST. SAGAR (MADHYA PRADESH)**

2. **PREM YADAV S/O MATHARA PRASAD YADAV, AGED ABOUT 56 YEARS, OCCUPATION: AGRICULTURE VILLAGE PATHARIYA JAAT POLICE STATION CIVIL LINE SAGAR (MADHYA PRADESH)**

3. **SMT.VIMLA YADAV W/O PREM SINGH YADAV, AGED ABOUT 51 YEARS, OCCUPATION: HOUSEWIFE VILLAGE PATHARIYA JAAT POLICE STATION CIVIL LINE SAGAR (MADHYA PRADESH)**

.....APPELLANTS

(BY SHRI ABHISHEK TIWARI - ADVOCATE*)*

AND

1. **MAHENDRA SINGH THAKUR S/O SHREESINGH THAKUR OCCUPATION: VEHICLE TRUCK VILL. GAMBHIRIYA MAKRONIYA DIST. SAGAR (MADHYA PRADESH)**

2. **BALVEER JOSHI S/O BABULAL JOSHI PRABHAKAR NAGAR GALI NO. 1 DISTT.SAGAR (MADHYA PRADESH)**

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3. CHOLAMANDLAM M/S GENERAL INSURANCE CO.LTD. BHOPAL 164-A SECOND FLOOR STAR ARCED UPON AXIX BANK ZONE-1 M.P. NAGAR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI T.S.LAMBA – ADVOCATE FOR RESPONDENT NO.3)

MISCALLENOUS APPEAL No.2010 OF 2019

BETWEEN:-

CHHOLAMANDALAM MS GENERAL INS.CO.LTD. THR. OFFICE AT 165-A, 2ND FLOOR STAR ARCADE, ABOVE AXIS BANK, ZONE I M.P. NAGAR BHOPAL (MADHYA PRADESH)

.....APPELLANTS

(BY SHRI T.S.LAMBA - ADVOCATE)

AND

SMT. VARSHA YADAV W/O LATE VIJAY YADAV, AGED ABOUT 20 YEARS, VILLAGE PATHARIYA JAAT P.S. CIVIL LINES SAGAR (MADHYA PRADESH)

PREM YADAV S/O MATHURA YADAV, AGED ABOUT 56 YEARS, R/O VILLAGE PATHARIYA JAAT, P.S.CIVIL LINES SAGAR (MADHYA PRADESH)

VIMLA YADAV W/O PREMSINGH YADAV, AGED ABOUT 51 YEARS, R/O VILLAGE PATHARIYA JAAT, P.S.CIVIL LINES SAGAR (MADHYA PRADESH)

MAHENDRA SINGH THAKUR S/O SHRISINGH THAKUR R/O VILLAGE GAMBHIRIYA MAKRO NIYA (MADHYA PRADESH)

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BALVIR JOSHI S/O BABULAL JOSHI R/O PRABHAKAR NAGAR, MAKRONIYA (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI B.J.CHOURASIA – ADVOCATE)

RESERVED ON : 12.01.2024

PRONOUNCED ON:

This appeal having been heard and reserved for order, coming on for pronouncement on this day, the court passed the following:

O R D E R

This common order shall govern disposal of Misc. Appeal No.1554 of 2020 (Smt.Versha Yadav and Others Vs. Mahendra Singh Thakur and Others) and Misc. Appeal No.2010 of 2019 (Chholamandalam MS. General Insurance Co.Ltd. Vs. Smt. Varsha Yadav and others) arising out of common award dated 04.01.2019 passed in MACC No.506/2017 passed by Member M.A.C.T., Sagar District Sagar.

2. MA No.1554/2020 (Smt.Versha Yadav and Others Vs. Mahendra Singh Thakur and Others) has been filed by appellant/claimant for seeking enhancement of compensation whereas MA No.2010/2019 has been filed for seeking reduction of compensation as well as rate of interest.

3. Learned counsel for the appellant /insurance company after referring to para-21 and 22 of the impugned award submits that tribunal has wrongly relied

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upon photographs to conclude that deceased was running a Canteen and thereby earning at least Rs.10,000/- per month. It is also urged that tribunal has awarded interest at the rate of 8% which is excessive and it should be reduced. On this connection, he has relied upon decision of a Coordinate Bench in ***MA No.1487/2021 (Oriental Insurance Company Ltd. Vs. Deepti and others) order dated 08.04.2022***. On above ground, it is urged that compensation awarded by tribunal be reduced and the rate of interest be also reduced.

3. Learned counsel for the appellants/claimants have submitted that tribunal has wrongly held that appellants failed to prove that deceased was not having cow etc. and he was not supplying milk. Income assessed by the tribunal is on the lower side. It is also urged that wrong multiplier has been applied, no future prospects have been awarded and no loss of consortium/funeral expenses and loss of estate has been awarded. On above grounds, it is urged that compensation awarded by the tribunal be suitably enhanced.

4. I have heard learned counsel for the parties and perused the record of the case.

5. So far as income of deceased is concerned, perusal of evidence on record and findings recorded by the tribunal in para-19 to 22 reveals that tribunal has rightly held that applicants have failed to prove that deceased was having cow etc. and he was supplying milk and thereby earning Rs.20,000/- per month.

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6. So far as income from canteen is concerned, perusal of record of Tribunal reveal that no documents, whatsoever, concerning running of canteen have been filed by the claimants. No GST registration etc. have been filed to show that deceased was running a Canteen. No person has been examined from SVN University to prove that deceased was running canteen in SVN University premises. It is apparent from para 22 of impugned award that only on the basis of photographs, Tribunal has held that deceased was running canteen, which is erroneous.

7. Perusal of para 22 of the impugned award reveals that tribunal has also held that as deceased was married and he was riding a motorcycle at the time of accident, therefore, then it will be presumed that he was earning at least Rs.10,000/- per month.

8. In this Court's opinion above finding of tribunal is also erroneous and without any basis. Therefore, in this Court's opinion tribunal has wrongly held that deceased was earning Rs.10,000/- per month.

9. In the instant case, accident has occurred on 22.06.2017. Therefore, treating deceased's an unskilled labour, deceased's monthly income is determined of Rs.7125/- per month on basis of minimum wages notified under Minimum Wages Act.

10. In view of above, appellant's annual income comes to Rs.85,500/- (Rs.7125/- x 12) and in view of age of deceased and nature of job, 40% is to be

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added for future prospect. Then, amount comes to Rs.1,19,700/- and 1/3 is to be deducted for personal expenses. Then amount comes to Rs.79,800/- and multiplier of 18 is to be applied than total loss of dependency comes to Rs.14,36,400/-.

11. So far as other heads are concerned, tribunal has awarded appropriate amount under conventional heads but it has not awarded any consortium to parents of deceased. Therefore, appellants No.2 and 3 i.e. Prem Yadav and Smt. Vimla Yadav are also entitled to Rs.40,000/- each i.e. Rs.80,000/- for loss of filial consortium.

12. Thus claimants are entitled to receive Rs.14,36,400/-(loss of dependency) + Rs.1,20,000/-(consortium) +Rs.30,000/-(loss of estate/funereal expenses) total Rs.15,86,400/- as compensation.

13. So far as rate of interest is concerned, tribunal has held that appellants are entitled to receive interest at the rate of 8% per annum on compensation amount.

14. Learned counsel for the appellants/Insurance Company after relying on Oriental Insurance Co.Ltd. (supra) submits that tribunal has wrongly awarded interest at the rate of 8%, Hon'ble Apex Court in the case of ***Puttamma and Others Vs. K.L.Narayana Reddy and Another reported in (2013) 15 SCC 45***, has held as under :-

> "61. This Court in Kaushnuma Begum v. New India Assurance Co. Ltd. 2001 2 SCC 9 noticed that the

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nationalised banks are granting interest @ 9% on fixed deposit for one year and held as follows: (SCC p. 16, para 24)

> "24. Now, we have to fix up the rate of interest. section 171 of the MV act empowers the Tribunal to direct that 'in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf'. Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalized banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed herein before shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants. The amount of Rs 50,000 paid by the Insurance Company under Section 140 shall be deducted from the principal amount as on the date of its payment, and interest would be recalculated on the balance amount of the principal sum from such date."

62. This Court in Abati Bezbaruah v. Geological Survey of India 2003 3 SCC 148 noticed that varying rates of interest are being awarded by the Tribunals, the High Courts and this Court. In the said case, this Court held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being adopted by Reserve Bank of India

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from time to time, how long the case is pending, loss of enjoyment of life, etc."

15. In the instant case, accident has occurred on 22.06.2017. Taking into consideration prevailing rate of interest and rates on FDR, it would be just and proper to award interest at the rate of 6% per annum. Hence, interest granted by the tribunal is reduced to 6% per annum. Appellants/claimants are entitled to receive interest at the rate of 6% on the compensation amount as adjudged above.

16. In view of discussion in the foregoing paras, appellant/claimants are entitled to receive Rs.15,86,400/- as compensation and not Rs.20,86,000/- as awarded by the Tribunal. Hence, compensation awarded by the Tribunal is reduced by Rs.4,99,600/- (Rs.20,86,00/ - Rs.15,86,400/-).

17. If compensation amount has already been deposit by Insurance Company, thus appellants/claimants shall refund Rs.4,99,600/- to appellant/Insurance Company.

18. In view of above discussions in forging paras, appeal filed by appellants/claimants is dismissed and appeal filed by the appellants/Insurance Company is partly allowed to the extent indicated herein above.

(ACHAL KUMAR PALIWAL)
JUDGE

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