HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Misc. Appeal No. 925/2014

Kanti Lal Ahari S/o Shri Vasuji Ahari, age 29 years, R/o Saklal Fala Anela, Tehsil Khairwada, District Udaipur.

----Appellant/Claimant

Versus

1. Pankaj S/o Shri Ruplal Damore, R/o Modivasa, Fala Kaniyala, Post Naya Gaon, Tehsil Khairwada, District Udaipur.
(Driver of Truck No.GJ-09-Z-3945)
2. Basanti Lal S/o Kura Patel, R/o Gulabpura, Post Parosara, Thana and Taluka Vijaynagar, District Himmat Nagar-Sabarkantha, Gujrat 383460, presently R/o Village Mahida, Post Naya Gaon, Tehsil Khairwada, District Udaipur.
(Owner of Truck No.GJ-09-Z-3945)
3. The New India Insurance Company Limited, through : Branch Manager, Branch office Bapu Bazar, Udaipur (Rajasthan).
(Insurance Company of Truck No.GJ-09-Z-3945)

----Respondents

Connected With

S.B. Civil Misc. Appeal No. 696/2014

The New India Insurance Company Limited, through Divisional Manager, The New India Assurance Co. Ltd, Bapur Bazar, udaipur.

(Insurer of Truck No.GJ-09-Z-3945)

----Appellant/Non-claimant

Versus

1. Shri Kantilal Ahari S/o Shri wasuji Ahari, age 29 years, Residence of Saklal Fla Anela, Tehsil Kherwada, District Udaipur, Rajasthan.
Respondent/Claimant
2. Shri Pankaj S/o Shri Rooplal Damore, age Major, R/o Modiwasa, Fla Kaniyala, Post Nya Gaon, thesil Kherwada, District Udaipur, Rajasthan.
(Driver of Truck No.GJ-09-Z-3945)
3. Basanti Lal S/o Kura Patel, age Major, R/o Gulabpura, Post Parosara, Thana and Taluka Vijaynagar, District Himmat Nagar-Sabarkantha, Gujrat 383460, presently R/o Village Mahida, Post Naya Gaon, Tehsil Kherwada, District Udaipur.
(Owner of Truck No.GJ-09-Z-3945)

----Respondent

S.B. Civil Misc. Appeal No. 926/2014

Shri Kanti Lal Ahari S/o Shri Vasuji Ahari, age 29 years, Residence of Saklal Fala Anela, Tehsil Khairwada, District Udaipur.

----Appellant/Claimant

Versus

1. Shri Pankaj S/o Shri Rooplal Damore, R/o Modivasa, Fala Kaniyala, Post Nya Gaon, Tehsil Khairwada, District Udaipur.
(Driver of Truck No.GJ-09-Z-3945)
2. Basanti Lal S/o Kura Patel, R/o Gulabpura, Post Parosara,

Thana and Taluka Vijaynagar, District Himmat Nagar-Sabarkantha, Gujrat 383460, presently R/o Village Mahida, Post Naya Gaon, Tehsil Khairwada, District Udaipur.
(Owner of Truck No.GJ-09-Z-3945)

3. The New India Insurance Company Limited, through : Branch Manager, Branch office Bapu Bazar, Udaipur (Rajasthan).
(Insurance Company of Truck No.GJ-09-Z-3945)

----Respondent

S.B. Civil Misc. Appeal No. 927/2014

Kanti Lal Ahari S/o Shri Vasuji Ahari, age 29 years, Residence of Saklal Fala Anela, Tehsil Khairwada, District Udaipur.

----Appellant/Claimant

Versus

1. Shri Pankaj S/o Shri Rooplal Damore, R/o Modivasa, Fala Kaniyala, Post Nya Gaon, Tehsil Khairwada, District Udaipur.
(Driver of Truck No.GJ-09-Z-3945)
2. Basanti Lal S/o Kura Patel, R/o Gulabpura, Post Parosara, Thana and Taluka Vijaynagar, District Himmat Nagar-Sabarkantha, Gujrat 383460, presently R/o Village Mahida, Post Naya Gaon, Tehsil Khairwada, District Udaipur.
(Owner of Truck No.GJ-09-Z-3945)
3. The New India Insurance Company Limited, through : Branch Manager, Branch office Bapu Bazar, Udaipur (Rajasthan).
(Insurance Company of Truck No.GJ-09-Z-3945)

----Respondents

For Appellant(s)	:	Mr. Manish Rajpurohit for claimant
For Respondent(s)	:	Mr. MP Goswami for Mr. Anil Bachhawat for Insurance Company Ms. Avya Gupta for Mr. Rajat Dave

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HON'BLE DR. JUSTICE NUPUR BHATI

Order

13/02/2025

1. The SBCMA Nos. 925/2014, 926/2014 and 927/2014 have been preferred by the claimant under Section 173 of the Motor Vehicles Act, 1988 (‘MV Act’) assailing the common judgment and award dated 28.02.2014 passed by learned Judge, Motor Accident Claims Tribunal No.1, Udaipur (‘learned Tribunal’) in MACT Case

Nos.766/2012, 765/2012 & 764/2012 respectively, whereby the learned Tribunal partly allowed the respective claim petitions filed by the claimant and awarded compensation of Rs.10,03,000/-, Rs.1,50,000/- & Rs.1,50,000/-, respectively in favour of claimant along with interest @ 9% p.a. while fastening the liability upon the respondents. SBCMA No.696/2014 has been preferred by the insurance company-The New India Insurance Company Limited challenging the impugned award passed in MACT Case No.766/2012.

2. Brief facts of the case are that on 21.05.2012, Shanti Lal, Sangita and Smt. Kavali were going towards Vijaynagar in a jeep, and when they reached Modivasa, a Truck bearing Registration No.GJ-09-Z-3945, driven in a rash and negligent manner, hit the Jeep and as a result of which Shanti Lal, Sangita and Smt. Kavali died. The claimants filed claim petitions before the learned Tribunal under Section 166 of the Motor Vehicles Act. On the basis of the pleadings, the learned Tribunal framed issues. Oral as well as documentary evidences were produced by the parties and after hearing both the parties, the learned Tribunal partly allowed the claim petition of the claimant and held the respondents liable to pay the quantum of compensation in favour of the claimant. Aggrieved by the same, both the claimant and the insurance company have preferred their respective appeals.

[In S.B. Civil Misc. Appeal Nos.925/2014 & 696/2014]

3. Learned counsel for the insurance company submits that the award has been given challenge only to the extent of wrong computation of income of the deceased wife of the claimant. He

submits that the learned Tribunal has wrongly assessed the income of the deceased as Rs.4050/- despite the fact that she was a homemaker and no document was submitted so as to demonstrate the income of the deceased wife. He also submits that the future prospects has wrongly been awarded at the rate of 50% and the deduction towards personal expenses has also been wrongly made at the rate of 1/3 instead of 1/2.

4. Learned counsel for the claimant submits that income has rightly been assessed as Rs.4050/-. He also submits that the Hon'ble Supreme Court in the case of **Kirti vs Oriental Insurance Company Limited [AIR 2021 SC 353]** has held that though there is no definite formula to assess the notional income of the homemaker, however, it is the duty of the Court to award just and fair compensation considering the facts and circumstances of the case. He further submits that the deduction towards personal expenses and the future prospects has rightly been awarded to the claimant.

5. Heard learned counsel for the parties.

6. This Court finds that the income of the deceased has rightly been assessed by the learned Tribunal to the tune of Rs.4050/- per month as it is only in absence of documents regarding income, the contribution of homemaker in the family cannot be undermined from the fact that she was not an earning member of the family and while taking into consideration the case of Kirti (supra), this Court finds that the learned Tribunal has rightly assessed the income of the deceased as Rs.4050/-, however, the learned Tribunal has wrongly awarded future prospects @ 50% and the same ought to have been awarded @ 40% looking to the

age of the deceased's wife i.e. 25 years as per the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi & Ors.** reported in **(2017)16 SCC 680.** Further, the learned Tribunal has wrongly made deduction of 1/3 on account of personal expenses of deceased and the same ought to have been 1/2 looking to the number of dependents as per the ratio of Hon'ble Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation** reported in **AIR 2009 SC 3104.** Therefore, the impugned award deserves to be modified in the following manner:

S.No.	Particulars	Amount as awarded by the learned tribunal	Amount as awarded/modified by this court
1.	(add) Compensation towards loss of dependency: 48,600 (annual) + 19,440 (future prospect @40%) – 34,020 (1/2 deduction on account of personal expenses) x 18 (Multiplier) = Rs.6,12,360/- **[A]**	Rs.8,74,800/-	Rs.6,12,360/-
2.	(add) Loss of Consortium 48,400 x 1 = 48,400/- **[B]**	Rs. 1,00,000/-	Rs.48,400/-
3.	(add) Funeral Expenses **[C]**	Rs.25,000 /-	Rs.18,150/-
4.	(add) Loss of Estate **[D]**	Rs.1,000/-	Rs. 18,150/-
5.	Transportation **[E]**	Rs.2,000/-	Rs.2,000/- (same as awarded by Tribunal)
Gross Total **[A]+[B]+[C]+[D]+[E]**		Rs.10,02,800/- **[F]**	Rs.6,99,060/- **[G]**
Reduced Amount [F]-[G]			Rs.03,03,740/-

7. Therefore, in view of the discussion in the above paragraphs, the appeal preferred by the insurance company - S.B. Civil Misc. Appeal No. 696/2014 is partly allowed only to the extent of quantum of compensation and the appeal preferred by the claimant - S.B. C.M.A. No. 925/2014 is dismissed.

8. Accordingly, the claimant is held entitled to the modified compensation of Rs.6,99,060/- along with interest @9% (same as awarded by the learned Tribunal) from the date of filing of the claim petition in the manner as directed by the learned tribunal. The amount of compensation if any paid or disbursed shall be adjusted.

[In S.B. Civil Misc. Appeal Nos. 926/2014 & 927/2014]

9. Learned counsel for the claimant submits that the age of the deceased child in SBCMA No.926/2014 is 03 years and in SBCMA No.927/2014, age of the deceased child is 05 year, however, the learned Tribunal has awarded a meager amount of compensation and the same requires to be enhanced in light of the RSLSA Guidelines for MACT Cases, 2024.

10. Learned counsel for the insurance company affirms the same.

11. Heard learned counsel for the parties and perused the material available on record.

12. Since both the parties have jointly requested to modify the compensation as awarded by the learned Triubnal in the light of the RSLSA Guidelines, for MACT Cases, 2024 (‘MACT Guidelines’), this Court finds that as per MACT Guidelines, in case of child death where the deceased child falls into the age group of 0-5 years, the

lump-sum amount of Rs.3.50 lakhs is payable. Thus, considering the joint request of the parties, the amount awarded by the learned Tribunal in both the claim petitions (MACT Case Nos.765/2012 & 764/2012) is enhanced to Rs.3,50,000/- each in the light of MACT Guidelines.

13. Accordingly, the instant appeals preferred by the appellant/claimant are partly allowed and the appellant/claimant are held entitled to the enhanced compensation of Rs.2,00,000/- (Rs.3,50,000 – Rs.1,50,000) each in MACT Case Nos.765/2012 & 764/2012 along with interest @ 9% (same as awarded by the learned tribunal) from the filing of the claim petition in the same manner as directed by the learned tribunal. The amount of compensation, if any disbursed to the appellant/claimant, shall be adjusted accordingly. No order as to costs. The impugned award passed by the learned tribunal is modified accordingly. The amount of compensation if any paid or disbursed shall be adjusted.

14. Record be sent back forthwith.

(DR. NUPUR BHATI),J

81-84-Ajay/-