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

**BEFORE
HON'BLE SHRI JUSTICE HIRDESH**

ON THE 29th OF APRIL, 2024

MISC. APPEAL No. 748 of 2023

BETWEEN:-

**NATIONAL INSURANCE COMPANY LTD. THROUGH ITS
MANAGER IN CHARGE DIVISIONAL OFFICE,
KHANDWA (MADHYA PRADESH)**

.....APPELLANT

(SHRI MANOJ JAIN, LEARNED COUNSEL FOR THE APPELLANT).

AND

- 1. PHOOLBAI W/O LATE SHRI HARIOM DAWAR,
AGED ABOUT 29 YEARS, OCCUPATION:
HOUSEWIFE VILLAGE JULWANIYA (AARSI)
TEHSIL SANAWAD (MADHYA PRADESH)**
- 2. HEMANT THROUGH GUARDIAN MOTHER
PHOOLBAI S/O LATE SHRI HARIOM DAWAR,
AGED ABOUT 29 YEARS, OCCUPATION:
HOUSEWIFE VILLAGE JULWANIYA (AARSI)
TEHSIL SANAWAD DISTRICT. KHARGONE
(MADHYA PRADESH)**
- 3. ABHAY THROUGH GUARDIAN MOTHER
PHOOLBAI W/O LATE SHRI HARIOM DAWAR,
AGED ABOUT 29 YEARS, OCCUPATION:
HOUSEWIFE VILLAGE JULWANIYA (AARSI)
TEHSIL SANAWAD DISTRICT. KHARGONE
(MADHYA PRADESH)**
- 4. ROSHANI THROUGH GUARDIAN MOTHER
PHOOLBAI W/O LATE SHRI HARIOM DAWAR,
AGED ABOUT 29 YEARS, OCCUPATION:
HOUSEWIFE VILLAGE JULWANIYA (AARSI)
TEHSIL SANAWAD DISTRICT. KHARGONE
(MADHYA PRADESH)**
- 5. SHOBHARAM S/O SHRI SUKLAL DAWAR, AGED
ABOUT 52 YEARS, OCCUPATION: NOTHING
VILLAGE JULWANIYA (AARSI) TEHSIL SANAWAD**

DISTRICT. KHARGONE (MADHYA PRADESH)

6. **PUNIBAI W/O SHRI SHOBHARAM DAWAR, AGED ABOUT 50 YEARS, OCCUPATION: NOTHING VILLAGE JULWANIYA (AARSI) TEHSIL SANAWAD DISTRICT. KHARGONE (MADHYA PRADESH)**
7. **PRADEEP THROUGH GUARDIAN S/O SHRI SHOBHARAM DAWAR, AGED ABOUT 17 YEARS, OCCUPATION: NOTHING SANAWAD DISTRICT KHARGONE (MADHYA PRADESH)**
8. **AMJAD KHAN S/O MAKBOOL KHAN, AGED ABOUT 35 YEARS, OCCUPATION: DRIVER SATDHARA, PIPALGONE, TEHSIL KASRAWAD, DIST. KHARGONE (MADHYA PRADESH)**
9. **M/S DIGIANA INDUSTRIES PVT. LTD. M-3, SAPNA CHAMBER, 12/1, SOUTH TUKOGANJ, BEHIND SHREEMAYA HOTEL, INDORE (MADHYA PRADESH)**

.....RESPONDENTS

**(SHRI VIKAS YADAV, LEARNED COUNSEL FOR THE RESPONDENTS
NO.5, 6 & 7)**

This appeal coming on for orders this day, the court passed the following:

सत्यमेव जयते **ORDER**

This appeal by the insurance company under section 173(1) of the Motor Vehicles Act is arising out of the award dated 15.09.2022 passed by MACT, Sanavad (link court), district Mandleshwar in claim case no.59/2020 seeking reduction of compensation/exoneration from liability on the ground of false implication of the vehicle.

2. Brief facts of the case are that on 15.11.2018 deceased Hariom was going on foot when the driver of the truck bearing registration no.MP-09-HG-9986 which was being driven rashly and negligently dashed him due to which he received grievous injuries and died. The claimants/respondents no.1 to 7 filed a claim petition seeking compensation against the appellant/insurance company

and respondents No.8 & 9/driver and owner of the offending vehicle.

3. Before the Tribunal the appellant/insurance company filed its written statement and denied all the averments pleaded in the claim petition. The driver and owner of the offending vehicle remained ex-parte before the Tribunal. On the basis of the pleadings, tribunal framed issues and after taking evidence and hearing learned counsel for the parties allowed the claim petition and awarded a total compensation of Rs.47,41,400/- in favour of the claimants and against the appellant respondents no.8 & 9 jointly and severally. Being aggrieved by the said impugned award, the appellant/insurance company has filed this appeal.

4. Learned counsel for the appellant submits that the Tribunal has erred in not considering the fact that it is a case of false involvement of the vehicle as the the police had lodged the FIR with a delay. The FIR has been lodged on the basis of Marg intimation of the brother of the deceased that he went to the place of accident and saw that the deceased was lying there on the road and this intimation never disclosed that it was a case of accident and the cause of death is not certain. However, on the basis of the statement of the brother of the deceased a false FIR has been lodged by the police. The Tribunal has also erred in assessing the income of the deceased on a very higher side. For proving the income of the deceased one certificate Ex.P/11 was exhibited by the wife of the deceased but the said certificate was not corroborated with any other supporting document. The issuer of the certificate was also not examined, therefore, the document was not reliable but the Tribunal has assessed the income on the basis of the document which was not proved.

5. On the other hand, learned counsel for the claimants/respondents has supported the impugned award and prayed for dismissal of the appeal.

6. Heard learned counsel for the parties and perused the record.

7. After hearing learned counsel both parties and on perusal of the record it is found that the accident had occurred on 15.11.2018 and the said information was received by the police on the same date after half an hour of the accident. The police after inquiring the information lodged the FIR against the offending vehicle and filed the charge sheet against the driver of the offending vehicle. The contention raised by the counsel for the appellant is that Ravi AW/2 was not an eye witness as he reached on the spot after the accident, therefore, there was no eye witness of the accident. So the contention of the counsel for the appellant is that the driver of the offending vehicle was rash and negligent and because of which the accident had occurred was not duly proved in the case. Ravi AW/2 has stated in his cross examination that he gave the information regarding the accident to the police. As per the Marg intimation, at the time of accident AW/2 was present at his house, therefore, he was not an eye witness of the incident. But in the present case, the driver and owner of the offending vehicle after receiving the notice proceed ex-parte and did not dare to enter the witness box in order to rebut the evidence and criminal documents produced by the claimants. So perusal of the criminal record and un-rebutted evidence it is duly proved that the driver of the offending vehicle was rash and negligent in causing the accident, therefore, the contention of the counsel for the appellant regarding false implication of the vehicle has no substance.

8. The next contention raised by the counsel for the appellant is that the pay certificate of the deceased Ex.P/11 has not been duly proved as the person who issued the certificate has not been examined before the Tribunal. In reply the counsel for the respondents submits that Ex.P/11 has been duly proved. On perusal of the record it is found that Ex.P/11, the pay certificate of the deceased

was filed by the claimants before the Tribunal but the claimants were unable to examine the person who has issued the said certificate. It is true that this document was exhibited by the claimants but in the considered opinion of this Court, mere exhibition of document does not mean that it was admissible in the eye of law. It was the duty of the claimants to produce the witness who issued the certificate but no one was examined by the claimants, therefore, this certificate is not admissible in the eye of law as it was not duly proved by the person who issued the same. So, in the considered opinion of this court, the Tribunal has committed an error in assessing the income of the deceased as Rs.18,000/- per month on the basis of the certificate Ex.P/11. Therefore, the finding of the tribunal in this regard deserves to be modified. As per the evidence adduced by the claimants the deceased was a skilled labour, therefore, considering the minimum wages prescribed by the Labour Commissioner for a skilled labour for the relevant period i.e. 15.11.2018 was Rs.9,360/- per month. Accordingly, the income of the deceased is fixed as Rs.9,360/- per month.

9. In view of the foregoing discussion, the compensation awarded by the Tribunal deserves to be and is hereby modified as under:

HEAD	AMOUNT
Loss of dependency (i.e. Rs.9,360 40% F.P=13,104x12=1,57,248 - 1/5th personal expenses=1,25,798 x 17 (multiplier))	-Rs.21,38,566/-
Loss of consortium	-Rs.2,40,000/-
Funeral expenses	-Rs.15,000/-
Loss of estate	-Rs.15,000/-

	TOTAL Rs.24,08,566/-

10. Thus, the just and proper amount of compensation in the instant case is Rs.24,08,566/-. Accordingly, the amount awarded by the Tribunal is reduced to Rs.24,08,566/-.

11. In the result, the appeal is partly allowed by reducing the compensation amount to a sum of Rs.24,08,566/-. This amount shall bear interest at the same rate as awarded by the Tribunal. The other findings recorded by the Tribunal shall remain intact.

hk/



**(HIRDESH)
JUDGE**