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**(2005) 08 MP CK 0114**

**In the Madhya Pradesh High Court**

**Case No : M.A. No's. 650, 652 to 655 and 674 of 2001**

United India Insurance Co. Ltd.

APPELLANT

Vs

Asha Devi and Others

RESPONDENT

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**Date of Decision : 18-08-2005**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 170

**Citation : (2006) ACJ 1516**

**Hon'ble Judges : Shraavan Shanker Jha, J;P.K Jaiswal, J**

**Bench : Division Bench**

**Advocate : B.N. Malhotra, for the Appellant; B.D. Verma, R.V. Sharma, Suresh Kushwaha, Meena Singhal, Suraj Devi Agrawal and Kamal Rochlani, for the Respondent**

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## **Judgement**

S.S. Jha, J.—Since these appeals arise out of common award, they are heard together.

Misc. Appeal Nos. 650, 652, 653 and 655 of 2001.

2. Only question involved in these appeals is whether the appellant insurance company has rightly been held responsible to indemnify the insured.

3. Counsel for the appellant insurance company Mr. B.N. Malhotra has submitted that from the evidence on record, these are the cases of composite negligence of drivers of two vehicles. As such apart from the appellant insurance company, respondent National Insurance Co. Ltd. is also jointly and severally liable to pay the compensation. Respondent National Insurance Co. Ltd. has insured the offending jeep bearing registration No. MP 07-H 1828 which had dashed against the tanker bearing registration No. HNU 9877 insured with the appellant insurance company.

4. We have heard counsel for the parties and perused the evidence on record.

5. In evidence, witnesses have deposed that while the tanker lorry was

overtaking another vehicle, it collided with the jeep which was coming from opposite direction. It is true that this is a case of head-on collision, but the fact remains that when the tanker was overtaking another vehicle, said tanker was on the right side of the road, whereas the jeep was on its left side. Since the accident has occurred while overtaking the vehicle, owner and driver of the tanker will be jointly and severally liable to pay the compensation and the appellant insurance company is bound to indemnify the insured. In the circumstances of the case, the appellant insurance company has rightly been held responsible to pay the compensation.

6. Cross-objections have been filed by the respondent National Insurance Co. Ltd. for refund of the amount of Rs. 25,000 deposited by it towards no fault liability. Since the jeep was also involved in the accident and compensation has been deposited towards no fault liability, respondent National Insurance Co. Ltd. is not entitled for any refund. Cross-objections of the respondent National Insurance Co. Ltd. are dismissed.

7. Cross-objection has been filed by the claimants in Misc. Appeal No. 652 of 2001. Mr. B.D. Verma, the learned Counsel appearing for the claimants does not wish to press the cross-objection as he has filed separate appeal against the award. Therefore, the cross-objection is dismissed.

8. The Claims Tribunal has directed that the claimants will be entitled for interest at the rate of 9 per cent per annum if the compensation is paid within one month and if the compensation is not paid within one month, then claimants will be entitled for interest at the rate of 12 per cent per annum. Since penal condition could not be imposed, therefore, order passed by the Claims Tribunal directing the payment of interest at the rate of 12 per cent per annum is set aside and it is directed that claimants will be entitled for interest at the rate of 9 per cent per annum.

9. Misc. Appeal Nos. 650, 652, 653 and 655 of 2001 have no merit and are dismissed with the aforesaid modification in the order of the Claims Tribunal.

Misc. Appeal No. 674 of 2001:

10. This appeal is filed by the widow of deceased Daulatram.

11. It is contended by claimant that the deceased was running a shop in the name and style "Maa Vaishno Devi Readymade Stores" and was earning Rs. 4,000-5,000 per month. Claims Tribunal has found that in the absence of any record pertaining to the shop, the income of the deceased has not been proved and determined notional income of the deceased at Rs. 15,000 per annum. Since the deceased and the claimant had no issue and the family consisted of husband and wife, therefore, Claims Tribunal has determined dependency of the widow at Rs. 7,500 per annum.

12. Ms. Suraj Devi Agrawal, learned Counsel appearing for insurance company, respondent No. 3, has submitted that the award is just and proper.

13. We have perused the evidence on record. It is true that there is no document produced by the claimant pertaining to accounts of the shop of the deceased. However, one fact emerges from the record that deceased Daulatram had some earnings. Therefore, Claims Tribunal has committed an error in holding the notional income of the deceased at Rs. 15,000 per annum. Considering the facts of the case, it can safely be held that the deceased must be earning around Rs. 2,500 per month, i.e., Rs. 30,000 per annum. Normally expenditure of husband is less than wife. Therefore, in the present case, personal expenses of the deceased will be only Rs. 10,000 per annum and he was spending Rs. 20,000 per annum upon his family. Deceased was aged about 30 years and in the post-mortem his age is found to be 35 years. Therefore, multiplier of 17 will be applicable in this case. On applying the multiplier of 17, the figure comes to Rs. 3,40,000. In addition, claimant will also be entitled for a sum of Rs. 10,000 towards damages under various heads such as loss of consortium, loss to estate, funeral expenses, etc. and the compensation is determined at Rs. 3,50,000 (rupees three lakh fifty thousand). Claimant will also be entitled for interest at the rate of 6 per cent per annum on the enhanced amount of compensation from the date of filing of appeal.

14. Appeal succeeds in part. There shall be no order as to costs.

Misc. Appeal No. 654 of 2001:

15. This appeal is filed by the appellant insurance company challenging the quantum of compensation and imposition of penal interest.

16. Counsel for the appellant insurance company submitted that the claimants are the parents of deceased Brij Mohan Saini. Deceased was aged about 22 years at the time of the accident and was unmarried. Counsel for the appellant submitted that Claims Tribunal has committed an error in applying multiplier of 17 on the age of the deceased. He submitted that the multiplier ought to have been applied on the age of parents. The counsel for the appellant further submitted that in a case where parents are the claimants, dependency should not be determined at 2/3rd of the income of the deceased and it should be 1/3rd of the income of the deceased.

17. Respondents-claimants have also filed cross-objections. The learned Counsel for the respondents-claimants submitted that income of the deceased is not assessed properly and the insurance company has no right to challenge the quantum of compensation.

18. Counsel for the appellant submitted that the insurance company has been permitted to contest the claim on all grounds u/s 170 of Motor Vehicles Act by the Claims Tribunal, therefore, it has right to challenge the quantum of compensation.

19. We are of the opinion that since permission has been granted to the insurance company u/s 170 of Motor Vehicles Act, insurance company is entitled

to challenge the quantum of compensation.

20. As regards compensation is concerned, it is settled law that when parents are the claimants, compensation is to be determined on the age of mother. In the claim petition, age of mother is shown to be 40 years and age of the deceased is between 22-25 years. Considering the age of the deceased it can safely be held that the age of mother is between 40-45 years. Therefore, multiplier of 15 will be reasonable in the present case.

21. As regards income of the deceased is concerned, it is deposed that deceased was getting salary of Rs. 2,000 per month and allowance of Rs. 20 per day. Besides this, he was earning Rs. 1,000 from supply of electric goods. Only evidence on record is salary of the deceased at Rs. 2,000 per month and the daily allowance at Rs. 20 per day. Phoolkali, AW 2, mother of the deceased has deposed in para 9 of her deposition that she is selling flowers and garlands. She admitted that her husband is not earning anything. She has further admitted that the day when son was not driving vehicle, he used to sit in the flower-shop. She admitted that she earns Rs. 15-20 per day from the shop. Considering the facts of the case, it may be possible that the deceased may be sitting in the shop on some days when he was not required to drive vehicle. However, it will not mean that he had income from other sources. This witness has deposed that her husband is not earning anything. Considering the facts of the case, it can safely be held that income of the deceased was Rs. 2,500 per month, i.e., Rs. 30,000 per annum. Since the claimants are parents and the deceased was likely to enter into marriage, acquire family and spend most of his income upon his family, parents will be entitled for 1/3rd of the income of the deceased. Therefore, dependency of the parents is determined at Rs. 10,000 per annum. On applying the multiplier of 15 on the age of mother of deceased, figure comes to Rs. 1,50,000. In addition, claimants will be entitled for further sum of Rs. 25,000 towards damages under various heads such as loss to estate, funeral expenses, etc. Thus, the compensation is determined at Rs. 1,75,000 (rupees one lakh seventy-five thousand). Claimants will also be entitled for interest at the rate of 6 per cent per annum on the compensation from the date of filing of appeal. Award of Claims Tribunal is modified. Any amount towards compensation for no fault liability deposited by the insurance company shall be adjusted towards the amount of compensation.

22. Award passed by the Claims Tribunal is modified accordingly. Appeal succeeds in part. Cross-objections filed by the claimants are dismissed. There shall be no order as to costs.