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**(1995) 09 MP CK 0065**  
**In the Madhya Pradesh High Court**

Vidyawati Dubey and Others

APPELLANT

Vs

Vidyaram and Others

RESPONDENT

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**Date of Decision :** 25-09-1995

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 173

**Citation :** (1996) 2 ACC 19

**Hon'ble Judges :** Fakhuddin, J;D.M. Dharmadhikari, J

**Bench :** Division Bench

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## Judgement

D.M. Dharmadhikari, J.—This appeal by the claimants u/s 110-D of the Motor Vehicles Act, 1939 (for short, the "Old Act"), read with Section 173(1) of the Motor Vehicles Act, 1988 (for short, the "New Act"), has been preferred against the award of the Motor Accident Claims Tribunal, Gwalior (for short, the Tribunal") dated 13.3.1991, seeking enhancement in the quantum of compensation awarded.

2. The only facts relevant and need to be mentioned are that deceased Premchand Dubey, who was coming on a scooter (RES 2746) was hit by truck coming from opposite direction (CIM 7445) and as a result thereof Premchand Dubey died. He left behind his widow, three sons and three daughters who are claimants in the case. The deceased Premchand Dubey was employed in Food Corporation of India as Assistant Manager. His age was 43 at the time of his death.

3. The Tribunal, in para 12 of its Award, computed the total compensation awardable at Rs. 2,52,000/- in the following manner. It held that as per the Last Payment Certificate (Ex. P/3) the deceased was getting a salary of Rs. 3,560.75/-. A sum of Rs. 505/- was deducted a GFP and he was getting Rs. 3,000/-per month in hand. The deceased, at the time of death, was posted at Datia, but his family was living at Gwalior. Because of his posting at Datia, for separate stay and journey, he must be spending about Rs. 600/- to Rs. 700/- per month for himself. He must be spending Rs. 500/- per month for maintaining the

scooter. That apart, he must be spending Rs. 200/- to Rs. 300/- per month for his personal expenditure. The monthly dependency was, therefore, worked out at Rs. 1,500/-so far as the claimants are concerned and, thus, working out annual dependency at Rs. 18,000/-, multiplier of 14 was taken to arrive at the figure of Rs. 2,52,000/-. The Tribunal also said that since no deduction is being made for lump sum payment, no separate compensation is being awarded for loss of consortium and physical and mental agony.

4. The learned Counsel appearing for the claimants in this appeal, submits that the method of computation of compensation adopted by the Tribunal is unjust and unfair. It is also not in accordance with the settled principles. He cited various decisions of various High Courts in this behalf. He submitted that there were as many as seven dependents and the annual dependency worked out is on the lower side. He also submitted that under New Act, as amended, the multiplier indicate for age of 43 is 15. Some amount should also have been awarded for loss of consortium and loss of estate.

5. The learned Counsel for the Insurance Company supported the award and the quantum determined by arguing that with 12% interest awarded per annum on the compensation from date of claim, a substantial amount has been paid under the Award to the claimants and the judgment of the Tribunal needs no interference. It is also pointed out on behalf of the Insurance Company that is the last Pay Certificate, if the various amounts shown are added up, there appears to be a mistake of calculation. It is also submitted that the multiplier of 15 cannot be adopted under the New Act as the accident took place prior to the coming into force of the New Act.

6. Having considered the submissions made by the parties and the evidence on record, we find that there is a glaring mistake in the Award of the Tribunal in the matter of determination of quantum of compensation which, according to us, is on lower side. The Tribunal lost sight of the fact that posting of the deceased at the time of death at Datia was only a fortituous circumstance and should not have been given much weight. As an employee of the Food Corporation of India, he was liable to be posted and transferred to any place in India. No deduction should, therefore, have been allowed for the temporary expenditure incurred by him for living separately from his family at Datia. The Tribunal also did not at all consider the fact that as a salaried employee, the chances of rise in salary and prospects of promotion in future service-career were there by which the deceased could have earned more. The Tribunal also lost sight of the fact that the deceased left behind a large family consisting of seven persons, including six children, who were growing up who needed education and marriage. The normal ratio is 1/3rd and 2/3rd towards personal expenditure and amount of dependency. In the instant case, the Tribunal has taken it to be 1/2nd which, looking to the size of the family, is on the higher side. It is true that the accident took place prior to the coming into force of the New Act and the Notification of the Schedule thereunder. The multiplier of 14 is not very low, but the Schedule

can be taken as a good guide for adopting the multiplier which should be 15. Learned Counsel for the claimants has cited many cases at the Bar that even higher multiplier above 15 is taken in cases of accident prior to the coming into force of the New Act. The learned Member of the Tribunal also erred in not awarding any amount towards loss of consortium and loss of estate, which should have been Rs. 15,000/- in each case as laid down by the Supreme Court in the General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others,

7. For the aforesaid reasons, we partly allow this appeal by computing the amount of compensation in the following manner and enhance the amount of compensation to the extent indicated herein on which the interest at the rate of 12% per annum shall be paid from the date of claim till date of payment:

(i) Amount of last pay drawn as per LPC (Ex. P/3C) .. Rs. 3,560.75 (ii) Amount spent by the deceased on himself per month .. Rs. 1,186.91 (iii) Amount of dependency per month .. .. Rs. 2,373.00 rounded to .. .. Rs. 2,373.00 (iv) Amount of annual dependency .. Rs. 28,476.00 (Rs. 2,373/-  $\times$  12 = Rs. 28,476/- ) (V) Amount of total dependency .. Rs. 4,27,440.00 (Rs. 23,476/-  $\times$  15 (vi) Amount of loss of consortium and loss of estate at the .. Rs. 30,000.00 rate of Rs. 15,000/- on each count ----- (vii) Total amount of compensation .. Rs. 4,57,140.00 -----

8. In the circumstances of the case, we leave parties to bear their own costs.