

THE HIGH COURT OF MADHYA PRADESH**MA No.1277/2011****Smt. Shobha Yadav and others Vs. Mahesh Batham and others****Gwalior, Dated :31/07/2019**

Shri H.K. Goyal, Advocate for appellants.

Shri S.N. Gajendragadkar, Advocate for respondent no.3.

This Miscellaneous Appeal under Section 173 of the Motor Vehicles Act has been filed against the award dated 20/5/2011 passed by Additional Motor Accident Claims Tribunal, Datia in Claim Case No.56/2010.

2. Since the factum of accident and liability is not in question, therefore, it is suffice to say that the deceased Raju Yadav has lost his life in a vehicular accident, which took place on 20/5/2010 at about 3:20 in the afternoon.

3. It is submitted by the counsel for the appellants that the deceased was an Advocate by profession and he was enrolled as an Advocate in the year 1992 and he was earning Rs.25,000/- per month and he was also enjoying the reputation of a good Lawyer. The deceased was having his personal land to the extent of 7 bigha and he himself was looking after the said land and was cultivating the same and after the death of the deceased, there is nobody to look after the agricultural land. It is further submitted that the Claims Tribunal has wrongly assessed the monthly income of the deceased as Rs.3,500/- per month, which is liable to be enhanced and the multiplier has also

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been wrongly applied and the future prospects have not been given.

4. *Per contra*, it is submitted by the counsel for the respondent that the Claims Tribunal has awarded just and proper compensation and it does not require any interference.

5. Heard learned counsel for the parties.

6. In support of the contention that the deceased was practicing as a Lawyer, the certificate of Membership of Advocate Welfare Scheme 1989, which has been issued by the State Bar Council of M.P. Ex.P/6 and the enrollment certificate issued by the State Bar Council of M.P. Ex.P/17 have been filed. It is the case of the claimants that the deceased was having 7 bigha of land and he himself was cultivating the same and was growing the crops. If this submission of the claimants is accepted, then it is clear that the deceased was not in active practice and after getting himself enrolled with the Bar Council of M.P., the deceased was doing agricultural activities. The claimants have not filed any order-sheet of any case to show that the deceased had ever appeared in any case pending before any Court of law. It was the case of claimants that the monthly income of the deceased was Rs.25,000/-, therefore, he must be filing his income tax return, but the same has also not been placed on record. The appellants have also not filed the case diary of the deceased to show

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listing of his cases before any Court of law. Although the appellants have examined one Chhatrapal Singh Somvanshi, Advocate, to support their contention that the deceased had a leading practice, but this witness has admitted in his cross-examination that he is not aware of the number of sessions cases, criminal cases or civil cases, in which the deceased was appearing. This witness has also failed to disclose the fees of the deceased and also failed to disclose the result of any of the cases filed by the deceased. Under these circumstances, where the appellants could have proved that the deceased was in active practice by filing the copies of the order-sheets of the cases or the income tax return or the court case diary or any order-sheet disclosing the appearance of the deceased or the bank pass-book, but that has not been done, this Court is of the considered opinion that in absence of any evidence to show that the deceased was in active practice, the contention of the claimants that the deceased was having monthly income of Rs.25,000/- cannot be accepted and accordingly, the Claims Tribunal has fixed the notional income of the deceased as Rs.3,500/- per month, which according to this Court is proper and does not require any interference. The deceased was survived by his wife, one son aged about 19 years and one son aged about 17 years as well as the mother aged about 75 years, therefore, it is held that all

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the four appellants were dependents upon the deceased and accordingly, it is held that the deceased must be spending $\frac{1}{4}^{\text{th}}$ of his income for his personal expenses. The age of the deceased has been assessed by the Claims Tribunal between 40-45 years, therefore, the multiplier of 14 would be applicable. The Claims Tribunal has awarded Rs.2,000/- each to the appellants no.2 and 3 towards love and affection. The amount of Rs.5,000/- has been awarded towards funeral expenses and an amount of Rs.5,000/- has been awarded towards the loss of estate, which according to this Court, is on a lower side. Accordingly, it is held that the appellants are entitled for the following compensation amount:-

1.	Yearly income of the deceased	:	Rs.42,000/-
2.	Personal expenses of the deceased	:	$\frac{1}{4}^{\text{th}}$
3.	Loss of yearly dependency	:	Rs.31,500/-
4.	Multiplier	:	14
5.	Loss of dependency	:	Rs.4,41,000/-
6.	Loss of estate	:	Rs.15,000/-
7.	Loss of consortium	:	Rs.40,000/-
8.	Funeral expenses	:	Rs.15,000/-

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Total	=	Rs.5,11,000/-
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7. The Claims Tribunal has awarded Rs.4,34,000/- and accordingly, the compensation amount is enhanced by further amount of Rs.77,000/-. The enhanced compensation would carry the interest at the rate of 7% per annum from the date of filing of the Claim Petition. The other terms and conditions of the award shall remain the same. With aforesaid modification, the award dated 20/5/2011 is hereby affirmed.

8. The appeal succeeds and is hereby **allowed to the extent mentioned above.**

Arun*

(G.S. Ahluwalia)
Judge

