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**HIGH COURT OF MADHYA PRADESH**  
**(SINGLE BENCH : HON'BLE SMT. JUSTICE ANJULI PALO)**

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**M.A. No. 470/2012**  
HDFC ERGO General Insurance Ltd.  
Vs.  
Smt. Asha Sharma & others

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**M.A. No. 994/2012**  
Smt. Asha Sharma  
Vs.  
Narbada Prasad & others

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Shri Rohit Jain, Advocate for the Insurance Company.  
Shri Kapil Patwardhan, Advocate for the claimants.

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**ORDER**

**Jabalpur, Dated : 29.2.2020**

Both these appeals arise out of award dated 24.12.2011 passed by Eighth Additional MACT, Bhopal in Claim Case No. 841/2011 whereby the Claims Tribunal has awarded a compensation of Rs.19,72,814/- to the claimants on account of the death of D.K. Sharma. M.A. No. 470/2012 has been filed by the Insurance Company for reduction of compensation whereas M.A. No. 994/2012 has been filed by the claimants for enhancement of compensation.

2. The facts of the claim case, in short, are that on 12.2.2011 at about 8:00 am in the morning the deceased was waiting for bus to go to his work place Lupin Factory, Mandideep. Narbada Prasad, driving the offending vehicle (Truck bearing registration No. MP-04-GA-3186) rashly and negligently, came from Hoshangabad side and dashed the

deceased, as a result of which he sustained grievous injuries and was taken to the Hospital, where he was declared dead.

3. The claimants, who are widowed wife, sons and mother of the deceased, filed a claim petition before the Claims Tribunal claiming compensation on account of death of the deceased. The Claims Tribunal has awarded compensation of Rs. 19,72,814/- in favour of the claimants. The Claims Tribunal has held liable driver, owner of the vehicle and insurance company to pay compensation jointly and severally, therefore, these appeals have been filed by the claimants for enhancement of compensation and by the insurance company for reduction of compensation.

4. Shri Rohit Jain, learned counsel for the Insurance Company has placed reliance on the judgment of **Shyamwati Sharma and others v. Karam Singh and others** reported in **(2010) 12 SCC 378** to submit that the Claims Tribunal has wrongly taken into consideration the overtime income of the deceased while assessing his annual income. He further submitted that, in the light of the decision of Shyamwati (supra) 30% amount ought to be deducted towards income tax from the income of the deceased. It is further submitted by him that after deducting the amount as stated above, the compensation comes to Rs. 13,15,222/- therefore, the compensation awarded by the Claims Tribunal should be reduced upto that extent.

5. Shri Kapil Patwardhan, learned counsel appearing for the claimants has submitted that, the Claims Tribunal has not awarded compensation under the head of future growth, which is about 15% of

his total annual income. Learned counsel for the Insurance company has stated that if future growth is taken into consideration, it would be upto 10% only. Learned counsel for the claimants has further submitted that learned Claims Tribunal has wrongly deducted the one third amount towards self expenditure of the deceased, however, looking to the number of dependents, one fourth deduction ought to have been made towards self expenditure of the deceased, therefore, the compensation be suitably enhanced.

**6.** Learned counsel for both the parties have not disputed that the claimants are entitled for a sum of Rs. 70,000/- under the other customary heads because learned Tribunal has awarded Rs. 12,000/- only under the same head, which is on lower side.

**7.** Undisputedly, at the time of the accident, the age of the deceased was 51 years. He was working in Lupin Factory, Mandideep as a technical staff. To prove the earning of the deceased, the claimants examined Pranav Nandi as witness, who deposed that net annual income of the deceased was Rs. 3,19,369/- as per his salary certificate (Ex.P-6), which is also signed by him. He further admitted in his cross-examination that the deceased was working in the company since the year 1988. The accident took place on 12.2.2011. He stated that as per Form 16 (Ex. P-6), the taxable annual income of the deceased was 2,18,530/-. However, in my considered opinion, learned Claims Tribunal has rightly assessed the income of the deceased at Rs. 2,37,432/- per annum. Learned Tribunal has rightly applied multiplier of 11 at the age of deceased, therefore, annual loss of dependency comes to Rs.

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$2,37,432 \times 11 = 26,11,752/-$ . Claimant No. 2 Vikas Upadhyay, son of the deceased was major, he was aged 21 years at the time of institution of the claim case, thus, he cannot be said to be dependent on his father, therefore, the trial Court has wrongly deducted one fourth amount towards self expenditure. After deducting one third amount towards self expenditure, the loss of dependency comes to Rs. 17,41,168/-. The deceased was aged 51 years, he was working as a permanent technical staff since 1988, certainly upto the age of superannuation, the growth in his income must be 15%, which would be about 2,61,175/-, therefore, the total loss of dependency comes to Rs. 17,41,168/- + Rs. 2,61,175/- = Rs. 20,02,343/-. The claimants are entitled for further sum of Rs.70,000/- under other customary heads, therefore, total compensation comes to Rs. 20,02,343 + Rs. 70,000/- = Rs. 20,72,343/-.

**8.** Accordingly, M.A. 470/2012 filed by the Insurance Company is dismissed and M.A. No. 994/2012 is partly allowed. The compensation is enhanced by a sum of Rs. 99,529/- which is rounded off to Rs. 1,00,000/- in addition to the compensation awarded by the Claims Tribunal, therefore, total compensation comes to Rs. 20,72,814/-. The enhanced compensation to carry the interest @ 6% per annum from the date of filing claim petition till its realization.

**(Smt. Anjali Palo)**  
**Judge**

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