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**(2002) 04 MP CK 0058**

**Madhya Pradesh High Court**

**Case No:** Miscellaneous Appeal No. 394/94

Smt. Nanbai and Others

APPELLANT

Vs

Vijay Kumar Awasthi and Others

RESPONDENT

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**Date of Decision:** April 2, 2002

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 128, 168, 171, 173

**Citation:** (2003) ACJ 1990 : (2002) 3 MPHT 279 : (2002) 3 MPLJ 240

**Hon'ble Judges:** Bhawani Singh, C.J; Rajendra Menon, J

**Bench:** Division Bench

**Advocate:** R.S. Patel, for the Appellant; S.S. Bisen and N.S. Ruprah, for the Respondent No. 3, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Bhawani Singh, C.J.

This appeal is directed against the award of Motor Accidents Claims Tribunal, Shahdol, in Claim Case No. 4 of 1991, dated March 3, 1992.

Accident took place on 8-11-90 when deceased Kushal Singh pillion rider of scooter No. UPG-9223 met with accident with dumper No. MPA 7669 driven by Vijay Kumar rashly and negligently. In this accident, the deceased left behind wife Nanbai (22) and minor children of 7, 5, 3 1/2 age. It is submitted that the deceased was working in Super Chips Industries as Supervisor earning Rs. 1,500/- per month. Out of the same, he was spending Rs. 200/- on himself leaving Rs. 1300/- to the family. Compensation of Rs. 5,82,200/- is claimed. Owner and driver of dumper have opposed this saying that the vehicle was being driven carefully and accident took place due to the negligence of the owner of scooter, they are not responsible for the accident. Though they admit that truck was insured with New India Assurance Company Limited, but it is claimed that the vehicle was being driven against the

conditions of insurance policy as per the insurance company. Claims Tribunal has come to the conclusion that accident took place between the two vehicles and both of them were equally responsible for this. It has come to the conclusion that deceased died in accident. He was earning Rs. 900/- per month and dependency was Rs. 600/- per month. Multiplier of 15 is applied and compensation of Rs. 1,08,000/- is awarded with interest at the rate of 12 per cent per annum. Since the Tribunal has found both the vehicles equally responsible, Rs. 54,000/- have been awarded to the respondents in this case. Appellants are not satisfied with the compensation, therefore, have challenged the award through this appeal.

Before turning to what compensation is payable, it is desirable to find how the accident took place and which party is responsible. Claimants' witness has stated that dumper was carrying boulders and he was sitting with the driver and labourers in the vehicle. He states that dumper was being driven at great speed and when it reached Changer curve it hit the scooter which was going on its right side. Due to the accident the deceased suffered injuries and died. With this kind of evidence, it cannot be said that scooter was being driven at great speed, as contended. In any case, it was going on the right side. The dumper is a heavy vehicle, therefore, heavy responsibility is on the driver thereof to drive it at low speed more so while negotiating a curve. It has been stated by Babbu Singh that the scooter was being driven on right side, but there is no evidence pointing out or suggesting that the truck was being driven on right side. However, the legitimate inference which can be drawn from the totality of circumstances and nature of evidence is that the truck driver was responsible for the accident and not the driver of the scooter. As such, finding of Claims Tribunal that both the vehicles were equally responsible for the accident is liable to be set aside. Having done so, we proceed to decide the next question relating to age of the deceased. Shri R.S. Patel contends that the age of deceased was 20 to 22 years while Shri Ruprah, Counsel for insurance company submits that it was 30 years as per post-mortem examination report (Ex. P-2). Submission of Shri Ruprah has force in view of evidence on record that the deceased was working for the past 16/17 years which means he had been working as supervisor from the age of 6/7 year which is not possible. Therefore, it has rightly been found by the Tribunal that the age of deceased at the time of accident was 30 years.

With regard to income of the deceased, there is no satisfactory evidence. Smt. Nanbai (wife) states that the deceased was earning Rs. 1500/- per month out of which he was spending Rs. 200/- on himself and Rs. 1300/- on household items but in the claim petition, she states that out of this income he was spending Rs. 1200/- on the family. In view of this kind of evidence, it would be appropriate to assess the income on notional annual income of Rs. 15,000/-. Therefore, the dependency would come to Rs. 10,000/- after leaving Rs. 5,000/- towards personal expenses. The appropriate multiplier in the case should be 18. The calculated compensation comes to Rs. 1,80,000 + Rs. 19,500/- = Rs. 1,99,500/-. The amount of Rs. 19,500/-

comprises of Rs. 10,000/- loss of expectancy of life, Rs. 5,000/- loss of consortium, Rs. 2,500/- loss to the estate and Rs. 2,000/- funeral expenses. The enhanced compensation will carry interest at the rate of 9 per cent. Costs on parties.