

THE HIGH COURT OF MADHYA PRADESH
MA-1097-2008

(Mahindra & Mahindra Finance Vs. Smt. Rajkumari Bhadoria & ors.)

AND

MA-1289-2008

(Smt. Rajkumari Bhadoriya & Ors. Vs. Uday Kumar @ Kallu and others)

Gwalior, Dated : 26.02.2019

Shri Prashant Sharma, counsel for the appellants in MA No. 1097/2008.

Shri B.D. Verma, counsel for the respondents No. 1 to 3 in MA No. 1097/2008 and appellants No. 1 to 3 in M.A. No. 1289/2008.

Shri Rahul Singh Kushwaha, counsel for the respondents No. 3 and 4.

This common order shall also dispose of M.A. No. 1289/2008 filed by the claimants for enhancement of award, whereas M.A. No. 1097/2008 has been filed by the financier of the vehicle.

2. These miscellaneous appeals under Section 173 of the Motor Vehicles Act, 1988 have been filed against the award dated 12.08.2008 passed by the fourth Additional Motor Accident Claims Tribunal, Gwalior in Claim Case No.78/2006, by which the financier of the vehicle has also been held to be jointly and severally liable to pay compensation amount of Rs.7,29,332/- to the claimants.

3. The necessary facts for the disposal of the present appeals in short are that appellant No. 1 in MA No. 1289/2008 is the wife of the deceased Muneshwar Singh, who was working on the post of Junior

Engineer in the office of PWD, Gwalior. The deceased Muneshwar Singh was aged about 55 years and his monthly salary was Rs.21,689/-. On 05.10.2005 the deceased Muneshwar Singh was going from Station to his house on a Scooter bearing registration No RJ19/8-M-7193. The appellant No. 3 – Ku. Abha Bahdoriya was the pillion rider. The moment, deceased reached in front of Maruti Showroom situated at Bhind Road, driver of the tractor bearing registration No. MP07-HA-5548, by driving the tractor in a rash and negligent manner dashed Scooter, as a result of which, Muneshwar Singh sustained grievous injuries and he expired on the next day during treatment. FIR was lodged. Accordingly, the criminal offence was registered against the driver of the tractor. It was further pleaded that respondent No. 5 – Tulsiram was the owner of the tractor, whereas the appellant – Mahindra & Mahindra Finance Services Lt. had financed that tractor and accordingly, it was pleaded that respondents No. 4 and 5 and the appellant are liable to make payment of the compensation amount and in all, the amount of Rs.15,20,000/- was claimed by way of compensation. The respondents No. 6 and 7 are the married daughters of the deceased Muneshwar Singh and, therefore, they had not filed the claim petition and they were made proforma defendants. The present appeal against the respondents No. 6 and 7 has stood dismissed by peremptory order dated 26.11.2015 but it will not make any adverse effect on the maintainability of the present appeal as they are married daughters of deceased and no relief

was claimed against them. The driver of the tractor was proceeded ex parte, whereas the owner of the tractor respondent No. 5 filed his written statements and denied the allegations. It was pleaded that the accident had occurred due to negligence of the deceased himself. It was further stated that the respondent No. 5 was not the owner of the vehicle on the date of the accident. After the accident, the appellant had taken the tractor in question on supurdagi from the Court of District and Sessions Judge, Gwalior and accordingly, it was pleaded that in fact, the appellant is the owner of the tractor and accordingly it was prayed that the claim petition filed against the respondent No. 5 may be dismissed.

4. The appellants also filed their written statements and denied the allegations of accident. It was further pleaded by the appellants that at the time of the accident, the tractor in question was in possession of respondent No. 5 and he had given the same to the respondent No. 4 for driving the same and, accordingly, it was pleaded that in fact, the respondent No. 5 is liable to pay the compensation. It was further pleaded that the appellant has been unnecessarily made a party. He has merely financed the vehicle, whereas respondent No. 5 is the registered owner.

5. The Claims Tribunal after recording the evidence of the parties, came to the conclusion that on the date of accident, the appellant was in possession of the offending tractor and, therefore, he was the owner of the tractor. Further by assessing the income of the deceased,

the Claims Tribunal passed an award against the driver as well as the appellant to make payment of Rs.7,29,332/- with 6% interest from the date of filing of the claim petition.

6. Challenging the findings recorded by the Claims Tribunal, it is submitted by the counsel for the financier Mahindra & Mahindra Finance Company / appellant in MA No. 1097/2008 that on the date of accident, the tractor was in the possession of the owner of the tractor namely Tulsiram / respondent No. 5. It is true that the appellant had financed the vehicle, but the custody of the vehicle was taken after accident had taken place. It is not important as to whether the financier has taken the custody of the tractor on subsequent date or not, but the important aspect of the matter is that, who was in possession of the offending vehicle at the time of accident. It is further submitted that respondent No. 5 in his written statement has also stated that the appellant had taken the custody of the tractor after the accident and, thus, the Claims Tribunal has committed a material illegality by exonerating the owner / respondent No. 5 and by passing the liability on the appellant by treating it to be the owner of the offending vehicle because not only the respondent No. 5 is the registered owner of the tractor, but the tractor was also in his possession on the date of accident.

7. *Per contra*, it is submitted by the counsel for the claimants that where the financier is in possession of the offending vehicle at the time of accident, then he has to be treated as the owner of the same.

8. Heard the learned counsel for the parties on the question of liability to pay the compensation amount.

9. The Supreme Court in the case of **HDFC Bank Ltd. Vs. Reshma and others** reported in **2015 ACJ 1** has held as under:-

“24. On a careful analysis of the principles stated in the foregoing cases, it is found that there is a common thread that the person in possession of the vehicle under the hypothecation agreement has been treated as the owner. Needless to emphasis, if the vehicle is insured, the insurer is bound to indemnify unless there is violation of the terms of policy under which the insurer can seek exoneration.”

10. The High Court of Punjab and Haryana in the case of **SBS Financers Bathinda Vs. Narinder Jeet Kaur and others** reported in **2018 ACJ 978**, has held as under:-

“15. The plain reading of the aforesaid definition demonstrates that in relation to a motor vehicle, which is subject to an agreement of hypothecation, the person in possession of the vehicle under that agreement is the owner. In this case, the vehicle was hypothecated for a small loan of Rs.19,000 taken in the year 2004. It is not a case where the vehicle was purchased with the loan amount. Either way, this fact is not disputed that the vehicle was in control and possession of the registered owner at the time of accident.”

11. Thus, the moot question for determination is that whether the registered owner has to be treated as a “owner” or financier has to be treated as the “owner”. The guiding factor is that who was in possession of the offending vehicle at the time of accident. The respondent No. 5 has pleaded that since the financier had taken the custody of the offending vehicle after the accident, therefore, the

appellant should be treated as the “owner”. In paragraph 24 of his written statement, respondent No. 5 – Tulsiram had taken the following stand:-

“24. यह कि, उक्त क्लेम आवेदन पत्र में बताये गये अनुसार के प्रार्थी/अनावेदक क्रमांक 2 वाहन क्रमांक एम.पी. 07 एच.ए. 5548 ट्रेक्टर का मालिक था गलत है क्योंकि प्रार्थी के पास कोई ट्रेक्टर घटना दिनांक से ही नहीं है। उक्त ट्रेक्टर को अनावेदक क्रमांक 5 महिन्द्रा फायनेंस द्वारा वाहन स्वामी के रूप में जिला एवं सत्र न्यायालय ग्वालियर श्रीमती रेणू शर्मा साहब के यहां से प्राप्त किया गया था। जिससे सम्बन्धित समस्त दस्तोवेज प्रकरण में प्रस्तुत कर दिये गये हैं इस कारण प्रार्थी / अनावेदक क्रमांक-2 उक्त वाहन का स्वामी नहीं है। इसलिये उसके विरुद्ध कोई भी वादकारण उत्पन्न नहीं होता है न प्रार्थी/अनावेदक क्रमांक-2 से आवेदकगण अनावेदक क्रमांक 3 व 4 किसी भी प्रकार की कोई क्षतिपूर्ति राशि प्राप्त करने का अधिकारी नहीं है यदि कोई क्षतिपूर्ति का दायित्व बनता भी है तो वह अनावेदक क्रमांक-5 महिन्द्रा एण्ड महिन्द्रा फायनेंस कम्पनी का है।”

12. Thus, it is clear that respondent No. 5 has not stated that he was not in possession of the offending vehicle at the time of accident, but his contention is that immediately after the accident, the custody of the vehicle was taken by the financier and, therefore, financier should be treated as the “owner”. It appears that the Claims Tribunal has also held the appellant to be the owner of the vehicle because of the fact that the custody of the vehicle was taken by the appellant after the accident. However, in absence of any clear pleading by respondent No. 5 that the tractor was not in his possession at the time of accident, this Court is of the considered opinion that merely because the appellant had taken the custody of the vehicle after the accident, cannot be held to be crucial for holding that the appellant was the

owner of the offending vehicle. Further respondent No. 4 who was driving the tractor, is the son of respondent No. 5, who is the registered owner of the tractor. Accordingly, it is held that as the registered owner / respondent No. 5 / Tulsiram was in possession of the offending vehicle at the time of accident, therefore, the appeal filed by the appellant is **allowed**. It is directed that since the respondent No. 5 was the registered owner and was in possession of the offending tractor at the time of accident, therefore, he is liable to pay jointly and severally with respondent No. 4 – Uday Kumar @ Kallu. The appellant is, accordingly, exonerated from liability.

13. So far as the quantum of compensation is concerned, the Claims Tribunal on the basis of the pay slip of the deceased Ex. P-7 has come to the conclusion that the monthly salary of the deceased was Rs.21,689/- and after the deductions, he was getting the salary of Rs.11,263/-. This Court is of the considered opinion that only mandatory deductions can be taken into consideration while assessing the net income of the deceased. The salary slip of the deceased is Ex. P-7. According to which, the gross monthly salary of the deceased was Rs.21,689/- whereas Rs.5,000/- was being deducted towards GPF, Rs.5,000/- was being deducted towards GPF advance, Rs.175/- was being deducted towards professional tax, Rs.4/- was being deducted towards water charges, Rs.30/- was being deducted towards CGEIS and Rs.217/- was being deducted towards license fees. The amount deducted for GPF and amount deducted for GPF advance

cannot be said to be deductions for the purpose of calculating the income of the deceased. This Court is of the considered opinion that further amount of Rs.217/-, which was deducted towards license fees, can also not said to be a mandatory deduction under the law. Thus, the amount of Rs.175/-, amount of Rs.4/- and amount of Rs.30/- under the heads of professional tax, water charges and CGEIS can be taken into consideration for assessing the deductions. Thus, this Court is of the considered opinion that the only amount of Rs.209/- is liable to be deducted from the monthly salary of the deceased and thus, the monthly salary of the deceased is assessed at **Rs.21,480/-** instead of Rs.11263/- as assessed by the Claims Tribunal. The deceased was 57 years of age. Thus, the multiplier of 9 would apply. Accordingly, the claimants are entitled for the following amount:-

1	Monthly income of the deceased	Rs.21,480/-
2	Yearly income of the deceased - 21480x12	Rs.2,57,760/-
3	Personal expenses	1/3 rd
4	Loss of yearly income / dependency	Rs.1,71,840/-
5	Multiplier	9
6	Loss of income	Rs.15,46,560/-
7	Future prospects 15%	Rs.2,31,984/-
8	Loss of estate	Rs.15000/-
9	Loss of consortium	Rs.40,000/-
10	Funeral expenses	Rs.15,000/-
	Total	18,48,544/-

14. The enhanced amount shall carry interest of 6% from the date of filing of the claim petition.

15. With aforesaid modification, the award dated 12.08.2008

passed by the fourth Additional Motor Accident Claims Tribunal, Gwalior in Claim Case No.78/2006, is hereby affirmed and the respondents No. 4 and 5 namely Uday Kumar @ Kallu and Tulsiram Gurjar S/o Maharban Singh Gurjar, are held jointly and severally liable to pay the compensation amount. The appellant Mahindra & Mahindra Finance Services Limited is exonerated.

16. M.A. No. 1097/2008 and M.A. No. 1289/2008 succeed and are hereby allowed.

(G.S. Ahluwalia)
Judge

Abhi