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M.A.NO.1014/2012 & M.A. No.1016/2012

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 16th OF JULY, 2025

MISC. APPEAL No. 1014 of 2012

SMT. ARUNADEVI AND OTHERS

Versus

SULTAN SINGH KUSHWAH AND OTHERS

Appearance:

Shri R. P. Gupta – learned counsel for the appellant.

Shri Nirendra Singh Tomar - learned counsel for the respondent
No.3/Insurance Company.

WITH

MISC. APPEAL No. 1016 of 2012

DURGESH SINGH @ RINKU SENGAR

Versus

SULTAN SINGH KUSHWAH AND OTHERS

Appearance:

Shri R. P. Gupta - learned counsel for the appellant.

Shri N. S. Tomar – learned counsel for the respondent/ Insurance
Company.



J U D G M E N T

With the consent of the parties, the matters are heard finally.

2. Both these appeals filed under section 173 (1) of the Motor Vehicles Act, are being decided by this common order, as both these appeals are filed against the award dated 1.08.2012 passed by the Fourteenth Additional Motor Accident Claims Tribunal, Gwalior in Claim Case No.28/2009 and Claim Case No.85/2009 whereby learned MACT has dismissed the claim of appellants.

3. The facts necessary for the disposal of the present appeals, in brief, are that on 16.12.2007, when Harvind Singh, Anil Sengar, and Durgesh were going from Gwalior to Rairu on a motorcycle, they were hit near Ganga Malanpur, Morena, by a dumper bearing registration No. MP-07-G-2187, which was being driven rashly and negligently by respondent No.1 Sultansingh Kushwah. As a result, they sustained grievous injuries; Anil Singh Sengar died on the spot, and Durgesh, the brother of the deceased, suffered permanent disability due to bodily injuries.

4. Learned counsel for the appellants submits that though the *dehati nalsi* contained the fact that the accident was caused by a road roller but on the next day, injured Durgesh submitted a written report before the police and clarified that due to the injuries and dismay, while lodging the *dehati nalsi* he had stated 'road roller' instead of 'dumper' but the accident



was actually caused by the dumper bearing registration No. MP-07-G-2187. Thereafter, the police conducted an investigation and recorded the statements of various witnesses, which clearly show that the accident was caused by the offending vehicle, i.e., the dumper. Even the driver of the road roller, Sonu, stated in his statement (Ex.D/3) that the accident was caused by the dumper and not by the road roller, as his road roller was parked near Anuradha Stones. It is further submitted that the appellant has got examined the witnesses, namely Durgesh Singh Sengar, (AW/2) eye-witness Ramveer Singh (AW/4), and Investigating Officer Raju Singh (AW/5), to prove the factum of the accident as claimed in the claim petition before the Tribunal. The witnesses remained consistent during their cross-examination. Even the learned Tribunal posed questions to the Investigating Officer, and he clarified that it is mistakenly mentioned by Rinku-injured who was 15 years old at the time of accident in *dehati nalisi* that the accident was occurred due to road roller. Looking to the tender age of Rinku as well as the fact that he sustained grievous injuries and was under the effect of dismay, the aforesaid fact mentioned in the *dehati nalisi* cannot be the basis to disbelieve the factum of accident as stated in the claim petition. The learned Tribunal has erred in not proving the factum of accident and therefore also erred in dismissing the claim petition.

It is further submitted that as far as the amount of compensation in respect of deceased Anil Sengar is concerned, the dependency is appropriate 50% instead of 2/3, as held in the cases of **Sarla Verma**



(Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, and National Insurance Co. Ltd. v. Pranay Sethi & Ors., (2017) 16 SCC 680. Since the deceased was 20 years old, a multiplier of 18 would be appropriate. The claimants are also entitled to get future prospects at 40% and are further entitled to get compensation under the conventional head. Therefore, he prays to set aside the impugned award and to grant just compensation amount in favour of the appellants.

5. Per-contra, learned counsel for the insurance company has vehemently opposed the appeal and submits that the *dehati nalisi* (Ex.D/1) has not been filed by the claimant/appellant rather they suppressed the fact that this *dehati nalisi* was itself lodged by injured Rinku bear his signature too. He cannot turn around and say that same fact has been mentioned wrongly. It is further submitted that not only *dehati nalisi* but in the merg intimation also contained the fact that the accident was caused by the road roller. Ramvir Singh is not an eye-witness to the incident. He was not present at the spot. The police officer who recorded the *dehati nalisi* has been examined on behalf of the insurance company as Lakpat Singh Tomar (NAW/1), who categorically stated that he wrote the *dehati nalisi* at the instance of Rinku, and the facts mentioned therein were true as informed by Rinku Sengar. The investigating officer did not indicate on what basis he found that the accident was actually caused by the dumper vehicle. The entire story implicating the dumper in the accident is false and frivolous. The learned Tribunal has rightly disbelieved the story put forth by the applicant and



rightly dismissed the claim petition.

6. Heard the learned counsel for the parties and perused the record.
7. Eyewitness Durgesh Singh (AW/2), who was also injured in this incident, and eyewitness-Rajvir Singh (AW/4) have deposed in their statement that on the date of the accident, the deceased Anil Sengahr and the injured Durgesh Singh (AW/2) were traveling on a motorcycle on the left side of the road. Suddenly, from the opposite direction, a dumper bearing registration No. MP-07-G-2187, being driven in a rash and negligent manner, hit the motorcycle, resulting in the accident. Deceased-Anil Sengar, who was riding the motorcycle died due to grievous injuries sustained by him and the pillion rider - Durgesh Singh also sustained grievous injuries. These witnesses were cross-examined with reference to Ex.D/1, which is the *Dehati Nalisi*, wherein it is mentioned that the offending vehicle was a road roller. In this regard, the witnesses clarified that the *Dehati Nalisi* (Ex.D/1) was recorded at the instance of Durgesh Singh, who was only 15 years old at the time of the accident. Since his brother Anil had died in the accident and he himself had sustained grievous injuries in jaw and nasal fracture, therefore, he was under dismay and anxiety. Moreover, he was admitted to the hospital at that time. During treatment, the police got some papers signed from Durgesh Singh; however, he was not aware of the contents of those papers.
8. The explanation in this respect by Durgesh (AW/2) and Rajvir Singh (AW/4) does not seem to be false, frivolous, or an afterthought.



Since the condition of Durgesh, just after the accident, was under great dismay due to the injuries sustained by him and the death of his brother Anil, the explanation appears quite possible, considering the age of Durgesh (AW/2). It also seems plausible because, on the very next day, i.e., 17.12.2007, Durgesh (AW/2) submitted a written report before Police Station Purani Chawni, Gwalior, by stating that the accident was caused by the offending vehicle-dumper and not by a road roller. It is also stated in this report that because of dismay and anxiety, vehicle road roller mentioned in the *Dehati Nalisi*. Similarly, reiterating the facts the police statement of Durgesh as Ex.P/4, which was recorded on 30.12.2007, stated that the offending vehicle was the cause of the accident.

9. Rajvir Singh (AW/4) has also stated in his statement that since there was a paper news that accident was caused by road roller; therefore, he himself contacted with the police and thereafter, police has reached on the spot. He informed the police that the accident was caused by offending vehicle dumper not by road roller.

10. The insurance company has examined Lakpat Singh Tomar (NAW-1), who wrote the *Dehati Nalisi* (Ex.D/1). Lakpat Singh (NAW-1) stated that he wrote the *Dehati Nalisi* as per the version stated by the complainant, Durgesh. He admitted in his cross-examination that the complainant, Durgesh, was a minor child of 15 years. He had sustained an injury on his nose and other grievous injuries on his body, at the time of recording the *Dehati Nalisi*. His brother had died in the said accident. He also admitted that it is nowhere stated in Ex.D/1 that it was read over to



the complainant and that he admitted it to be a true version. He further admitted that after recording the Dehati Nalisi, he did not visit the place of the accident. The police, after investigation, finds out who the actual culprit is, and thereafter submits the challan before the concerned court.

11. Raju Singh, the Investigating Officer of the case, has also been examined on behalf of the non-applicants. He stated the entire steps taken during the investigation. In his cross-examination, he deposed that during the investigation, he recorded the statements of complainant Rinku, Rajvir Singh, Mahesh, Omvir, and Jitendra Singh, which are exhibited as P/1 to P/4. He also admitted that in the spot map (Ex.D/2), he has marked place B as Anuradha Stones. He denied the suggestion given by the insurance company that he had wrongly implicated the offending vehicle dumper in this case.

12. The police statement of Sonu, S/o Kamod Singh Parmar, who is said to be the driver of the road roller, has been recorded by the police under the provisions of Section 161 of Cr.P.C. He stated in his police statement Ex.D/3 /Ex.P/5 that on the date of accident he has parked the road roller at about 7:00 PM near Auradha Stones and thereafter, he went to P.S.P. Plant and after taking dinner at 9 O'clock, he went to sleep. The accident in question has took place at 9:00 P.M. on 16.12.2007. On the basis of statement of Sonu it is argued by learned counsel for the respondent/insurance company that road roller was parked near Anuradha Stones at the time of accident which is nearby place of accident. The location of road roller indicates that accident was caused by the road



roller and since the driver of road roller was not having valid and effective license; therefore, offending vehicle i.e. dumper has been falsely implicated in this case.

13. The contention of the learned counsel for the respondent/insurance company has not impressed this Court, as the respondent/insurance company has not tried to examine the said Sonu as a witness. Merely the location of the road roller near Anuradha Stones is not sufficient to infer that the accident was caused by the road roller itself, especially where the evidence regarding the accident caused by the offending vehicle dumper is on record and found to be believable. Proper explanation for the variation in the Dehati Nalisi (Ex.D/1) has also been given, which is found to be natural and believable. A similar situation exists in respect to the Merg intimation and MLC (Ex.P/11). Therefore, the aforesaid contention raised on behalf of the respondent/insurance company is not worthy of acceptance.

14. On the basis of the foregoing discussion, it is found that the claimants, on the strength of the oral evidence of Durgesh (AW/2) and Rajvir (AW/4), and on the basis of documentary evidence in the form of memos prepared during the police investigation and the charge sheet, have established that the police, after completing the investigation, found that the accident in question was caused by the offending vehicle dumper. Therefore, the driver of the said offending vehicle, respondent No.1 Sultan Singh, has been charge- sheeted under Sections 279, 337, and 338 of the I.P.C. The copy of the charge sheet (Ex.P/1) also shows that Rajvir



Singh (AW/4), an eye-witness, is listed in the witness list at No.4. Therefore, the factum of the accident is proved in the light of principle of preponderance of probability. The learned Tribunal erred in concluding Issue No.1 by not finding the factum of the accident proved.

15. In the case of **Bimla Devi vs. Himachal Road Transport Corporation AIR 2009 SC 2819** it is ruled by the Hon'ble Apex Court that in claim cases the claimant is not under the obligation to adduce cogent evidence. The claim cases are to be decided on the principle of preponderance of probability. Principle of beyond reasonable doubt is not applicable in such cases.

16. In the case of **Rajendra Singh vs. Sheetal Das, 1992(1) M.P.W.N. 104**, it has been observed that if the driver of the offending vehicle is not examined on behalf of the non-applicants, a presumption may be drawn against him that he was driving the offending vehicle rashly and negligently.

17. In the case of **National Insurance Company Ltd vs. Sanjay Kumar & Ors., II(2011) ACC 75** it has been held by the Punjab & Haryana High Court that when driver of the offending vehicle is facing criminal trial, prima facie it can be presumed that he was responsible for accident. In the light of foregoing discussion, and law laid down in aforesaid cases, the learned Tribunal has erred in decide the issue No.1 negatively.

18. As far as the enhancement of compensation is concerned, no



argument has been advanced in respect of enhancement of compensation to the injured, Durgesh. Keeping in view the discussion regarding the compensation assessment by the learned Tribunal, it is found that the learned Tribunal has properly appreciated the evidence in this regard and held that the claimant, Durgesh, is entitled to compensation of Rs. 21,000/-. In the considered view of this Court, the compensation is sufficiently proved, keeping in view the injury sustained by the injured, Durgesh, and the evidence on record.

19. As far as the compensation granted in respect of the death of deceased Anil is concerned, the learned Tribunal has assumed the income of the deceased as Rs. 4,000/- per month. At the time of the accident, the minimum income of unskilled labour was Rs. 2,651/- and of skilled labour was Rs. 2,869/-, which is less than Rs. 4,000/- per month; therefore, the income assessment is not found to be faulty. The claimants are the parents, sister, and brother of the deceased, but the sister and brother of the deceased cannot be deemed to be dependent on the deceased, who was 20 years old at the time of the accident, especially when the parents are alive. Therefore, the dependency may be considered only in respect of the parents of the deceased. As the deceased was a bachelor, in light of the dictum in the cases of *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121*, and *National Insurance Co. Ltd. v. Pranay Sethi & Ors., (2017) 16 SCC 680*, 50% deduction towards personal expenses is held to be appropriate. Keeping in view the age of the deceased, multiplier 18 is appropriate. The



claimants-parents are also entitled to 40% future prospects. Under the conventional heads, the claimants are also entitled to Rs. 15,000/- each towards funeral expenses and loss of estate, and Rs. 40,000/- each towards loss of consortium.

20. Consequently, the appeal No.1016 of 2012 filed on behalf of the Injured Durgesh Singh @ Rinku Sengar are found to be meritless. The factum of accident as found proved by learned Tribunal is not interferable. Hence, the appeal filed on behalf of appellant Durgesh being devoid of merits is hereby dismissed. The appeal No.1014 of 2012 filed on behalf of claimant - Smt. Arunadevi and others is hereby allowed in part. The calculation of compensation is as follows :

Heard	Compensation Award
Income	4,000/-
Dependency	($\frac{1}{2}$) 50%
Future Prospects	40%
Multiplier	18
Loss of income	4,000/- x12=48,000 x1/2(50%) =24,000/- +40% = 33,600/- x18 = 6,04,800/-
Funeral expenses	15,000/-
Loss of Estate	15,000/-
Consortium	80,000/- (for parents only)
Total Compensation	7,14,800/-



21. The enhanced amount of compensation, i.e., Rs. 7,14,800/-, shall carry interest at the rate of 6% per annum from the date of filing of the application till its realization. The said amount shall be paid by the non-applicants/respondents jointly and severally, keeping in view the Insurance Policy on record. Appellant No.1 – Aruna Devi, the mother of the deceased, shall be entitled to get 60% of the awarded compensation amount, and appellant No.2 Harvind Singh Sengar, the father of the deceased, shall be entitled to get 40% of the awarded compensation amount. 50% of the award amount shall be deposited in the fixed deposit in the name of the claimants in a nationalized bank for the period of 5 years.

22. In view of the aforesaid terms, the appeal stands disposed of.

(RAJENDRA KUMAR VANI)
JUDGE

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