

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ROOPESH CHANDRA VARSHNEY

ON THE 3rd OF SEPTEMBER, 2024

MISC. APPEAL No. 697 OF 2012

UNITED INDIA INSURANCE COMPANY LIMITED

VS.

INDER SINGH AND ORS.

AND

MISC. APPEAL No. 698 OF 2012

UNITED INDIA INSURANCE COMPANY LIMITED

VS.

SMT. VAIKUNTHI BAI AND ORS.

AND

MISC. APPEAL No.699 OF 2012

UNITED INDIA INSURANCE COMPANY LIMITED

VS.

NARENDRA SINGH AND ORS.

AND

MISC. APPEAL No. 178 OF 2013

NARENDRA SINGH

VS.

JITENDRA SINGH AND ORS..

AND

MISC. APPEAL No. 180 OF 2013

SMT. VAIKUNTHI BAI AND ORS.

VS.

JITENDRA SINGH AND ORS..

APPEARANCE

Shri R.P.Gupta, learned counsel for the claimants in all the appeals.

Shir B.N.Malhotra, learned counsel for the Insurance Company in all the appeals.

None for owner and driver of the offending vehicle.

ORDER

This common order shall govern disposal of M.A.No. 697/2012, M.A.No. 698/2012, M.A.No. 699/2012, M.A.No. 178/2013 and M.A.No. 180/2013 as all these appeals are filed by against the common award dated 20/03/2012 passed by Fifth Additional Motor Accident Claims Tribunal, Gwalior in Claim Cases No. 64/2010, 65/2010 and 66/2010 arising out of accident dated 12/6/2010.

2. M.A.Nos. 697/2012, 698/2012 and 699/2012 have been filed on behalf of Insurance Company assailing in the impugned award so far as

it directs the Insurance Company to make the payment of compensation amount to the claimants is concerned; whereas, M.A.No. 178/2013 and 180/2013 have been filed by claimants seeking enhancement of the compensation amount.

3. Briefly stated facts of the case are that on 12/6/2010 when deceased Lakhan alias Laakhan and injured Narendra Singh and Inder Singh were going on a motorcycle to Amrol, it is alleged in between on the way near a well when they were discharging urine by the side of road, it is alleged that driver of Truck No. MKH7357 coming from opposite direction, by driving it in rash and negligent manner, dashed them, due to which all of them sustained grievous injuries and on the way to hospital, Lakhan alias Laakhan succumbed to the injuries sustained by him. This gave rise to filing of claim cases by the dependents of deceased Lakhan alias Laakhan and injured Narendra Singh and Inder Singh vide Claim Cases No. 65/2010, 66/2010 and 64/2010 respectively seeking total compensation of Rs. 17,50,000/- 19,50,000/- and 13,50,000/- respectively; however, by the impugned award, learned Claims Tribunal awarded compensation of Rs. 29,975/- to injured Inder Singh for the injuries sustained by him, Rs. 4,99,100/- to dependents of deceased Lakhan alias Laakhan Singh and Rs. 1,05,330/- to injured Narendra Singh. The liability of payment of compensation amount was fastened over the owner, driver and Insurance Company jointly and severally.

4. It is the submission of learned counsel for the Insurance Company that admittedly at the time of accident, the driver of the offending truck was not holding the driving licence and therefore, the truck was being

driven in breach of Insurance Policy and therefore, learned Claims Tribunal erred in fastening the liability of payment of compensation amount over the Insurance Company. It is further submitted that as three persons were riding over the motorcycle, therefore, it was a case of contributory negligence and in absence of any finding in this regard, learned Claims Tribunal erred in passing the impugned award.

5. It is the submission of learned counsel for the claimant of M.A.No. 178/2013 that at the time of accident, injured Narendra Singh was aged 23 years and used to do work of Meson. Due to accident, he suffered fracture in 1-8 right side ribs, he remained hospitalized in Sahara Hospital from 12/6/2010 to 24/6/2010 and thereafter his treatment continued and therefore, looking to the nature of injuries, its period, the amount of compensation as awarded by the Claims Tribunal is on the lower side and same is liable to be enhanced by a further sum of Rs. 1,00,000/-.

6. As regards M.A.No. 180/2013, which is moved on behalf of dependents of deceased Lakhan alias Laakhan, it is the submission of learned counsel that at the time of accident deceased was aged 26 years and used to labour work thereby earning Rs. 7,500/- per month; however, learned Claims Tribunal assessed his income at Rs. 3,000/- per month, which is on the lower side. It is further submitted that no amount under the head future prospects has been awarded and further the amount of compensation awarded under other conventional heads is on lower side.

7. None appeared on behalf of offending vehicle to contest the case though they were duly represented through counsel before the Claims

Tribunal.

8. Heard learned counsel for the parties at length and perused the record.

9. As regards the appeals filed on behalf of Insurance Company, from para 20 of the impugned award it is clear that on the date of accident, the driver of the offending vehicle did not possessing any valid driving licence to drive the vehicle as the licence was valid from 5/6/1981 to 5/2/2010 and thereafter it got renewed from 15/9/2011 to 14/9/2016 as such on the date of accident i.e. 12/6/2010, it was not a valid licence and it already got expired. As regards defence taken by driver and believed by learned Claims Tribunal that driver deposited the renewal fees on 19/2/2010 and thereafter even appearing in the RTO office many a times, his licence cannot be renewed is unbelievable because it must be leniency of the driver in not appearing on the given date. Further from the finding of Claims Tribunal recorded in para 24 of the impugned award, it is clear that driver cannot produced any evidence regarding his submissions that after 5/2/2010 he got licence after 4-5 months and he also admitted that on 12/6/2010, his licence was not renewed. As such, at the time of accident, driver of the offending vehicle was not possessing valid and effective driving licence to ply the offending vehicle and therefore, in the opinion of this Court, learned claims Tribunal erred in fastening the liability over the Insurance Company; whereas, instead of Insurance Company, owner and driver of the offending vehicle are liable to be fastened with the liability. However, in the light of decisions of Apex Court in the matter of **Shivaraj Vs. Rajendra [(2018) 10 SCC 432]**, **Manuara Khatun Vs. Rajesh Kumar**

Singh [2017 ACJ 1031] & Shamanna and another Vs. Divisional Manager, the Oriental Insurance Co. Ltd. and others,[(2018) 9 SCC 650], Insurance Company is directed to make the payment of compensation amount first to the claimants with liberty to recover the same from the owner and driver of the offending vehicle.

10. As regards submission of learned counsel for the Insurance Company regarding contributory negligence since three persons were riding the motorcycle is concerned, in the opinion of this Court same is baseless. In **United India Fire and General Insurance Company Limited and another, vs. Mrs. Sayar Kanwar and others reported in 1976 ACJ 426**, a Division Bench of the Karnataka Court, held that merely because three persons travelled in the motor cycle, it does not amount to contributory negligence until and unless it is proved that because of riding of three persons, the motorcyclist lost his control over the motorcycle due to which accident happened. Further, in the present case, as per the evidence available on record, at the time of accident, injured and deceased were discharging urine at the time of accident by the side of road.

11. As regards prayer of claimant of M.A.No. 178/2013 is concerned who has prayed for enhancement of compensation amount, after having heard learned counsel appearing for the parties and on perusal of the pleadings and the evidence so adduced, in the opinion of this Court, considering the nature of injuries sustained, treatment papers and its period, the mental pain and suffering and also the other heads, the compensation as awarded by the Claims Tribunal is liable to be enhanced by **Rs. 30,000/- in lump sum** thereby making the total compensation Rs.1,35,330/- respectively which shall be paid within two months from today. The enhanced amount of compensation shall carry interest as per

impugned award from the date of claim case.

12. As regards appeal filed by claimants of M.A.No. 180/2013 i.e. dependents of deceased Lakhan alias Laakhan, in the opinion of this Court, in absence of any documentary evidence regarding earning of deceased, learned Claims Tribunal did not err in assessing his income at Rs. 3,000/- per month, Learned Claims Tribunal further erred in not awarding any amount towards future prospects. Accordingly, under the head future prospects, in the light of decision of Apex Court in the matter of **National Insurance Co. Ltd. Vs. Pranay Sethi, 2017 ACJ 2700 (SC)**, 40% is required to be added towards future prospects. Thus, by taking his income Rs. 3,000/- per month, his yearly income comes to Rs. 36,000/-, to which 1/5 is required to be deducted towards personal expenses and after deducting the same, the remaining amount comes to Rs. 28,800/- to which 40% is required to be added towards future prospects and after adding the same, the yearly loss of dependency comes to Rs.40,320/-. Multiplier of 17 would be applicable as deceased was aged 26 years at the time of accident and after applying the same, total loss of dependency comes to Rs. 40,320/- x 17 = 6,85,440/-. Claimants Shall also be entitled for Rs. 70,000/- towards funeral expenses, loss of estate and loss of consortium and after adding the same, the total compensation to which claimants are entitled for comes to Rs. 7,55,440/-. The Claims Tribunal has already awarded a compensation of Rs. 4,99,100/-, therefore, claimants shall be entitled to receive an enhanced compensation of **Rs. 2,56,340/-**, which shall carry interest as per the impugned award from the date of claim case.

13. In view of the aforesaid, all these appeals filed by Insurance Company as well as Claimant are allowed in part to the extent as indicated hereinabove and while holding that Claims Tribunal erred in passing the

direction against the Insurance Company for making payment of compensation amount, therefore, Insurance Company is exonerated from its liability however it is directed to make the payment of compensation amount first to the claimants and thereafter can recover it from driver and owner of the offending vehicle. Rest of the conditions as imposed shall remain intact.

14. Impugned award is modified to the extent as indicated hereinabove.

(ROOPESH CHANDRA VARSHNEY)
JUDGE

jps/-