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MA-1006-2013

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 3rd OF JULY, 2025MISC. APPEAL No. 1006 of 2013*SMT. GUDDI DEVI AND OTHERS**Versus**RAMLAKHAN SINGH PARMAR AND OTHERS*

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Appearance:

Shri Arun Sharma - Advocate for the appellants.

Shri B.K.Agrawal- Advocate for the respondent No.3.
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ORDER

This Miscellaneous appeal has been preferred by the appellants/claimants for enhancement of the amount awarded by the Fourth MACT, Gwalior vide award dated 23.07.2013 in Claim Case No.131/2011 whereby MACT has awarded compensation amount of Rs.2,34,000/- along with interest @ 6% per annum to the claimants on account of death of deceased in a road accident.

2. The necessary facts for disposal of this appeal are that deceased Vakeel Singh along with Vidyaram and Ratiram went in a motorcycle bearing registration No.MP-07-MH8719 from Transport Nagar through Shankarpur Chauraha to their village. The motorcycle was driven by Vakeel Singh and Vidyaram and Ratiram were seated as pillion riders. As soon as they reached Sada Chauraha, from the opposite side the truck bearing registration No..MP07-HB3079 was being driven by respondent No.1



Ramlakhan Singh Parmar rashly and negligently hit the motorcycle, due to which Vakeel Singh, Vidyaram and Ratiram suffered grievous injuries. During treatment Vakeel Singh died.

3. It is submitted by the learned counsel for the appellants that the learned tribunal has erroneously held that in absence of spot map and the fact that along with the deceased, two pillion riders were riding the motorcycle, it is the case of contributory negligence. The appellants, however, have adduced ample evidence to prove their case that it is a case of complete negligence of the driver of the offending vehicle/truck. The learned tribunal ought to have found proved the accident as per the claim petition. It is also submitted that the income of the deceased was assumed as Rs.4000/-, while on the date of accident, the minimum wage of unskilled labour was Rs.4395/- which is to be assumed as the income of the deceased. Tribunal has rightly found the dependency of the appellants as 3/4, but the learned tribunal has not granted the loss of consortium to each of the appellants @ Rs.40,000/- and also not granted Rs.30,000/- towards funeral expenses and loss of estate. On these grounds, he prays for enhancement of the compensation and to set aside the order of the learned tribunal with regard to the contributory negligence. He has relied upon the judgments in the case of **Devisingh Vs. Vikramsingh and others**, 2008 ACJ 393, **Mohammed Siddique and another Vs. National Insurance Co. Ltd and others**, 2020 ACJ 751, **Saraswati Palariya and others Vs. New India Assurance Co.Ltd and others**, 2019 ACJ 42 and **Meera Devi and another Vs. Himachal Road Transport Corporation and others**, 2014 ACJ 1012 in support of his



contention.

4. Per contra, the learned counsel appearing on behalf of the respondent/Insurance company has opposed the prayer on the ground that the learned tribunal in para 10 has categorically held that at the time of accident, the deceased along with pillion riders Vidyaram and Ratiram was riding the motorcycle and he had no valid licence to drive the vehicle. Keeping in view the averments and evidence on record, learned tribunal rightly held that it is a case of contributory negligence. In this regard, the conclusion of learned tribunal does not warrant any interference. It is also submitted that there is no ground for enhancement of the compensation amount. He relied upon the judgment of co-ordinate Bench of this Court in the case of **Kamini and Others Vs. K.P. Sharma and Others** reported in 2009(2) T.A.C.397 (M.P.) and submitted that since the appellants willfully have not produced the spot map to hide the relevant facts, therefore, keeping in view the law laid down aforesaid case, the conclusion of contributory negligence cannot be set aside.

5. Heard the learned counsel for the parties and perused the record.

6. So far as the issue regarding contributory negligence is concerned, the witnesses submitted on behalf of appellants, Guddi devi is not an eyewitness to the accident. Ratiram (AW-2), Vidyaram (AW-3) are the eyewitnesses of the accident and these two witnesses were sitting as pillion rider on the motorcycle with deceased. They categorically stated in their statement that deceased Vakeel Singh was going on the left side and riding the motorcycle with slow speed. The offending vehicle truck bearing registration No.MP07-HB3079, was being driven by the driver rashly and



negligently. It came on the wrong side and dashed the motorcycle; therefore, the accident took place. Though, both the witnesses have admitted in the cross examination that no spot map has been filed but they denied the suggestions that the spot map has been willingly not filed because, the spot map shows the motorcycle was on the wrong side and the negligence was of the deceased, the rider of the motorcycle. In fact, there is nothing in the cross-examination which indicates that the deceased was himself negligent in riding the motorcycle. But the statement of these witnesses establishes that the driver of the offending vehicle was solely responsible for the accident, who had driven the offending vehicle truck in rash and negligent manner and he dashed the motorcycle. The statement of the witness was corroborated by the document evidence, *dehati nalisi* Ex.P/2, F.I.R. Ex.P/3, seizure and arrest memo etc. After the investigation, police has filed charge-sheet against the driver of the offending vehicle, Ramlakhan who is respondent No.2 in this case. The respondents have not adduced any evidence in rebuttal.

7. In the case of **Bimla Devi Vs. Himachal Road Transport Corporation**, reported in A.I.R.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.

8. In the case of **Rajendra Singh Vs. Shitaldas**, 1992 (1)MPWN-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.

9. In case of **National Insurance Company Limited Vs. Sanjay Kumar & Others reported in 2011 (II) ACC 75**, it held by the Punjab & Haryana High Court that when the driver of offending vehicle is facing criminal trial, prima facie it can be presumed that he was responsible for accident.

10. In case of **Devi Singh (supra)**, the full bench of this Court has held that motorcyclist carrying more than one person as pillion rider, thereby violating Section 128 of the Motor Vehicle Act. It is held that it is a violation of Section 128. However, *per se* does not raise presumption of contributory negligence on the part of motorcyclist.

11. In case of **Mohammed Siddique (supra)**, Hon'ble Apex Court has held that no evidence has been led that accident occurred as a result of three persons riding on the motor cycle and accident could have been averted if three persons were not riding on the motorcycle. Since motorcycle was hit by the car from behind, deceased was wearing helmet and no evidence that 2 persons as a pillion rider added to the imbalance. It is held that pillion rider cannot be held guilty of contributory negligence on the ground of triple riding.

12. In case of **Saraswati Palariya (supra)**, Hon'ble Apex Court has held that the High Court fixed the contributory negligence on the ground that the deceased was driving the vehicle without a driving licence it is held that driving without a valid driving licence may expose the persons to other liabilities but no inference of contributory negligence can be drawn at on that basis.



13. In case of **Meera Devi (supra)**, Hon'ble Apex Court has held that there is no specific evidence that accident had taken place due to rash and negligent driving of the deceased scooterist. In absence of evidence to prove the plea of contributory negligence, it is not justified to hold the deceased liable for contributory negligence merely on the doctrine of common law that deceased was a minor and not permitted to drive the scooter.

14. In case of **Kamini (supra)**, a co-ordinage Bench of this Court has held that since there is no proportion of contributory negligence held by the tribunal, but looking to the head-on collision, it is held that the deceased must have contributed to the extent of 25% of contributory negligence.

15. Keeping in view the law laid down in aforesaid cases, it is found that the learned tribunal has concluded on the anvil of three persons on motorcycle and that the rider of the motorcycle deceased was not having valid driving licence but having regard to the aforesaid citations, on these ground alone it cannot be held that the deceased was liable for contributory negligence, especially, in condition where the claimants witnesses have supported the accident and established the fact that the driver of the offending vehicle was solely responsible for the accident and there is no rebuttal evidence on record. The driver of the offending vehicle not examined before the tribunal, a criminal case has been registered against him, therefore, keeping in view the principle of preponderance of probability the case of claimants have been established. The conclusion of contributory negligence of the deceased is erroneous perverse and liable to be set aside.



16. As far as the income of the deceased is concerned since there is no cogent and reliable evidence in respect of the income of the deceased, therefore, the minimum wages of the unskilled labour declared by the Labour department can be resorted to. On the date of accident, the minimum wage of unskilled labour was 4395/- it can be taken as the income of the deceased. The appellants/claimants are of the widow, the son of the deceased and parents of the deceased. Total 5 in number. Therefore, keeping in view the law laid down in case of **Sarla Verma Vs. Delhi Transportation Corporation and another**, (2009) 6 SCC 121 and **National Insurance Co. Ltd. v. Pranay Sethi**, (2017) 16 SCC 680, the dependency of the claimants on the deceased is 3/4. As per postmortem report, the deceased Vakeel Singh was 42 years of age, therefore, the claimants are entitled to get 25% future prospects. Looking to the number of claimants, the claimants are entitled to get Rs.40,000/-each for loss of consortium. They are also entitled to Rs.30,000/- for funeral expenses and estate loss.

17. In the light of the aforesaid discussion, the calculation of compensation amount is as follows:-

Sr.	Head	Amount of compensation awarded by Claims Tribunal	Amount of Compensation assessed by this Court
1	Income of deceased	Rs. 4,000/-	Rs.4,395/-
2	deduction towards Personal expenses	1/4	3/4
3	Future Prospects	25%	25%
4.	Multiplier	14	14
5.	Loss of income	4,48,000/-	$(4395 \times 12 = 52740) \times 3/4 = \text{Rs.} 39555 + 25\% = 49444 \times 14 =$



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			Rs.6,92,216/-
6.	Loss of consortium	-	40,000x5= 2,00,000/-
7.	Funeral Expenses	10,000/-	15,000/-
8.	Loss of Estate	10,000/-	15,000/-
10	Total compensation	4,68,000/- Out of which 50% deducted for contributory negligence Rs.2,34,000/-	Rs.9,22,216/-
11.	Additional enhancement		Rs.6,88,216/-

18. Although the appellants have valued this appeal at Rs.5,00,000/- and have paid court fees on the said amount, however, in view of the decision of the Apex Court in **Kavita Balthiya and Others vs. Santosh Kumar and Another** in Civil Appeal No. 8053/2024 (@ SLP (C) No. 16558/2024), it is directed that the appellants shall pay the court fees on the remaining amount of Rs.1,88,216/- (i.e., Rs. 6,88,216 – Rs. 5,00,000) within a period of one month from the date of receipt of the certified copy of this order. Failing which, the present order shall not be given effect to.

19. The other terms and conditions of the award shall remain intact.

20. With the aforesaid, this miscellaneous appeal is **disposed off**.

(RAJENDRA KUMAR VANI)
JUDGE