

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR  
BEFORE  
HON'BLE SHRI JUSTICE HIRDESH  
ON THE 04<sup>th</sup> OF OCTOBER, 2024**

**MISCELLANEOUS APPEAL NO. 865 OF 2015**

**THE ORIENTAL INSURANCE COMPANY LIMITED  
VS.  
MAHILA MEENA DEVI AND OTHERS**

*Appearance:*

*Shri Ram Vilas Sharma- learned Counsel for appellant- Insurance Company.*

*Shri Akshat Jain- learned Counsel for respondents No.1 to 6/ claimants.*

*None for respondents No. 7 and 8 (owner and driver of offending vehicle) though served.*

**AND**

**MISCELLANEOUS APPEAL NO. 848 of 2015**

**MAHILA MEENA DEVI AND OTHERS**

**VS.  
SITARAM SINGH AND OTHERS**

*Appearance:*

*Shri Akshat Jain- learned Counsel for appellants- claimants.*

*None for respondents No. 2 and 3 (owner and driver of offending vehicle) though served.*

*Shri Ram Vilas Sharma- learned Counsel for respondent No.3 - Insurance Company.*

**ORDER**

Since both the aforesaid miscellaneous appeals are arising out of common Award dated 16-05-2015 passed by Motor Accident Claims Tribunal, Ambah, District Morena in Claim Case No.12 of 2014, therefore, they are heard together and disposed of by this common order.

(2) Misc.Appeal No.865 of 2015 has been filed by the Insurance Company under Section 173(1) of Motor Vehicles Act, 1988 seeking exoneration of its liability on

the ground of false implication, whereas Misc.Appeal No. 848 of 2015 has been filed by the Claimants seeking enhancement of compensation.

(3) In brief, the facts of the case are that on 30-11-2013 around 07:00 in the evening, Kunwar Singh (since deceased) was coming from Ambah to his village Motisingh Ka Pura, Senthara on his motorcycle No. MP-06-MG-6197. He was driving the motorcycle with due care. When he reached Sahu Ka Pura, a boy driving offending motorcycle no.MP06-MH-5913, came from Porsa in a rash and negligent manner and hit the motorcycle of the deceased due to which, the deceased suffered serious injuries on his body and while being taken to Ambah Hospital for treatment, he died on the way. FIR in connection with accident at Crime No.738 of 2013 was registered for offence punishable under Sections 279, 304-A of IPC. After completion of investigation and other formalities, charge-sheet was filed before the competent Court against the driver of the offending vehicle. The claimants filed claim petition before the Claims Tribunal for compensation to the tune of Rs.30,26,000/-.

(4) The driver and owner of the offending vehicle filed their reply to the claim petition, denying claim averments. Similarly, the Insurance Company filed its reply to the claim petition and denied the claim averments. It was stated by the Insurance Company that there was no accident with the offending motorcycle. The accident in question occurred due to rash and negligent driving of the deceased. FIR was lodged against an unknown vehicle. The offending vehicle in question was being driven without valid and effective licence. Therefore, the Insurance Company is not liable to pay the compensation.

(5) After hearing the evidence of both the parties and documents on record, the Claims Tribunal framed issues and *vide* impugned Award, awarded compensation to the tune of Rs.4,86,000/- with simple interest @ 7% per annum in favour of claimants from the date of filing of claim petition till its realization and put liability on the Insurance Company as well as on the owner and driver of the offending vehicle.

(6) Challenging the impugned award, learned Counsel for the Insurance Company (Misc. Appeal No. 865 of 2015), submits that the Claims Tribunal has not considered the documentary and the oral evidence minutely and submits that the FIR was lodged by the claimants in which it was specifically mentioned that the alleged accident had occurred by an unknown motorcycle. In support of the claimants, witness Uday Singh in his evidence stated that the alleged accident was not occurred in his presence and he reached the spot after the accident. After 10-12 days of accident, Om Prakash (AW-3) told him the number of the offending motorcycle. Om Prakash in his evidence stated that the number of the offending vehicle was disclosed by his son Ahibaran Singh (AW-2). Ahibaran (AW-2) in his evidence stated that there was no darkness on the spot, while Om Prakash (AW-3) stated that there was darkness on the spot. The identity of the offending vehicle involved in the accident creates a doubt. Therefore, evidence of AW-2 Ahibaran and AW-3 Omprakash are contradictory to each other and their evidence are not reliable. It was the duty of the claimants to examine the Investigating Officer to prove that on what basis he had registered the case against the offending vehicle. The learned Claims Tribunal has not considered all these aspects and has committed an error in imposing liability on the Insurance Company to pay compensation. Therefore, the finding of Claims Tribunal is illegal as well as perverse and same deserves to be set aside. In support of his contention, learned Counsel for the Insurance Company has relied on Division Bench decision of this Court in the case of **National Insurance Company Ltd. Vs. Smt. Setubai and Others, ILR (2008) MP 2367** and Single Bench decision of this Court in the case of **Oriental Insurance Company Ltd. Vs. Kalawati and Others 2014 ACJ 2772**.

(7) On the other hand, Counsel for the Claimants (MA No.848 of 2015), submits that the compensation awarded by learned Claims Tribunal is on the lower side. The deceased was a 35-year old hale and hearty person, who used to work as a manson and used to earn Rs.10,000/- per month. The learned Claims Tribunal has committed an error in holding the income of the deceased as Rs.3,000/- per month. It is

submitted that the alleged accident took place in the year 2013 and at that time, as per the Minimum Wages Act, notional income of the deceased was prevailing at Rs.5,520/- per month. The learned Claims Tribunal has also committed an error in not awarding reasonable sum under the loss of future prospects and other conventional heads. Hence, it is prayed that just and proper amount under the award may be enhanced reasonably in the light of the decisions of the Apex Court in the case of **Sarla Verma vs. Delhi Transport Corporation and Another, AIR 2009 SC 3104, National Insurance Company Ltd. Vs. Pranay Sethi AIR 2017 SC 5157.**

(8) Heard learned Counsel for the parties and perused the impugned Award as well as record of the Claims Tribunal.

(9) Ahibaran Singh (AW-2) in his statement deposed that around 07:00 in the evening, he was going from Ambah to Porsa on his motorcycle with his father. A boy came from behind by driving motorcycle no.MP-06-MH-5913 in a high speed and hit motorcycle of the deceased no.MP-06-MG-6197 due to which, the deceased fell down and suffered serious injuries. He and his father pulled out him. On being asked, driver of the offending motorcycle coming from Porsa, disclosed his name as Kamal Singh. Police arrived the spot. Soon after the police arrived, the driver of the offending motorcycle coming from Porsa, fled away. Police picked up the injured (since deceased) and took him to the hospital. During cross-examination, this witness further stated that at the time of accident, there was no traffic jam and no other vehicles were passing by. Evidence of Om Prakash (AW-3) is also supported by the evidence of Ahibaran Singh (AW-2), who stated that around 07:00 in the evening, he and his son were going towards their home on motorcycle. Near Sahu Ka Pura, driver of the offending motorcycle driving at a high speed came and hit motorcycle of the deceased. During cross-examination, this witness has also stated that he did not see the number of offending motorcycle. Ahibaran told him the number of offending motorcycle. At the time of accident, there was darkness. It appears that the evidence of these witnesses were substantially intact in their cross-examination.

(10) From the evidence of Ahibaran Singh (AW-2) and Om Prakash (AW-3), it is

clear that they are eye-witnesses of the accident. From their evidence, it is clear that the driver of the offending motorcycle had hit the motorcycle of the deceased by driving rashly and negligently, due to which the deceased suffered serious injuries and died on the way while he was brought to the hospital. From the seizure memo Ex.P7, it appears that during investigation, the police had seized the offending motorcycle in question along-with its registration and photocopy of driving licence. Owner and driver of offending vehicle were present before the Claims Tribunal and cross-examined these witnesses. The driver had no dare to enter in the witness box to rebut the evidence of Claimants' witnesses and the documents produced by the Claimants. So, considering the evidence of the Claimants' witnesses, criminal documents and lack of rebuttal evidence, the Claims Tribunal had rightly believed the evidence of the Claimants. Therefore, the Claims Tribunal had rightly held that the driver of the offending vehicle was responsible for the alleged accident.

(11) In view of above, Misc. Appeal No.865 of 2015 filed by the Insurance Company being devoid of substance, is hereby **dismissed**.

(12) On going through the record, it is found that the alleged accident took place in the year 2013 and at the time of accident, the deceased was 35 years. Mahila Meena Devi is the wife of the deceased, Ku.Neetu and Ku.Anjali are minor daughters of the deceased, Rahul Singh and Lokesh are minor sons of the deceased and Devki Bai is the mother of the deceased, therefore, all they are dependents on the deceased. The Claims Tribunal has assessed the income of deceased as Rs.3,000/- per month, whereas in the opinion of this Court, as per the Minimum Wages Act, the notional income of the deceased would be assessed at Rs.5,520/- per month and considering the other facts and circumstances of the case, the claimants are also entitled for compensation under future prospects and other conventional heads in the light of decisions of Apex Court in the cases of **Sarla Verma (supra) and Pranay Sethi (supra)**.

(13) In view of aforesaid, the compensation awarded by learned Claims Tribunal is modified to the extent indicated under:-

<b>Heads</b>	<b>Compensation Awarded</b>
Income	Rs.5,520 pm
Future Prospects	Rs.2,208 pm ( i.e. 40% of income)
After deduction towards personal expenditure	Rs.1,932 (i.e. 1/4 <sup>rd</sup> of total income (5,520+ 2,208)
Total income after deduction of personal expenses	Rs.5,796 pm (7,728-1,932)
Multiplier	16
Loss of future income	Rs.11,12,832/- (Rs.5,796 x12m x16)
Loss of consortium (wife and mother, and four children)	Rs.2,90,400 /-(48,400 x 6)
Loss of estate, love, affection, pain and suffering etc.	Rs.18,150/-
Loss of funeral expenses	Rs.18,150/-
<b>Total</b>	<b>Rs.14,39,532/-</b>

(14) The learned Claims Tribunal has awarded compensation of Rs.4,86,000/-. Thus, the claimants are held entitled to receive enhanced amount of **Rs.9,53,532/-** in addition to the amount of compensation already awarded by learned Claims Tribunal, making the total compensation amount of **Rs.14,39,532/-**.

(15) The enhanced amount shall carry interest @ 7% per annum as fixed by the learned Claims Tribunal from the date of filing of claim petition till its realization. The said amount be paid within a period of **three months** from the date of receipt of certified copy of this order. Rest of conditions as imposed by learned Claims Tribunal shall remain intact.

(16) If the enhanced amount of compensation is in excess to the valuation of appeal, the difference of the Court fee (it not already paid) shall be deposited by the appellants- claimants within a period of **one month** and proof thereof, shall be

submitted before the Registry. Thereafter, the Registry shall issue the certified copy of the order passed today.

(17) Accordingly, Misc. Appeal No.848 of 2015 filed by the Claimants is **allowed in part and disposed of** accordingly.

**(HIRDESH )  
JUDGE**