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MA-958-2016

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 26<sup>th</sup> OF JUNE, 2025

MISC. APPEAL No. 958 of 2016

*VIPUL SIROTHIYA AND OTHERS*

*Versus*

*DASHRAT PRASAD BOHARE AND OTHERS*

.....  
Appearance:

*Shri R.P. Gupta - Advocate for appellants/claimants.*

*Shri B.K. Agrawal - Advocate for respondent No.2/Insurance*

*Company.*

.....  
WITH

MISC. APPEAL No. 780 of 2016

*UNIVERSAL SOMPO GENERAL INSURANCE CO. THR.*

*Versus*

*SMT. RAJNI SIROTHIYA AND OTHERS*

.....  
Appearance:

*Shri B.K. Agrawal - Advocate for appellant/Insurance Company.*

*Shri R.P. Gupta - Advocate for respondents No.1 to 3/claimants.*

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MISC. APPEAL No. 781 of 2016

*UNIVERSAL SOMPO GENERAL INSURANCE CO. THR.*

*Versus*

*VIPUL SIROTHIYA AND OTHERS*

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Appearance:

*Shri B.K. Agrawal - Advocate for appellant/Insurance Company.*

*Shri R.P. Gupta - Advocate for respondents No.1 to 3.*



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**MISC. APPEAL No. 953 of 2016**

***SMT. RAJANI SIROTHIYA AND OTHERS***

*Versus*

***DASHARTH PRASAD BOHARE AND OTHERS***

.....

**Appearance:**

*Shri R.P. Gupta - Advocate for appellants/claimants.*

*Shri B.K. Agrawal - Advocate for respondent No.2/Insurance*

*Company.*

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**ORDER**

I.A. No.4292/2016 filed in M.A. No.958/2016, is an application for condonation of delay in filing the appeal.

2. As per office report, the appeal (M.A. No.958/2016) is barred by 27 days. The application is supported by an affidavit.

3. For the reasons stated in the application and submissions advanced, I.A. No.4292/2016 filed in M.A. No.958/2016 is allowed. Delay in filing the appeal (M.A. No.958/2016) is hereby condoned.

4. These four connected Miscellaneous Appeals arise out of the same accident and are being decided by this common order.

5. These appeals challenge the common award dated 30.04.2016, passed by the Second Additional Tribunal Gwalior to the Court of First Additional Motor Accident Claims Tribunal, Gwalior, in Claim Cases No. 72/2016 and 62/2016.

6. M.A. No.958/2016 has been filed by the appellants-claimants seeking enhancement of the compensation amount awarded by learned Claims Tribunal in respect of the death of Ku. Mohini Sirothiya in a road



accident. M.A. No. 953/2016 has been filed by the appellants/claimants for enhancement of compensation amount awarded in respect of the death of Sameer Sirothiya in the same accident. On the other hand, M.A. Nos. 781/2016 and 780/2016 have been filed by the Insurance Company challenging the award.

7. The facts necessary for the disposal of these appeal are that, on 11.07.2012, the deceased Sameer Sirothiya borrowed a Tata Safari vehicle bearing registration number MP-09-CF-7574 from Dashrath to visit the Mahakaleshwar Temple in Ujjain. On 12.07.2012, at around 4:30 am, while he was returning with his family in the same vehicle and upon reaching near Shivhare Dhaba on the highway road, Police Station Amola, District Shivpuri, at that time the vehicle developed a technical fault, lost control, and collided with divider. As a result, Sameer Sirothiya and his daughter Ku. Mohini, who was seated beside him, sustained grievous injuries and died. Smt. Rajni and Vipul also suffered injuries in the accident.

**8. M.A. No.953/2016 & M.A. No.780/2016**

8(i). It is submitted by the learned counsel for the claimants that the learned Tribunal has limited the award amount to Rs.2,00,000/-, while the compensation calculated is Rs. 5,21,000/- for the accidental death of Sammer Sirothiya. The learned Tribunal ought to have awarded the full amount of Rs.5,21,000/- in respect of the accident which has been found proved. Hence, it is prayed that the compensation amount be enhanced in the interest of justice.

8(ii). Learned counsel for the Insurance Company submits that the



premium was paid in the insurance policy only for the owner and not for the driver who had borrowed the vehicle from the owner. Therefore, the conclusion of the Tribunal is erroneous and liable to be set aside. The claimants are not entitled to compensation.

9. M.A. No.958/2016 & M.A. No.781/2016

9(i). It is submitted by the learned counsel for the claimants that the learned Tribunal has awarded a sum of Rs.2,00,000/- as compensation for the death of Ku. Mohini in the accident, which is on the lower side. The deceased was a 12-year-old school-going girl. It is submitted that having regard to the judgment dated 13.10.2023 passed by the Coordinate Bench of this Court in M.A. No. 5815/2019 (*Lalla Mahate & Others v. Kailash Ahirwar & Others*) and the order dated 29.08.2022 passed by the Coordinate Bench in M.A. No. 183/2017 (*Smt. Indra & Others v. Brajkishor Yadav & Others*), a fair and just compensation would be in between Rs. 4 to 5 lakhs. This appeal is filed for enhancement of the compensation amount by Rs.2 lakhs; therefore, it is prayed that the compensation awarded by the Tribunal may safely be enhanced by Rs. 2 lakhs. He has also relied upon the judgment passed by the Hon'ble Apex Court in case of *Ramkhiladi and Another Vs. United India Insurance Company*, (2020) 2 SCC 550 .

9(ii) Per contra, learned counsel appearing for the Insurance Company submits that since the deceased was a 12-year-old school-going girl, the learned Tribunal has rightly assessed the compensation under Section 163-A of the Motor Vehicles Act. There is no ground for enhancement of compensation amount. He also relied upon the judgment of



the Hon'ble Apex Court in the case of *Rajendra Singh and Others v. National Insurance Company and Others*, (2020) 7 SCC 256 .

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

11. The perusal of the policy (Exh. D-1) reveals that it is a Private Car Package Policy. The premium for basic third-party liability under the policy is Rs. 2,750/-, for a paid driver is Rs. 25/-; and for P.A. cover for Owner-Driver of Rs. 2 Lakhs, a premium of Rs. 100/- has been paid as premium in the policy. It is not disputed in this case that the deceased, Sameer, had borrowed the Tata Safari vehicle from respondent Dashrath to visit the Mahakal Temple in Ujjain. The deceased Sameer, being the borrower of the offending vehicle, was in the position of an owner-driver. Therefore, the premium of Rs. 100/- paid under the policy (Exh. D-1) squarely covers the accidental death of the deceased Sameer, though it is limited upto Rs. 2 Lakhs as per the terms of the policy. Accordingly, the learned Tribunal has rightly concluded that, for the death of the deceased Sameer, the Insurance Company is liable to pay compensation not more than Rs.2 lakhs. In this regard, the conclusion of the learned Tribunal is not found to be perverse or dehors the evidence on record.

12. In the case of *Ramkhiladi (supra)*, the Hon'ble Apex Court has held in that case that the claim petition under Section 163-A was not maintainable by the borrower/permissive user of the vehicle against the true owner and/or insurer of the vehicle, as such borrower/permissive user steps into the shoes of the true owner, and the true owner cannot be both the claimant and the recipient. In a claim petition under Section 163-A, the



deceased/victim must be a third party in relation to the vehicle in question. Since owners/borrowers/permissive users are not “third parties” in relation to their own or borrowed vehicles, they are not covered by statutory insurance under Section 147. Thus, the claim of owner/borrower/permissive user would be limited to personal accident coverage in respect of own-use of the vehicle. Therefore, the Hon'ble Apex Court held that in the case of owner/borrower/permissive user of the vehicle, if the accident is caused with the said vehicle, the liability of the Insurance Company is limited to the personal accident coverage only.

13. In the present case, since under the policy (Exh. D-1), coverage of Rs.2 Lacs is there by paying premium of Rs.100/- for owner and driver, the liability of the Insurance Company for the death of the borrower-owner, deceased Sameer, has rightly been held limited upto Rs. 2 Lakhs.

14. So far as the compensation awarded in respect of the death of Ku. Mohini is concerned, the learned Tribunal has awarded Rs. 2 Lakhs as compensation. However, Ku. Mohini was not in the capacity of owner, driver, or paid driver. She being a third party, the amount of compensation cannot be limited to Rs. 2 Lakhs. The learned Tribunal, in paragraph 20 of the impugned award, has concluded that Ku. Mohini was a third party. Therefore, it erred in limiting the compensation amount to Rs.2 Lakhs. In respect of the amount of compensation for the accidental death of Ku. Mohini, learned counsel for the claimants has relied upon the judgment passed in the case of *Lalla Mahate* (supra) and the order passed in the case of *Smt. Indra* (supra). Both these cases relate to the compensation awarded for



the death of a child. However, it is not clear from the orders whether they were passed in claim petitions filed under Section 163-A of the Motor Vehicles Act.

15. The present case (M.A. No.958/2016) arises out of a claim petition filed under Section 163-A of the Motor Vehicles Act. The judgment of the Hon'ble Apex Court in the case of *Rajendra Singh* (supra) pertains to a claim petition filed under Sections 163-A and 166 of the Motor Vehicles Act. In that case, the Hon'ble Apex Court made observations in paragraphs 12 to 16, which are as under :

"12. The second deceased was a school-going child aged about 12 years. She had a whole future to look forward in life with all normal human aspirations. She died prematurely due to the accident at a very tender age for no fault of hers even before she could start to understand the beauty and joys of life with all its ups and downs. The loss of a human life untimely at childhood can never be measured in terms of loss of earning or monetary loss alone. The emotional attachments involved to the loss of the child can have a devastating effect on the family which needs to be visualised and understood. Grant of non-pecuniary damages for the wrong done by awarding compensation for loss of expectation in life is therefore called for.

13. Undoubtedly the injury inflicted by deprivation of the life of the child is very difficult to quantify. The future also abounds with uncertainties. Therefore, the courts have used the expression "just compensation" to get over the difficulties in quantifying the figure to ensure consistency and uniformity in awarding compensation. This determination shall not depend upon financial position of the victim or the claimant but rather on the capacity and ability of the deceased to provide happiness in life to the claimants had she remained alive. The compensation is for loss of prospective happiness which the claimant would have enjoyed had the child not died at the tender age. Since the child was studying in a school and opportunities in life would undoubtedly abound for her as the years would have rolled by, compensation must also be granted with regard to future prospects. It can safely be presumed that education would have only led to her better growth and maturity





with better prospects and a bright future for which compensation needs to be granted under non-pecuniary damages. (See R.K. Malik v. Kiran Pal [R.K. Malik v. Kiran Pal, (2009) 14 SCC 1 : (2009) 5 SCC (Civ) 265 : (2010) 1 SCC (Cri) 1265] .)

14. The income of the minor girl child is incapable of precise fixation. We find no reason to interfere with the assessed notional income of the second deceased. In R.K. Malik v. Kiran Pal [R.K. Malik v. Kiran Pal, (2009) 14 SCC 1 : (2009) 5 SCC (Civ) 265 : (2010) 1 SCC (Cri) 1265] , considering grant of future prospects for the deceased child aged about 10 years it was observed as follows : (SCC p. 14, paras 32-33)

“32. A forceful submission has been made by the learned counsel appearing for the appellant claimants that both the Tribunal as well as the High Court [R.K. Malik v. Kiran Pal, 2006 SCC OnLine Del 611 : ILR (2006) 1 Del 866] failed to consider the claims of the appellants with regard to the future prospects of the children. It has been submitted that the evidence with regard to the same has been ignored by the courts below.

33. On perusal of the evidence on record, we find merit in such submission that the courts below have overlooked that aspect of the matter while granting compensation. It is well-settled legal principle that in addition to awarding compensation for pecuniary losses, compensation must also be granted with regard to the future prospects of the children. It is incumbent upon the courts to consider the said aspect while awarding compensation.”

15. In *New India Assurance Co. Ltd. v. Satender* [New India Assurance Co. Ltd. v. Satender, (2006) 13 SCC 60 : (2008) 1 SCC (Cri) 96] , the deceased victim of the accident was a nine year old school-going child. Considering the claim for loss of future prospects in absence of a regular income, it was observed that the compensation so determined had to be just and proper by a judicious approach and not fixed arbitrarily or whimsically. The uncertainties of a young life were noticed in the following terms : (SCC p. 64, para 12)

“12. In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are





capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.”

16. The deduction on account of contributory negligence has already been held by us to be unsustainable. The determination of a just and proper compensation to the appellants with regard to the deceased child, in the entirety of the facts and circumstances of the case does not persuade us to enhance the same any further from Rs 2,95,000 by granting any further compensation under the separate head of “future prospects”. It may only be noticed that R.K. Malik [R.K. Malik v. Kiran Pal, (2009) 14 SCC 1 : (2009) 5 SCC (Civ) 265 : (2010) 1 SCC (Cri) 1265] does not consider Satender [New India Assurance Co. Ltd. v. Satender, (2006) 13 SCC 60 : (2008) 1 SCC (Cri) 96] on the grant of future prospects as far as children are concerned.”

16. In the aforesaid case, the accident had also occurred in the year 2012, and the facts of the aforesaid said case are substantially similar to the present case.

17. In view of the above discussion, in the considered opinion of this Court, in M.A. No. 958/2016, the appellants/claimants are entitled to a total compensation of Rs. 2,95,000/- for the death of Ku. Mohini in the road accident, whereas the learned Tribunal has awarded only Rs.2,00,000/- as compensation. Therefore, the amount of compensation is enhanced in lump sum by Rs.95,000/-. Accordingly, M.A. No.958/2016 filed by the claimants is partly allowed by enhancing Rs.95,000/- as compensation in addition to the amount already awarded by the Tribunal in favour of the claimants. The



remaining terms and conditions as stipulated in the impugned award shall remain intact.

18. M.A. No. 953/2016 filed by the claimants, and M.A. Nos. 781/2016 and 780/2016 filed by the Insurance Company, being devoid of merit, are hereby **dismissed**.

(RAJENDRA KUMAR VANI)  
JUDGE

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