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MA-4934-2019

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 3<sup>rd</sup> OF JULY, 2025MISC. APPEAL No. 4934 of 2019*SMT. RAJENDRI AND OTHERS**Versus**ASHOK SINGH AND OTHERS*

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Appearance:

Shri Ramesh Prasad Gupta - learned counsel for the appellants.

Shri Madhukar Kulshretha - learned counsel for the respondent No.1  
to 2.

Shri Kamal Kumar Rochalani - learned counsel for the respondent  
No.3.

.....

ORDER

This miscellaneous appeal has been preferred by the appellants/claimants for enhancement of the amount awarded by the Motor Accident Claims Tribunal, Morena vide award dated 26.06.2019 in Claim Case No.54/2017 whereby MACT has awarded compensation amount of Rs.7,35,520/- along with interest @6% per annum to the claimants on account of death of deceased in a road accident.

2. The necessary facts for the disposal of this appeal are as follows:  
On 01.01.2017, at about 1:30 AM, the deceased - Chhotelal Thakur along with his companion were returning to their village by tractor bearing



registration number M.P.-06-AB-0797. The tractor had stopped on the way due to a mechanical defect. Chhotelal Thakur alighted from the vehicle and went towards to the cannal's. At that moment, after repairing the tractor, the driver drove it in rash and negligent manner and struck the deceased, causing him grievous injuries. As a result, Chhotelal Thakur died on the spot.

3. It is submitted by the learned counsel for the appellants/claimants that when the deceased was going on foot, the offending vehicle came from behind and hit him, due to which he sustained grievous injuries and succumbed on the spot. The learned Tribunal, on the basis of the police report and the statements of witnesses marked as Ex.D/2 to Ex.D/5, concluded that the deceased was sitting on the tractor and not covered under the insurance policy, therefore, exonerated the insurance company. However, the appellants have adduced the evidence of Smt. Rajendri (AW/1), who is widow of the deceased. Phan Singh (AW/2), who is an eyewitness to the incident, they remained unshaken in their statements that the accident was caused by the offending vehicle hitting the deceased from behind. Both eyewitnesses have remained consistent on their version of events. Since the case involves third-party injury and death, the exoneration of the Insurance Company from paying the compensation is erroneous. The Insurance Company should be held liable to pay the compensation amount. It is further submitted that future prospects at the rate of 25% ought to have been considered. Additionally, under other heads, the loss of consortium to both the claimants has not been properly granted. An amount of only Rs70,000/- has been awarded, which ought to be Rs.1,10,000/-. Alternatively he



submitted that if the Court comes to the conclusion that the deceased was sitting on the mudguard of the tractor, in that condition, even the insurance company is liable to pay the compensation first to the claimant and it is at liberty to recover it from owner and driver of the offending vehicle. To buttress his contention, he relied upon the judgments of the Hon'ble Apex Court in the cases of *Halappa vs. Malik Sab*, 2018 ACJ 686; *V. Renganathan and Others*, 2023 ACJ 623; and *Shivraj vs. Rajendra and Others*, 2018 ACJ 2755 and *Satish Chandra Upadhyay and other vs. Harnam Singh and others* in M.A. No.224 of 2011 and *Insurance Company vs. Chintu and other* in M.A. No.1162 of 2005.

4. Per contra the learned counsel for respondent No.3/Insurance Company has vehemently opposed the prayer on the ground that the deceased was sitting on the tractor and, therefore, was not covered under the insurance policy of the offending vehicle. Hence, the Insurance Company is not liable to pay any compensation amount to the claimant. He has relied upon the judgment of this Court in the case of *Santosh Sahu vs. Sakhi and other* in M.A. No.1339 of 2010 and Hon'ble Apex Court judgement in the case of *Ramashray Singh vs. New India Assurance Co. Ltd and others* (2003) 2 ACC 706 and *New India Assurance Co. Ltd. vs. Kalabai* (2018) ACJ 2422 and submitted that in the facts and circumstances of the case, no direction for 'pay and recover' may be issued in favour of the claimant. That apart, there is no ground for enhancement of the compensation amount as claimed by the learned counsel for the claimants.

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



6. Smt. Rajendri (AW/1) admitted in her cross-examination that she was not eye-witness to the incident. Eye-witness Than-Singh (AW/2) has been examined on behalf of claimants/appellants. Than Singh (AW/2) stated in his chief-examination that on 1.1.2017 he was returning with deceased Chottelal and Maan Singh by offending vehicle i.e. tractor bearing registration No.MP-06-AB-0797 after selling the agricultural goods. Between Morena and their village Tujsipura, Tehsil Jaura, the tractor get stopped due to some mechanical defects. The driver of the offending vehicle, Chotu (NAW/1), started repairing it. Than Singh and he himself got down from the tractor and going by foot at the side of the canal. Suddenly, after repairing the said vehicle, the driver of the offending vehicle drove it rashly and negligently and hit the deceased. As a result, the deceased died due to the injuries sustained by him. He was cross-examined on the point that such a description was not mentioned in the FIR (Ex.P/2), merg report (Ex.P/3), or in the police statements of the witnesses. He admitted that this version is not mentioned in the FIR or the appended documents. He did not provide any explanation for such an omission.

7. Though it is trite that in claim cases the factum of accident is to be proved on principle of preponderance of probability. But having regard to the statement of witnesses and documents submitted, exhibited and relied by the claimants there seems a major contradiction in their statement. The FIR and and other documents including police statements and final report contained the fact that along with driver of offending vehicle the deceased Man Singh and Than Singh were travelling, suddenly, the tractor fell into the



canal; therefore, the deceased died due to drowning in the canal. The claimants cannot partially relied on these documents. Once a part of it is relied by the claimants it would not justifiable for them to deny the other part of the documents. In the case of *Oriental Insurance Company v. Premlata Shukla and Others (2007) ACJ 1928*, the relevant paragraphs 13 and 14 are reproduced as under:

*13. However, the factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an Exhibit as both the parties intended to rely upon them.*

*14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise.*

8. In the case of *New India Assurance Company Ltd v. Smt. Kiran* 2018 2 ACC 376, the Co-ordinate Bench of this Court has held that at the time of alleged incident, the tractor was being used for carrying the passengers and transporting the sand in contravention of the policy condition. The Court has held that the mudguard of the tractor is not meant for carrying passengers and thus, there is no statutory requirement to cover the risk of gratuitous passenger travelling on a tractor under Section 147 of the Motor Vehicle Act; therefore, the insurance company is not held liable



for payment of compensation. Same law laid down in the case of **New India Assurance Co. Ltd v Kala Bai (2018) ACJ 2422** and **New India Assurance Co. Ltd v Vedwati (2007) 1 ACC 924**.

9. In the case of **Ramashray Singh v. New India Assurance Co. Ltd and others (2003) 2 ACC 706** the Hon'ble Apex Court has held that if the concerned employees is neither a driver nor conductor nor examiner of tickets, insured cannot be claim that the employee would come under the description of "any person" or "passenger". If this were permissible, then there would be no need to make special provisions for the employees of the insured.

10. In the case of **Halapa v. Malik Sab 2018 ACJ 686** Hon'ble Apex Court has held that Insurance Company neither produced the file and report of the investigator nor examined any other witness to rebut the version of the injured. It is held that analysis of evidence by Tribunal to believe the version of the testimony of injured and eye-witnesses has been displaced by the High Court without considering the material aspect of the evidence on record.

11. In the present case, however, the facts and circumstances are distinguishable. The witnesses examined on behalf of the claimants to prove the factum of the accident has produced, exhibited, and relied upon documents such as the FIR, final report, etc., which clearly reveal that the deceased was sitting on the mudguard of the tractor at the time of the accident. This version is binding on the claimants.; therefore, learned Tribunal has rightly concluded that though the deceased died due to accident



with the offending vehicle but at that time he was travelling on the mudguard of the tractor it was not meant for carrying a passenger and thereby the condition of insurance policy has been violated in this case.

12. Learned Tribunal has exonerated the Insurance Company for paying the compensation but in the case of **V. Renganthan and another vs. Branch Manager, United India Insurance Co. Ltd and another 2023 ACJ 623**, the Hon'ble Apex Court has held that the tractor met with the accident resulting in the death of the person travelling on the mudguard of the tractor. It is found that the Insurance Company is liable to pay the compensation and entitled to recover the amount from the owner of the tractor.

13. In the case of *Shivaraj v. Rajendra and Others*, 2018 ACJ 2755, the Hon'ble Supreme Court reiterated a similar view in paragraphs 9 and 10, which are as follows:

*9. The High Court, however, found in favour of respondent No.2 (insurer) that the appellant travelled in the tractor as a passenger which was in breach of the policy condition, for the tractor was insured for agriculture purposes and not for carrying goods. The evidence on record unambiguously pointed out that neither was any trailer insured nor was any trailer attached to the tractor. Thus, it would follow that the appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person namely the driver. As a result, the Insurance Company (respondent No.2) was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. That conclusion reached by the High Court, in our opinion, is unexceptionable in the fact situation of the present case.*

*10. At the same time, however, in the facts of the present case the High Court ought to have directed the Insurance Company to pay the compensation amount to the claimant (appellant) with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by this Court in **National Insurance Co. Ltd. Vs. Swarna Singh & Ors ACJ.1(SC); Mangla Ram Vs. Oriental Insurance Co. Ltd.2018 ACJ 1300 (SC), Rani Vs. National Insurance Co. Ltd. 2018 ACJ 2430 (SC) and***



*Manuara Khatun Vs. Rajesh Kumar Singh 2017 ACJ 1031(SC). In other words, the High Court should have partly allowed the appeal preferred by the respondent No.2. Appellant may, therefore, succeed in getting relief of direction to respondent No.2 Insurance Company to pay the compensation amount to the appellant with liberty to recover the same from the tractor owner (respondent No.1).*

14. In the case of *Satish Chandra Upadhyay and Others vs. Harnam Singh and Others*, vide order dated 04.03.2020 passed in M.A. No. 224 of 2011, the Co-ordinate Bench of this Court has held as under:-

*Insurance is a statutory contract between the insured and insurer. By which, the insurer indemnifies the insured against all the compensation, which may be claimed against him. However, the insurance company can avoid its liability on the ground that the terms and conditions of the insurance policy were violated by the insured. Therefore, it is an inter se dispute between the insured and the insurer. If the insurance company is of a view that the conditions of the insurance policy were violated and it is not responsible to pay the compensation, then the insurance company can always recover the amount from the insured. Since, the insurance company has the right to recover the amount by execution of the impugned award itself and is not required to institute a separate suit, therefore, it is held that although the insurance company is exonerated due to violations of the conditions of insurance policy but it shall satisfy the award with a right to recover the compensation amount from the owner/driver.*

15. In the case of *Chintu and Others v. Gulab Singh and others* vide order dated 26.03.2019 passed in M.A. No. 1130 of 2005, the Co-ordinate Bench of this Court has held in paragraphs 10 and 11 as under:

*10. In the present case, the Insurance Policy was filed by the Claimants themselves, which has not been disputed by any of the parties. Thus, without applying the doctrine of strict proof, it is held that the Tractor and Trolley were insured for agricultural purposes, and the deceased was travelling in the trolley and she was not covered under the Insurance Policy. Thus, it is clear that there was a violation of Insurance Policy and thus, the Insurance Company is not jointly and severally liable along with the owner and driver.*



*11. However, in the light of the judgments passed by the Supreme Court in the cases of Shivaraj Vs. Rajendra reported in (2018) 10 SCC 432, Amrit Paul Singh and Another vs. TATA AIG General Insurance Co. Ltd and Others reported in 2018(3) TAC 1 (SC) and Shamanna and Another vs. Divisional Manager, Oriental Insurance Company Limited and Others reported in (2018) 9 SCC 650, the Insurance Company is held liable to pay compensation amount with liberty to recover the same from the owner of the tractor.*

16. Having considered the law laid down in the aforesaid case, though there is a breach of the policy condition in the present case, the Insurance Company cannot avoid its liability to first pay the amount of compensation to the claimant. However, it shall be at liberty to recover the said amount from the driver and owner of the offending vehicle.

17. As far as the enhancement of compensation is concerned, the learned Tribunal has granted future prospects @10%, despite the fact that the age of the deceased was 50 years. In the light of judgment of *National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680*, the claimants are entitled to get future prospects at the rate of 25%. There are two claimants; therefore, they are also entitled to get compensation for loss of consortium at the rate of Rs.40,000/- per head. The learned Tribunal has rightly applied a deduction of one-third towards personal expenses and adopted the correct multiplier of 13. The income of the deceased has rightly been assumed by the learned Tribunal.

18. Resultantly, the assessment of the compensation is this case as under:



Sr.No.	Head	Amount of compensation awarded by claims Tribunal	Amount of Compensation assessed by this Court.
1	Income	5,800/-	5,800/-
2.	Personal Expenses	1/3	1/3
3.	Future Prospects	10%	25%
4.	Multiplier	13	13
5.	Loss of Income	6,63,520/-	5,800x12 =69,600 x1/3 =46,400/-+25% =58,000/- x 13 =7,54,000/-
6.	Dead body Transportation charge	2,000/-	2,000/-
7.	Loss of consortium	40,000/-	80,000/-
8	Funeral Expenses	15,000/-	15,000/-
9.	Loss of Estate	15,000/-	15,000/-
10.	Total compensation	7,35,520/-	8,66,000/-
11.	Additional Enhancement		1,30,480/-

19. Although the appellants have valued this appeal at Rs.1,00,000/- 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.30,480/- (i.e. Rs. 1,30,480/- – Rs. 1,00,000) 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.

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

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

(RAJENDRA KUMAR VANI)  
JUDGE

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