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MA-5764-2019

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 6th OF OCTOBER, 2025MISC. APPEAL No. 5764 of 2019*HDFC ERGO GENERAL INSURANCE COMPANY LTD.**Versus**PADAMCHANDRA JAIN AND OTHERS*

Appearance:

Shri Nirendra Singh Tomar - Advocate for appellant/Insurance Company.

Shri Somnath Seth- Advocate for respondent No.1/claimant.

None for respondents No. 2 and 3.

ORDER

This misc. appeal by the appellant/Insurance Company u/S. 173(1) of the Motor Vehicles Act, 1988 is arising out of the Award dated 22.07.2019 passed by Fourth Motor Accident Claims Tribunal (in short "the Claims Tribunal") Bhind (M.P.) in MACC No.32/2017, whereby the Claims Tribunal has awarded compensation in favour of claimant/respondent No.1 to the tune of Rs.84,300/- with interest from the date of filing of claim petition till its realization.

2. Brief facts of the case are that on 23.11.2017 at 02:45 PM, claimant Padamchandra was going to his shop with his son Ashok Kumar Jain and when they reached Makhan Bhog Hotel, a motorcycle bearing Registration No.MP30-MC-1444 being driven at high speed in rash and negligent manner, came from behind and hit him due to which, he sustained injuries. On the basis of report of aforesaid accident, police registered an FIR. After completion of investigation and other formalities, police filed charge-sheet.



Thereafter, claimant filed a claim case before the Claims Tribunal for seeking compensation.

3. During pendency of claim petition, the claimant filed an application for deleting name of Narendra Soni and in his place, brought Shivam Shivhare (respondent No.3 herein) in the claim petition.

4. Owner of offending vehicle- respondent No.1- Pankaj Yadav (respondent No.2 herein) submitted his reply to the claim petition and denied that any accident to the claimant was caused by his vehicle.

5. Newly added Shivam Shivhare (herein respondent No.3) submitted his reply to the claim petition and averred that he had no connection with alleged accident.

6. The Insurance Company also submitted its reply to the claim petition and denied all the claim averments.

7. The Claims Tribunal after framing the issues and taking evidence of both the parties, passed the impugned Award and recorded a finding that the Insurance Company and owner of the offending vehicle were liable to pay compensation to claimant.

8. Being aggrieved by the impugned Award, the Insurance Company filed the instant misc. appeal on the ground that the impugned Award passed by Claims Tribunal is contrary to law and facts, evidence and material available on record. It is further submitted that the Claims Tribunal has incorrectly decided Issue Nos.1 to 5 framed in claim petition. The Claims Tribunal did not give any finding that the alleged accident took place due to rash and negligence on the part of driver of motorcycle. Thus, the Claims



Tribunal erred by saddling liability directly on the owner and the Insurance Company of motorcycle. He also submitted that the police registered FIR against Narendra Soni and filed charge-sheet against him and the Claims Tribunal in its finding also not found that Shivam Shivhare was driving the vehicle in rash and negligent manner due to which, the alleged accident occurred. So, the findings recorded by the Claims Tribunal in awarding compensation in favour of claimant deserve to be set aside.

9. On the other hand, learned counsel for respondent No.1/claimant supported the impugned Award and prayed for rejection of the appeal.

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

11. Now, the moot question arises for consideration of this appeal that whether the claimant is entitled to get compensation from the Insurance Company and owner of the offending vehicle when the Claims Tribunal recorded a finding that the driver of offending vehicle was not found guilty.

12. Section 140 of the Motor Vehicles Act, 1988 read as under:-

Liability to pay compensation in certain cases on the principle of no fault-(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the



person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

13. Section 147 of the Motor Vehicles Act reads as under:-

Requirements of policies and limits of liability. -

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) -

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.

14. Section 163(A) of the Motor Vehicles Act read as under:-

basis Special provisions as to payment of compensation on structured formula

1. Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation

For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

2. In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.



3. The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

15. Section 166 of the Motor Vehicles Act read as under:-

166. Application for compensation.—(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—

- (a) by the person who has sustained the injury; or
- (b) by the owner of the property; or
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
- (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

[(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carried on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed.

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.]

[(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.]

16. This claim petition was filed by the claimant under Section 166 of the MV Act in which it is necessary for claimant to prove the fact that Driver of the offending vehicle was driving the offending vehicle in rash and negligent manner for causing the accident, but in the present case, Claims Tribunal found that Driver Shivam Shivhare was not driving the offending vehicle at the time of accident and no cross appeal was filed by claimants in this regard. So, this finding was not challenged by respondents/claimants.

17. So, it is clear from the provisions of the above mentioned Sections that if



claimants are unable to prove that Driver of the offending vehicle was driving the vehicle in rash and negligent manner, then he is not entitled to get compensation under the provisions of Motor Vehicles Act, but in the present case, Claims Tribunal has given the finding that Driver of the offending vehicle is not liable for accident, but the Claims Tribunal awarded compensation in favour of claimants only on the ground of use of vehicle.

18. Learned counsel for respondents submitted that Claims Tribunal has found that accident was occurred by use of offending vehicle. Section 140 of the MV Act provides provision of no fault liability in use of vehicle if claimant received permanent disability or person died in the accident, but in the present case, claimant received only grievous injury not permanent disability. So, he is not entitled to get compensation under Section 140 of the MV Act in no fault liability.

19. So in view of the above discussion, Claims Tribunal has committed error in granting compensation in favour of claimants and directed owner of the offending vehicle and Insurance Company to pay compensation only on the ground that accident was occurred by use of offending vehicle. So, the finding recorded by Claims Tribunal in this regard was not correct in the eye of law and deserves to be set aside and is hereby **set aside**.

In view of above, appeal stands **allowed to the extent indicated above**.

(HIRDESH)
JUDGE

AVI