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MA-3389-2022

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 3<sup>rd</sup> OF SEPTEMBER, 2025

MISC. APPEAL No. 3389 of 2022

*AVTAR SINGH AND OTHERS*

*Versus*

*JASPAL SINGH AND OTHERS*

.....  
Appearance:

*Shri Nirmal Sharma - learned Counsel for appellants- driver and  
owner*

*Ms. Aakancha Dhakad- learned Counsel for respondent No.1-  
claimant.*

*Shri Kamal S. Rochalani- learned Counsel for respondent No.2-  
Insurance Company.*

.....  
WITH

MISC. APPEAL No. 3387 of 2022

*AVTAR SINGH AND OTHERS*

*Versus*

*JASPAL SINGH AND OTHERS*

.....  
Appearance:

*Shri Nirmal Sharma - learned Counsel for appellants- driver & owner*

*Ms. Aakancha Dhakad- learned Counsel for respondent No.1- claimant*

*Shri Kamal S. Rochalani- learned Counsel for respondent No.2- Insurance  
Company.*

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ORDER

Considering the reasons assigned in IA Nos.3375 of 2022 and



3376/2022, applications for condonation of delay in filing the misc. appeals are allowed and delay in filing the misc. appeals is hereby **condoned**.

This order shall also govern disposal of **Misc.Appeal No.3387 of 2022 along with IA No.3661 of 2024**, an application under Order XLI Rule 27 of CPC for producing additional evidence on record filed by appellants- driver & owner against the common Award dated 28th of March, 2022 passed by Motor Accident Claims Tribunal, Shivpuri in Claim Case No.120/2020 (Filing No. MACC No. 266 of 2020).

Misc. Appeal No.3389 of 2022 under Section 173(1) of Motor Vehicles Act, has been filed by same appellants- driver & owner assailing the common Award dated 28th of March, 2022 passed by Motor Accident Claims Tribunal, Shivpuri in Claim Case No.121 of 2020 (Filing of MACC No.265 of 2019), whereby liability has been shifted upon the appellants for alleged accident in absence of licence to drive a transport vehicle for carrying goods of dangerous or hazardous nature.

It is the case of appellants that, claimant Jaspal Singh had filed aforesaid claim cases analogously, seeking compensation on the ground of death of his wife and mother in the accident caused by rash and negligent driving on the part of appellants (driver and owner) and when the claim cases were at the stage of evidence, although a reply was filed on behalf of appellants, but the Claims Tribunal without recording evidence of appellants, passed the impugned Award, observing in para 39 that appellant No.1 was driving the gas tanker bearing registration no.MP04- HE-4256 at the time of accident without having a licence to drive a transport vehicle for carrying



goods of dangerous or hazardous nature as per Section 14(2) of the Motor Vehicles Act, 1988 and no evidence was presented to refute the evidence of Insurance Company and the Insurance Company has been successful in proving its case that on the date of incident, appellant No.1 was driving the vehicle without a valid and effective licence and violated terms and conditions of insurance policy. It is further contended that since an assurance was given by counsel of the appellants that evidence has been recorded, but the same was never recorded in reality while reply was on record. The hazardous certificate was already made available with the Counsel of appellants, but since he did not produce it as evidence, therefore, the findings of the Claims Tribunal given in para 39 of the Award deserves to be set aside. Due diligence was exercised by the appellant by providing the certificate to their Counsel, but the same was not exhibited by their Counsel before the Claims Tribunal, which resulted in shifting of liability over the present appellants. Therefore, the appellants have filed IA No.3661 of 2024 for proving the same. Placing reliance on the judgment of Hon'ble Apex Court in the cases of **Sanjay Kumar Singh vs. State of Jharkhand 2022 (7) SCC 247** and **A.Andisamy Chettiar vs. A. Subhuraj Chettiar 2015(17) SCC 713**, it is contended that admissibility of additional evidence does not depend upon the relevancy to the issue in hand or on the fact, but it depends upon whether or not the appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. Under these circumstances, it is prayed that the application filed by appellants for taking additional evidence on record, may be allowed.



On the other hand, learned Counsel for the Insurance Company supported the impugned Award and prayed for dismissal of appeals as well as of interlocutory application filed by appellants under Order XLI Rule 27 of CPC.

If provisions of Order XLI Rule 27 of CPC be taken into consideration, then under the following circumstances, the additional evidence can be adduced at the appellate stage:-

- "1. The Court from whose decree the appeal has been preferred, has refused to admit the evidence, which ought to have been admitted.
- ii. The party seeing to produce additional evidence, established that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be within his knowledge or could, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed.
- iii. The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause."

After hearing learned Counsel for the parties and considering the provisions of Order XLI Rule 27 of CPC, this Court thinks it appropriate that the application (IA No. 3661 of 2024) deserves to be allowed and is hereby **allowed**. Accordingly, by setting aside the finding given by the Claims Tribunal in Para 39 of its Award, this matter is remanded to the Claims Tribunal concerned to record the evidence of appellants after taking the additional evidence/document (licence of hazardous) on record and after giving an opportunity of hearing to both the parties, decide the Claim Cases on the "question of liability" and pass Award afresh, in accordance with law, as early as possible within a period of **six months** from the date of receipt of copy of this order. Both the parties are directed to present before the Claims



Tribunal on 16th of September, 2025.

In view of aforesaid, both the misc. appeals **stand disposed of.**

CC as per rules.

Let a copy of this order be kept in connected Misc.Appeal No.3387 of 2022.

**(HIRDESH)**  
**JUDGE**

MKB