

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
BEFORE HON. SHRI JUSTICE ALOK VERMA,J.

M.A. No.2320/2006

Mehmood S/o Mohd. Chottu

Vs.

Nazir Khan and others

Shri H.S. Rajpal, learned counsel for the appellant.

Shri S.V. Dandwate, learned counsel for the respondents.

ORDER

(Passed on 06/09/2016)

This Miscellaneous Appeal is directed against the award passed by the learned First Motor Accident Claims Tribunal, Mhow, District Indore in Claim Case No.232/2005 dated 06.02.2003 whereby the learned Tribunal awarded a sum of Rs.52,000/- as compensation and interest @ 6% from 06.02.2003 for death of mother of the appellant.

2. As per the facts stated in the application filed by the appellant before the Tribunal for claiming compensation. Her mother- Fatima Bee was travelling on 06.04.1985 in a passenger bus bearing registration No.RRL-6378 and she was returning back to home from Bherughat. There were other passengers also in the bus. At about 8:00 pm., on Bherughat driver loss control over the

bus and bus fell down into the deep gorge. In the accident, mother of the appellant suffered death and to pay compensation the application was filed. The present appeal is filed on the following grounds :-

- (i) That the quantum of award Rs.52,000/- is on lower side, and therefore, an enhancement in the amount is claimed.
- (ii) The Tribunal fixed liability of insurance company/respondent No.3 to Rs.15,000/-. It is claimed that the Tribunal should have ordered payment by the insurance company and should have allowed the insurance company to recover the amount from driver and the owner of the bus.
- (iii) The interest was awarded from 06.02.2003 while should have been awarded from date of presentation of application.

3. Learned counsel for the appellant places reliance on judgment of Hon'ble Apex Court in case of **New India Assurance Company Ltd. vs. Vimal Devi and others; 2010 ACJ 2878**. In this case, liability of the insurance company under Sections 95 and 96 of Motor Vehicles Act was limited to Rs.50,000/- per passenger. The Tribunal directed the company to pay and recover, however, when the matter travelled before the Hon'ble Apex Court, after taking into consideration, the avoidance clause in the policy it was held by the Hon'ble Apex Court that such an order was proper and no interference was necessary and on this basis, in

this judgment, the learned counsel for the appellant submits that the insurance company may be directed to pay and recover.

4. Per contra, while supporting the award passed by the learned Tribunal, the counsel for the **respondent** places reliance on judgment of Hon'ble Apex Court in the case of **New India Assurance Co. Ltd. vs. Shanti Bai and others; 1995 ACJ 740** in which it was held that when liability of insurance company is limited to Rs.15,000/-, no further liability can be imposed on the insurance company for payment of compensation to the passengers travelling in a passenger bus.

5. So far as quantum of compensation is concerned, the Tribunal assessed income of the deceased @ Rs.15,000/- per year and amount of dependency per year is assessed @ Rs.10,000/-. A multiplier of 5 was applied as the deceased was 62 years of age, and accordingly, the amount of compensation was assessed @ Rs.50,000/-, Rs.2,000/- was awarded for funeral expenses and no amount was awarded for love and affections etc., thus, so far as the compensation is concerned, looking to the conditions and value of rupees in the year 1985, the amount of Rs.50,000/- appears reasonable. However, so far as the funeral expenses are concerned, the amount may be increased to Rs.3,500/- and this apart, the amount against love and affections may also be awarded @ Rs.10,000/-. Thus, total amount comes to Rs.63,500/-, and

accordingly, the amount of compensation is raised to Rs.63,500/-.

6. The next point is in respect of payment of interest @ 6% from 06.02.2003, and for this, the learned Tribunal observed that the appellant was responsible for delay, as he did not take the necessary steps for service of summons on respondents No.1 & 2.

7. Going through the record of the Tribunal, it is apparent that the service of summons on respondents No.1 and 2 was made by a substituted service of publication of notice in a newspaper. Looking to the financial condition of the appellant, delay caused may be condoned, and accordingly, in considered opinion of this Court, the appellant seems to be entitled to receive the interest from date of presentation of the application i.e. 22.08.1985.

8. The last point involved in this appeal is whether insurance company can be ordered to pay the amount and recover the same from respondents No.1 and 2.

9. So far as liability of insurance company is concerned, there appears to be no dispute in this regard. The insurance company examined his officer Paresh Kumar, according to whose statement, only Rs.12/- was paid per passenger, and therefore, liability of the insurance company is limited to Rs.15,000/-.

10. In this regard, the judgment of Hon'ble Apex Court in case of **Shanti Bai (supra)** can be referred in respect of avoidance

clause in the policy, which is as under :-

“Nothing in this policy or any endorsement hereupon shall affect the right of any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act, 1939, section 96. But the insured shall repay to the company all sums paid by the company which the company would not have been liable to pay but for the said provisions.”

11. The similar kind of avoidance clause is also there in the insurance policy submitted by the respondent No.3, which is marked as Ex.D-1, and therefore, in light of the observations made by the Hon'ble Apex Court in case of **Vimla Devi (supra)**, respondent No.3 is under an obligation to pay the amount and recover. Accordingly, this appeal is partly allowed. It is directed as under :-

- (i) The total amount of compensation comes to Rs.63,500/- which shall be paid by respondents No.1 and 2 to the appellant.
- (ii) The respondent No.3 shall pay the amount including interest thereon to the appellant and recover the same from respondents No.1 and 2.
- (iii) The interest shall be paid from date of presentation of the application i.e. 22.08.1985 and not from 06.02.2003, as directed by the Tribunal.

(iv)The remaining directions issued by the Tribunal are confirmed.

12. The cost of the appeal shall be borne by the respondents jointly and severally.

The counsel fee is assessed @ Rs.2,000/- if certified.

With aforesaid directions, the appeal stands disposed of.

(ALOK VERMA)
JUDGE