

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 30th OF JANUARY, 2023

MISC. APPEAL No. 1074 of 2007

BETWEEN:-

SAVITALILADHAR, AGED ABOUT 38 YEARS, OCCUPATION:
1. AGRICULTURE JOSHI GURADIA, TEH MHOW DIST. INDORE
(MADHYA PRADESH)

KU.JYOTILATE SH.LEELADHAR, AGED ABOUT 17 YEARS,
2. OCCUPATION: STUDENT JOSHI GURADIA, TEH MHOW DIST.
INDORE (MADHYA PRADESH)

NEELES S/O LATE SH.LEELADHAR, AGED ABOUT 17 YEARS,
3. OCCUPATION: STUDENT JOSHI GURADIA, TEH MHOW DIST.
INDORE (MADHYA PRADESH)

KAMLESH S/O LATE SH.LEELADHAR, AGED ABOUT 14
4. YEARS, OCCUPATION: STUDENT JOSHI GURADIA, TEH
MHOW DIST. INDORE (MADHYA PRADESH)

SMT GEETA BAILATE SH.SIDDHNATH, AGED ABOUT 65
5. YEARS, OCCUPATION: AGRICULTURE JOSHI GURADIA, TEH
MHOW DIST. INDORE (MADHYA PRADESH)

.....APPELLANTS

(BY SHRI R.N. DAVE, ADVOCATE FOR APPELLANTS)

AND

1. KAMAL KISHORE S/O ANOKHELAL, AGED ABOUT 34 YEARS,
SUNDAR NAGAR INDORE (MADHYA PRADESH)

2. DEVENDRA SINGH S/O RAMSINGH KEWAT 66/3, SHRIRAM
NAGAR, PALDA, INDORE (MADHYA PRADESH)

NATIONAL INS.COL.LTD. THRU:LEGAL SAIL 2,
3. M.G.ROAD,APPOLO TOWER, IDNORE,M.P. (MADHYA
PRADESH)

.....RESPONDENTS

(BY SHRI SUDHIR DANDWATE, ADVOCATE FOR RESPONDENTS)

This appeal coming on for orders this day, the court passed

the following:

ORDER

Heard finally with the consent of parties.

This appeal has been filed against the award dated 20.01.2007 passed in Claim Case No.04/2005 by First Additional Member, Motor Accident Claims Tribunal, Indore, whereby the learned AMACT, Indore has dismissed the claim case of appellants/claimants.

In brief, the facts of the case are that on 19.07.2005, the deceased Leeladhar was going on his motorcycle which was dashed by a Truck bearing registration No.MP09KB-1450 which was being rashly and negligently driven by respondent No.2 – Devendra, and was insured with respondent No.3 – National Insurance Company. It is stated that on account of the aforesaid accident, a claim case was filed before the First Additional Motor Accident Claims Tribunal, Indore, who vide his impugned award dated 20.01.2007, has rejected the claim holding that the claimants have not been able to prove the accident with the alleged vehicle. On perusal of the award, it has also been found that although as many as five issues were framed by the learned Member of the Claims Tribunal, however after deciding the first issue that the claimants have not been able to prove the accident with the alleged vehicle, it has also been held that so far as the entitlement of the appellants as regards compensation is concerned, the same is

not relevant as the accident itself is not proved.

In the considered opinion of this Court, the aforesaid approach of the learned Member of Claims Tribunal is erroneous as it was necessary for the Claims Tribunal to give his finding on the issues framed, especially, on the entitlement of compensation sought by the appellants/claimants and in the absence of the same, even if this appeal is allowed, this Court would be required to sift the evidence afresh for the first time in this appeal only.

Apart from that, during the course of arguments, counsel for the appellants/claimants has also referred to the statement of Bahadur (PW/1), recorded under Section 161 of Criminal Procedure Code, in which he has also given the registration number of the alleged truck, however the same has not been proved in accordance with law before the Claims Tribunal and in such circumstances, this Court is also of the considered opinion that the interest of justice would be met if the appellants is again given an opportunity to lead further evidence. Needless to say that the Insurance Company would be also entitled to lead such evidence as is necessary for their defence.

Hence, the impugned award cannot be sustained in the eyes of law and is hereby set-aside and the matter is remanded back to the Claims Tribunal with a direction to the Claims Tribunal to decide the case afresh, in accordance with law.

With the aforesaid direction, this petition stands disposed of, and the learned Member of Claims Tribunal is also directed to disposed of the claim case/appeal, as expeditiously as possible, preferably within a period of six months from the date of receipt of this order.

Certified copy, as per Rules.

(SUBODH ABHYANKAR)
J U D G E

Arun/-