IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

MISC. APPEAL No. 1787 of 2014

HDFC GENERAL INSURANCE CO. LTD.

Versus

HIMMAT BAI AND OTHERS

Appearance:

Shri Manoj Jain, learned counsel for the appellant.

Shri Romil Malpani, learned counsel for the respondents No.1 to 5.

Reserved on : 8.7.2025

Delivered on : 1.9.2025

ORDER

The appellant/Insurance Company has filed this appeal under Section 173 of Motor Vehicles Act being aggrieved by the award dated 10.7.2014 passed in Claim Case No.26/2012.

2. The short facts of the case are that on 25.12.2011 deceased Kaluram Bagri alongwith Himmat Bai and Govind (a boy of five years) went on his motorcycle having registration No.MP-14-MC-9725 to Dudhakhedi for religious purpose. When they were returning to village Suwasara, near Toriram Ka Kuwa at Suwasara public road a tractor trolley having registration No.MP-14-AA-2970 and MP-14-G-2552 respectively were standing on the road without any parking light or indicator. There was no signage so as to alert the vehicles about the situation of the trolley. Kaluram could not see/locate the tractor trolley because of the darkness and absence

of any signage, thus rammed into the trolley. All the three persons i.e. deceased Kaluram, Himmat Bai and boy Govind sustained grievous injuries. For the injuries sustained by all the three persons, Kaluram died and other two persons underwent a long treatment. The accident was reported to the concerned Police Station i.e. P.S., Suwasara, where a case was registered under Section 279, 337, 338 and 304(A) of IPC at Crime No.364/2011.

2.1 The respondents/claimants filed Claim Case No.26/2012 before the claims Tribunal under Section 166 of Motor Vehicles Act claiming compensation for the death of deceased Kaluram. The claims Tribunal after considering the evidence on record assessed a total compensation of Rs.5,70,500/- with interest @ 6% per annum from the date of application and directed that the same be paid by the appellant/Insurance Company.

3. The appellant being aggrieved by this award has filed the present appeal on three counts;

(i) There was contributory negligence on the part of deceased Kaluram as he was riding the motorcycle and rammed into the standing tractor trolley.

(ii) The trolley was not insured, thus the Insurance Company is not liable to pay compensation.

(iii) The tractor was insured for the agricultural purposes, but it was not being used for the same, instead it was being used for commercial purposes, thus the Insurance Company is not liable to pay compensation.

3.1 In support of his contentions regarding contributory negligence counsel for the appellant/Insurance Company refers to para 13 and 14 of the

award and submits that it has clearly come on record that the tractor trolley was standing on the public road at the time of accident and it is Kaluram, who rammed his motorcycle into the trolley and which is the cause of accident. Thus, it is a clear case of contributory negligence. He also submits that the trolley was not insured, thus the Insurance Company is not liable to pay compensation. He submits that in para 17 of the award, though the claims Tribunal has discussed the contention of the appellant/Insurance Company, but has repelled the same without any proper explanation for the same. He then submits that as the tractor was insured for agricultural purposes and as at the time of accident it was being used for commercial purposes for the reason that the tractor was transporting dirt for Suwasara Nagar Panchayat for a consideration of Rs.700/- per trolley. Thus, it was a case of breach of insurance policy and for this reason also as per the submissions of learned counsel for the appellant, the Insurance Company is not liable to pay compensation. In support of his contentions he relies on the decision of the Hon'ble Apex Court in the case of ***National Insurance Co.Ltd. Vs. Chinnama,*** reported in **MANU/SC/0698/2004**. He refers to para 16 of the said decision. He further relies on an order passed by coordinate Bench of this Court on **11.7.2024 in M.A.No.6385/2019 (*SBI General Insurance Co.Ltd. Vs. Gangaprasad and others*)**. He refers to para 19 of the same.

4. *Per contra*, learned counsel for the respondents No.1 to 5 submits that there was no contributory negligence on the part of rider of the motorcycle Kaluram. He submits that there was no cross FIR by owner or driver of the tractor trolley, which goes to show that there was no negligence

on the part of the deceased. He further submits that it was not a case of vehicle standing on the highway. He submits that it is a case where person was going on motorcycle from one village to another village, thus the area as well as the road were completely dark. Thus, it was not the mistake of Kaluram, but it was the mistake of driver of the tractor trolley, who parked the vehicle on road without any warning sign. As regards insurance of the trolley, he refers to the findings of the claims Tribunal recorded in para 17 of the award. He submits that the Tribunal has considered this aspect and has rejected the contention of the Insurance Company. He further submits that the issue with regard to breach of insurance policy is also not found proved by the Tribunal in view of the clear findings recorded in para 27 of the award.

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

6. The contention of the counsel for appellant that it was a case of contributory negligence is not based on any material at all. It is a pure and simple assumption by the Insurance Company that as the tractor trolley was standing and the bike has rammed into the standing tractor trolley thus, it was a case of contributory negligence, but the surrounding circumstances of the accident have not been taken into account while asserting the same. If it is seen from the facts as being reflected from the documents like FIR etc. it can be seen that it was a dark place of connecting road between two villages, where the tractor trolley was parked on road without any signal or signage. If a vehicle is standing in the middle of the road without there being any signage/warning signals and if some vehicle is going on the road even with a

normal speed, then also it will take some time to register such negligently parked vehicle and then it will take further time to take evasive steps to avoid collision, which sometimes even may not be possible thus it cannot be accepted that it a vehicle is standing and a moving vehicle rammed into it then it is always mistake of the moving vehicle or it is contributing to the clash, sometimes it may become impossible to avoid colliding. In the present case, the facts suggest that it was out of the control of the Kaluram to avoid collision because of the absolute negligence of the driver of the Tractor. It is because of this reason this Court does not find any fault in the conclusions of the claims Tribunal that there was no contributory negligence on the part of deceased Kaluram.

7. As regards the issue of insurance of the tractor the same has to be considered in the light of the fact that whether the trolley is a motor vehicle or not. The Motor Vehicles Act defines motor vehicle in terms of Clause 28 of Section 2 of the Act, which provides that "motor vehicle" or "vehicle" means any mechanically propelled vehicle adopted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chasis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory. Even the tractor has specially been defined in terms of Clause 44 of Section 2 of the Motor Vehicles Act, which provides that "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion). The trailer has also been defined in terms of Clause

46 of Section 2 of Motor Vehicles Act, which provides that "trailer" means any vehicle, other than a semi-trailer and a sidecar, drawn or intended to be drawn by a motor vehicle.

8. The necessity for insurance against third party risk as provided under Section 146 of the Act, which provides for no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of the Act. Then, Section 147 of the Act provides for requirements of policies and limits of liability. As can be seen the word "vehicle" mentioned in Section 147 is co-relatable to the word "motor vehicle", which is stipulated in Section 146 of the Act. Thus, it can be seen that the principle of claim of compensation in an accident arising out of the use of the motor vehicle is based on tortuous liability and the negligence of the driver of the motor vehicle is a *sine quo non* for maintaining a claim under the provisions of the Act. As it is common knowledge that the trolley by itself cannot be driven and it has to be carried or towed with a motor vehicle namely a tractor. Therefore, the question of driving or parking a trolley in a rash and negligent manner would not arise. It is only the prime mover or the motor vehicle which controls movement of the trolley. In the present matter it is not the case that the trolly was standing alone but it was attached to the tractor and the tractor & trolley together attached to each other were standing in the middle of the road, clearly it is the tractor which pulled the trolley and it is the tractor which was parked along with the trolley

in the middle of the road. As such, it the owner/insurer of the Tractor who are liable for payment of compensation.

9. The Hon'ble Supreme Court in the case of ***Royal Sundaram Alliance Insurance Co. Ltd. Vs. Honnamma & Ors.,*** 2025 SCC OnLine SC 1027 held in para 11 and 12 as under:

> *"11. Therefore, the undisputed position is that the trailer was being pulled by/attached to the tractor and then the trailer on which the deceased was present, turned turtle/upturned, resulting in his death. From the above, it is clear that the tractor which was insured was the reason for the accident. It is not the case that only because of some fault on the part of the trailer stand-alone, the accident happened. To explain, we may give an example : that had the trailer been stationary at a place and due to some reason, it overturned or a mishap happened, then without the trailer being specifically insured the Appellant would not be liable to pay, but here the main cause of the accident was the tractor which was pulling/driving/moving the trailer and in such sequence of events, the trailer upturned. Thus, the accident was caused by the tractor, as during the course of being driven/pulled by the tractor, the accident occurred.*
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> *12. Thus, the liability of the tractor/its insurer extended to the accident caused by the tractor resulting in the death of the deceased, through the trailer. This being the position in the present case, the principles emanating from the decisions where the Courts have held that the trailer has to be separately registered with the insurance company to make it liable, would not be applicable. To that extent, the facts in the present case are clearly distinguishable from the ones cited by learned counsel for the appellant. The legislation i.e., the MV Act, being beneficial and welfare-oriented in nature [Ningamma v. United India Insurance Co. Ltd., (2009) 13 SCC 710; K Ramya v. National Insurance Co. Ltd., 2022 SCC OnLine SC 1338, and; Shivaleela v. Divisional Manager, United India Insurance Co. Ltd., 2025 SCC OnLine SC 563] and ultimately the root cause of the accident being the tractor, which was insured, this crucial fact cannot be lost sight of. For further clarification, we might illustrate : if an insured vehicle hits another vehicle which in turn hits a third vehicle, then for the entire chain of accidents, the liability would pass on to the vehicle which was the root cause of the accident because it is the result of the action in the same chain of events which cannot be segregated or compartmentalized. Moreover, this Court is duty-bound to be mindful of the ground realities of our nation and cannot let practicality be overshadowed by technicality."*

10. Now, as far as the third question with respect to the breach of policy is concerned, the findings of the claims Tribunal in para 27 of the award are clear. The claims Tribunal after considering the submissions of the Insurance Company has recorded finding that there was not even a single document establishing the fact that tractor trolley was being used for commercial purposes. This finding of the claims Tribunal has not been shown to be perverse by referring to any material contrary to the findings of the claims Tribunal in this regard.

11. As such on all three counts, this Court does not find any merits in the submissions of the counsel for the appellant/Insurance company. Resultantly, appeal fails and is accordingly **dismissed**. No order as to costs.

(PAVAN KUMAR DWIVEDI)
JUDGE

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