

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 15th OF FEBRUARY, 2024

MISC. APPEAL No. 341 of 2017

BETWEEN:-

SHIVKANYA W/O KAILASH BHILL, AGED ABOUT 35 YEARS,
1. OCCUPATION: HOUSE WIFE VILLAGE TITODIPADA, TEH.
AND DISTT. RATLAM (MADHYA PRADESH)

SHYAMLAL(MINOR U/G MOTHER SHIVKANYA) S/O KAILASH
2. SOMA BHIL, AGED ABOUT 8 YEARS, OCCUPATION: STUDENT
VILLAGE TITODIPADA, TEHSIL AND DISTRICT RATLAM
(MADHYA PRADESH)

KU. ANITA (MINOR U/G MOTHER SHIVKANYA) D/O KAILASH
3. SOMA BHIL, AGED ABOUT 12 YEARS, VILLAGE TITODIPADA,
TEHSIL AND DISTRICT RATLAM (MADHYA PRADESH)

SOMA S/O SHOBHARAM BHIL, AGED ABOUT 60 YEARS,
4. OCCUPATION: NIL VILLAGE TITODIPADA, TEHSIL AND
DISTRICT RATLAM (MADHYA PRADESH)

SUHAG BAI W/O SOMA BHIL, AGED ABOUT 58 YEARS,
5. OCCUPATION: NIL VILLAGE TITODIPADA, TEHSIL AND
DISTRICT RATLAM (MADHYA PRADESH)

.....APPELLANTS

(SHRI VIJAY SINGH CHOUHAN, ADVOCATE FOR APPELLANTS)

AND

SANTOSH S/O HEERALAL CHARMKAR, AGED ABOUT 29
1. YEARS, OCCUPATION: DRIVER VILLAGE PREETAMNAGAR,
P.S. BILPANK, DISTT. RATLAM (MADHYA PRADESH)

GOBRIBAI W/O SOMA BHIL, AGED ABOUT 50 YEARS,
2. OCCUPATION: OWNER VILLAGE BADLIPADA, POST
SARWAD, TEHSIL AND DISTRICT RATLAM (MADHYA
PRADESH)

3. MANAGER BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.
KAREEM BUILDING, NEW ROAD, RATLAM/ INDORE OFFICE:

COMMERCE HOUSE, RACE COURSE ROAD, INDORE
(MADHYA PRADESH)

.....RESPONDENTS

(SHRI SUDARSHAN PANDIT, ADVOCATE FOR RESPONDENT NO.3)

*This appeal coming on for orders this day, the court passed
the following:-*

ORDER

This appeal has been preferred by the appellants/claimants under Section 173(1) of Motor Vehicles Act, 1988, is arising out of award dated 31.08.2016 passed by Member, Motor Accident Claims Tribunal, Indore, in Claim Case No.25/2013 on account of inadequacy of compensation and seeking enhancement of compensation.

(2) The brief facts of the case is that on 01.01.2013 at about 4:10 pm, the deceased Kailash S/o Soma Bheel was standing near Maruti Academy School, Mhow Neemuch Highway Road, suddenly one Tractor bearing registration No.MP43AA-5721 which was driven rashly and negligently by driver of offending vehicle hit the deceased as a result he died after being crushed under a tractor. Thereafter the police has registered the case against the driver of offending vehicle and has filed the chargesheet before the Magistrate Court. The claimants have filed the claim application for seeking compensation against the respondents for Rs.12,00,000/- in the motor accident claim case.

(3) The respondents have filed their written statement and has denied the averments.

(4) The Tribunal has framed the issue and on the basis of

pleadings of both the parties and after taking the evidence, the Tribunal has awarded Rs.4,85,000/- as compensation with interest in favour of the claimants/appellants and further totally has exonerated the respondent-Insurance Company.

(5) Being aggrieved from the impugned award, the claimants have filed this appeal on the ground that the Tribunal has committed error in exonerating the Insurance Company from liability because at the time of accident vehicle was plying without the valid driving license which is the breach of policy condition whereas the appellant is a third party in this accident and hence compensation ought to have been passed against the Insurance Company also. It has been stated that Tribunal has also committed error in not awarding the compensation against the Insurance Company because at the time of accident, the driver was not having the valid driving license but as per the statement of driver he has stated that he was having the driving license of LMV and LTV and as per the statement of driver no rebuttal evidence was adduced by the respondents regarding liability ought to have been imposed jointly and severally.

(6) The claimants have filed this appeal on the ground that the Tribunal on the ground that the Tribunal has committed error in holding the income of deceased was only Rs.3000/- per month and while the appellant has stated about the job and looking to the large number of family and date of accident the just and judicious income would be assess accordingly. It is also stated that appellants No.4 and 5 are not dependents as because they are the

parents and they lived jointly with the parents and hence just and judicious compensation ought to have been awarded to appellant No.4 and 5. It is averred that the Tribunal has erred in not assessing the future prospects of the deceased and has erred in deducting the 1/3 amount as personal expenses and the Tribunal has not granted compensation in other heads like future prospects, loss of estate and loss of consortium. Hence, counsel prays for reasonable amount of compensation may be awarded to him.

(7) *Per contra*, counsel for the respondent No.3 - Insurance Company contended that Tribunal has rightly awarded the compensation and has argued that there shall no further enhancement of compensation.

(8) I have heard counsel for the parties and have perused the record of the case.

(9) The Insurance Company has filed the cross-objection and has submitted that the deceased was traveling in the vehicle and he was not an authorized passenger and the Insurance Company has totally exonerated on the ground that the driver of offending vehicle was not having the valid driving license at the time of accident.

(10) In rebuttal, counsel for the appellants prays for rejection of cross-objection.

(11) After hearing counsel for the parties and on perusal of the record, the question arises whether the passenger was gratuitous passenger or an unauthorized passenger to which the counsel for respondent – Insurance Company has submitted that at the time of accident the deceased was sitting on the tractor and due to rash and

negligent driving the deceased fell down from the vehicle and was crushed as a result of which he died instantly.

(12) Counsel has submitted that prosecution witness Manoj Vishwakarma (PW/3) who is a law officer of the Company has stated in examination-in-chief that there is no risk cover of the passenger sitting on the tractor and he submitted that the deceased died in an accident and he was sitting on the tractor and hence the Insurance Company is not liable to pay the compensation.

(13) On perusal of the evidence of driver (PW/1) of offending vehicle, he has not stated in his evidence that the deceased was sitting on the tractor at the time of accident. He stated in examination-in-chief that the deceased was walking slowly-slowly on the road side and suddenly the person came in contact with the tractor and has been hit by the vehicle due to which he died and hence the statement of driver and law officer contradicts with each other.

(14) A perusal of document in respect of criminal record shows that there is no criminal record that the deceased was sitting on the tractor at the time of accident. So considering the criminal record and evidence of driver of offending vehicle and the fact that Insurance Company is unable to prove that the deceased was sitting on the tractor at the time of accident and hence the arguments of Insurance Company that the deceased was unauthorizedly sitting on the tractor has not been proved.

(15) So in view of the aforesaid facts, the cross-objection filed by the Insurance Company has no substance and is rejected.

(16) Counsel for the appellants has submitted that the Tribunal

has committed error in holding that at the time of accident the driver of offending vehicle was not having the valid or effective driving license. It is settled law that it is the duty of the Insurance Company to prove that the driver and owner shall not breach the terms and conditions of the Insurance Company.

(17) Considering the evidence of driver of offending vehicle in his cross-examination and considering the photocopy of driving license the Insurance Company has no dare to educe any evidence that the driver of offending vehicle has no valid or effective driving license at the time of accident.

(18) In the case of ***Rakesh Kumar vs. United India Insurance Company Limited and Others reported in 2016 ACJ 2157***, the Apex Court has held that if Insurance Company is unable to lead any evidence or the driver has no valid or effective driving license at the time of accident, then the Insurance Company is held liable.

(19) In the present case, the driver of offending vehicle has produced the photocopy of driving license at the time of evidence before the Tribunal and the Insurance Company has not led any evidence that the driver of offending vehicle has no valid or effective driving license, so this Court is of the opinion that the Tribunal has committed error in holding the fact that at the time of accident, the driver of offending vehicle has no valid or effective license, so the findings of the Tribunal is bad in law and is hereby set-aside. Hence, the Insurance Company is held liable and to pay the compensation to the claimants jointly and severally with owner and driver of offending vehicle and first liability is imposed upon the Insurance Company.

(20) Counsel for the appellants/claimants has filed this appeal and has contended that compensation as awarded by the Tribunal is on lower side.

(21) After hearing counsel for both the parties and on perusal of the record, in the considered opinion of this Court, the just and proper income of the deceased in the present case would be Rs.3070/- per month after deducting $\frac{1}{4}$ towards personal expenses adding multiplier of 15 and future prospects of 25%. Hence the amount of compensation of amount would be as under:-

Loss of dependency (3070/- pm + future prospects 25% x 12 - $\frac{1}{4}$ x 15 =	Rs.5,18,062/-
Loss of Estate	= Rs. 16,500/-
Loss of consortium	44000x5 = Rs 2,20,000/-
Loss of Estate	= Rs. 16,500/-
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Total Amount	= Rs.7,71,062/-

(22) Thus, the total amount of compensation comes to Rs.7,71,062/-. After deducting the amount of compensation of Rs.4,85,000/- as already awarded by the Tribunal (Rs.771062-485000=286062/-), the enhanced amount of compensation comes to Rs.2,86,062/-.The enhanced amount shall carry interest as awarded by the Tribunal from the date of filing of the claim application till its realization. The other findings recorded by the Tribunal shall remain intact.

(23) The appellants/claimants have valued the appeal only to the extent of Rs.1,00,000/- and has already paid the court fee of said amount, however, for the remaining amount of Rs.1,86,062/- the Court fee of Rs.4652/- (2.5% of Rs.1,86,062/-) shall be paid by the

appellants within a period of one month and thereafter the amount shall be released by the Insurance Company on receiving the certificate. In case, the certificate has not been filed before the Insurance Company up-to a period of three months, the claimants shall not be entitled to receive the interest on the enhanced amount of compensation.

(24) *Resultantly*, the appeal is allowed in part and to the extent indicated herein above.

(25) Certified copy, as per Rules.

Arun/-

(HIRDESH)
JUDGE