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

**BEFORE
HON'BLE SHRI JUSTICE HIRDESH
ON THE 23rd OF JANUARY, 2024**

MISC. APPEAL No. 4658 of 2022

BETWEEN:-

1. **SMT. HAKKU W/O ANSINGH KATARA, AGED ABOUT 38 YEARS, OCCUPATION: AGRICULTURIST R/O VILLAGE BHOYRA TEHSIL JHABUA (MADHYA PRADESH)**
2. **DINESH S/O ANSINGH KATARA, AGED ABOUT 23 YEARS, OCCUPATION: AGRICULTURIST VILLAGE BHOYRA TEH. JHABUA (MADHYA PRADESH)**
3. **MUKESH S/O ANSINGH KATARA, AGED ABOUT 20 YEARS, OCCUPATION: AGRICULTURIST VILLAGE BHOYRA TEH. JHABUA (MADHYA PRADESH)**
4. **SANJAY MINOR THROUGH NATURAL GUARDIAN MOTHER SMT. HAKU W/O ANSINGH KATARA, AGED ABOUT 38 YEARS, OCCUPATION: AGRICULTURIST VILLAGE BHOYRA TEH. JHABUA (MADHYA PRADESH)**
5. **KANU MINOR THROUGH NATURAL GUARDIAN MOTHER SMT. HAKU W/O ANSINGH KATARA, AGED ABOUT 38 YEARS, OCCUPATION: AGRICULTURIST VILLAGE BHOYRA TEH. JHABUA (MADHYA PRADESH)**
6. **AJAY MINOR THROUGH NATURAL GUARDIAN MOTHER SMT. HAKU W/O ANSINGH KATARA, AGED ABOUT 38 YEARS, OCCUPATION: AGRICULTURIST VILALGE BHOYRA TEH. JHABUA (MADHYA PRADESH)**
7. **LEELA MINOR THROUGH NATURAL GUARDIAN MOTHER SMT. HAKU W/O ANSINGH KATARA, AGED ABOUT 38 YEARS, OCCUPATION: AGRICULTURIST VILLAGEBHOYRA TEH. JHABUA (MADHYA PRADESH)**
8. **KAMLI MINOR THROUGH NATURAL GUARDIAN MOTHER SMT. HAKU W/O ANSINGH KATARA,**

AGED ABOUT 38² YEARS, OCCUPATION:
AGRICULTURIST VILLAGE BHOYRA TEH. JHABUA
(MADHYA PRADESH)

9. HAMJU S/O RANJEE KATARA, AGED ABOUT 70
YEARS, OCCUPATION: AGRICULTURIST VILLAGE
BHOYRA TEH. JHABUA (MADHYA PRADESH)

10.SMT.HUMA W/O HAMJU KATARA AGE 68
YEARS OCCUPATION AGRICULTURE ADDRESS OF
ALL VILLAGE BHOYRA TEHSIL JHABUA DISTRICT
JHABUA

.....APPELLANTS

*(SHRI YASH PAL RATHORE, LEARNED COUNSEL FOR THE
APPELLANTS).*

AND

1. GARVAR SINGH S/O MANJLA BILWAL, AGED
ABOUT 30 YEARS, OCCUPATION: DRIVER R/O
VILLAGE GHATTIYA TEHSIL JHABUA (MADHYA
PRADESH)

2. LOKENDRA S/O SHANTILAL GURJAR, AGED
ABOUT 45 YEARS, OCCUPATION: BUSINESS 16,
CHETANYA MARG JHABUA (MADHYA PRADESH)

3. THE NEW INDIA INSURANCE CO. LTD. CHETANYA
MARG, JHABUA (MADHYA PRADESH)

.....RESPONDENTS

*(SHRI VINDHYAVASHINI PRASAD KHARE, LEARNED COUNSEL FOR THE
RESPONDENT [R-3].*

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

ORDER

This miscellaneous appeal has been preferred by the appellants under section 173(1) of the Motor Vehicles Act against the award dated 02.07.2022 passed in Claim Case No.57/2020 by MACT, Jhabua whereby application filed under section 166 of the Motor Vehicles Act for compensation has been allowed and an award of Rs.10,78,000/- has passed in favour of the appellants

and directed the driver and owner of the offending vehicle to pay the compensation while exonerating the respondent No.3/Insurance Company.

2. Brief facts of the case is that on 13.01.2020 deceased Ansingh was going to his village Bhoira on his motorcycle no.MP-45-MJ-8997 after purchasing vegetables from Jhabua. When he reached near culvert situated between village Naldi and Bhoira he was dashed by vehicle no.MP 41 P 0467 coming from the direction of Pitol and was driven by non applicant no.1 rashly and negligently. Ansingh sustained grievous injuries and he was taken to district hospital Jhabua from where he was carried to Dahod after primary treatment. In Dahod he was first taken to Saifi hospital but for better treatment he was taken to Avdhut hospital Baroda. During treatment he succumbed to injuries and expired on 14.01.2020.

3. Claimants filed this claim petition for compensation against the respondents for a sum of Rs.55 lakhs 86 thousand with interest.

4. Respondents No.1 & 2 were ex-parte before the Tribunal and did not file written statement.

5. On the other hand, respondent No.3 filed written statement and denied all the averments pleaded in the pleadings and submitted that owner and driver of the offending vehicle breached terms and conditions of the insurance policy and vehicle was driven without permit in contravention of the insurance policy so insurance company is not liable to pay compensation.

6. The Tribunal framed issues and taking evidence passed the impugned award in favour of the claimants and exonerated the insurance company because owner and driver drove the vehicle without permit.

7. Being aggrieved by the inadequate compensation, present appeal has been preferred by the appellant and submitted that quantum of compensation

awarded by the Tribunal is on the lower side, hence deserves enhancement.

8. Learned counsel for the appellants submitted that Tribunal has committed error in exonerating insurance company on the ground that offending vehicle was not having valid permit. It is submitted that the aforesaid finding recorded by the Tribunal is contrary to the decision rendered by the Apex Court in the case of **National Insurance Co. Ltd. vs. Challa Bharathamma and others** reported in **AIR 2004 SC 4882** wherein the apex Court has held that in a case where the vehicle is plied without valid permit, the insurance company can be exonerated. However, the principal liability to pay the compensation shall be of the insurance company which can be recovered by the same from the owner and driver of the vehicle. Thus, it is submitted that aforesaid finding be set aside.

9. On the other hand, counsel for the insurance company submitted that Tribunal has rightly exonerated the insurance company and prayed for rejection of the appeal.

10. Heard learned counsel for the parties and perused the record of the Tribunal.

11. Learned counsel for the respondents has filed a citation in the case of **Shravankumar and others vs. Deepakkumar & others** in **MA No.1097/2008 decided on 11.04.2023** passed by coordinate bench of this Court in which it was held that when insurance company has proved that driver of the offending vehicle has no driving license, Tribunal has rightly exonerated the insurance company from the liability to pay compensation. He has further cited **Beli Ram vs. Rajinder Kumar and another - AIR 2020 SC 4453** and **Ram Sujan Tiwar vs. Sita Gupta and others - 2009 ACJ 437** of this Court

and submitted that Tribunal has rightly exonerated insurance company considering the submissions made by both the parties.

12. In the case of Challa Bharathamma (supra) the apex Court has held that in the case where vehicle is plied without permit the insurance company can be exonerated but principal liability to pay compensation shall be on the insurance company, which can be recovered by the same from the owner and driver of the vehicle. In the case of **Gudiya and ors. vs. Govind Sharma and ors. - 2020 ACJ 1569** this court has held that the insurance company is liable to satisfy the award and thereafter seek recovery from the owner of the vehicle if the offending vehicle was not having permit and fitness certificate on the date of accident.

13. From the perusal of the record it cannot be said that there was any error on the part of the claims tribunal in exonerating the insurance company because offending vehicle was being driven without permit but this Court finds that Tribunal has not applied ratio of the decision rendered in the case of Challa Bharathamma (supra) to hold that even if the vehicle was not having any valid permit the primary liability to pay compensation is on the insurance company which can be recovered from the owner and driver of the vehicle.

14. In such circumstances it is directed that findings recorded by the Claims Tribunal that insurance company is exonerated and is not liable to pay compensation is modified to the extent that insurance company is liable to pay the compensation but it shall be at liberty to recover the same from the owner and driver of the offending vehicle.

15. So far as the compensation is concerned, on due consideration this court finds that so far as enhancement of the award is concerned tribunal has clearly erred to hold income of the deceased as Rs.6000/- per month.

According to the guidelines of the Labour Department the minimum wages of an unskilled labour at the time of the accident was Rs.7950/- per month. Therefore, the monthly income of the deceased in this case is fixed at Rs.7950/- per month.

16. Learned counsel for the appellant submitted that tribunal has not given consortium in this case as per the verdict in the case of **United India Insurance Co. Ltd. vs. Satinder kaur @ Satwinder Kaur and others - (2021) 11 Supreme Court Cases 780**. On the other hand, counsel for the insurance company has submitted that only Rs.40,000/- should be given under the head of consortium as per the verdict of the Supreme Court in the case of **Shriram General Insurance Co. Ltd. vs. Bhagat Singh Rawat and others - 2023 ACJ 2330**.

17. After hearing both counsel for the parties, in the considered opinion of this court, appellants are entitled to get compensation under the head of consortium in all heads i.e. spousal consortium, parental consortium and filial consortium. Appellant No.1 is wife of the deceased, appellants No.2 to 8 are his children and appellants No.9 & 10 are his parents, so each appellant is entitled to get consortium @ Rs.44,000/-.

18. In view of the foregoing discussion, the compensation awarded by the Tribunal is modified as under:

HEAD	AMOUNT
Loss of dependency	-Rs.13,35,600/-
(i.e. Rs.7950 x 12=95400 +25% FP i.e. Rs.23,850=119250 - 1/5 personal expenses=95400 x 14 (multiplier)=13,35,600/-)	
Loss of estate	-Rs.16,500/-

Loss of consortium	-Rs.4,40,000/- (Rs.44000 x 10)
Funeral expenses	-Rs.16,500/-

TOTAL Rs.18,08,600/-

19. Thus, the just and proper amount of compensation in the instant case is Rs.18,08,600/- as against the award of the Tribunal of Rs.10,78,000/-. Accordingly, the appellants are entitled to an additional sum of Rs.7,30,600/- over and above the amount which has been awarded by the Tribunal. The principal liability to pay the said compensation amount shall be on the insurance company, however, the insurance company is at liberty to recover the same from the owner and driver of the offending vehicle.

20. In the result, the appeal is allowed to the extent indicated herein above by enhancing the compensation amount by a sum of Rs.7,30,600/-. The enhanced amount shall bear interest at the same rate as awarded by the Tribunal. The other findings recorded by the Tribunal shall remain intact.

21. The appellant has valued the appeal only to the extent of Rs.2 lakhs and paid the Court fee accordingly, however, for the remaining amount, the Court fee 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 claimant shall not be entitled to receive the interest on the enhanced amount of compensation.

22. In the result, the appeal is allowed to the extent indicated herein above.

(HIRDESH)

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