

A.F.R.

Judge

HIGH COURT OF MADHYA PRADESH JABALPUR

Miscellaneous Appeal No.485/2005

Proprietor Eastern Minerals Co. Ltd.

Vs.

Smt. Nisha Tomar and others

Miscellaneous Appeal No.1053/2005

Smt. Nisha Tomar and others

Vs.

Noor Mohammad and others

Present : Hon'ble Shri Justice N.K. Gupta.

Shri Anoop Nair, counsel for Proprietor Eastern Minerals Co. Ltd.

Shri N.K. Salunke, counsel for Smt. Nisha Tomar, Satendra Singh and Dushyant Singh/claimants.

Smt. Asgari Khan, counsel for United India Company Ltd. (Insurer).

O R D E R

(passed on 22nd day of September, 2015)

Both the appeals are related with the common award dated 24.12.2004 passed in claim case no.38/2004 therefore, decided by the present common order.

2. The Miscellaneous Appeal No.485/2005 has been

filed by the appellant/non-applicant no.2 owner of the vehicle against the award dated 24.12.2004 passed by the 3rd Motor Accident Claims Tribunal, Tikamgarh in claim case no.38/2004, whereby the compensation of Rs.1,60,000/- was awarded to the respondent nos.1, 2, 3 & 6 (claimant and non-applicant no.4 before the Tribunal).

3. The Miscellaneous Appeal No.1053/2005 has been filed by the appellants against the same award being claimants for enhancement of the award.

4. Facts of the case in short are that the appellants/claimants of Miscellaneous Appeal No. 1053/2005 have filed an application under Section 166 of the Motor Vehicle Act, 1988 before the Tribunal that on 21.11.1992, the deceased Bhagat Singh was travelling in a dumper bearing registration no. MP 07 A/6967, which was driven by the respondent no.1 Noor Mohammad, whereas the respondent no.2, the Minerals Company was owner of the said vehicle. The deceased Bhagat Singh had boarded the dumper from Prathvipur to reach Niwari Railway Station. On the way, due to rash and negligent driving of the respondent no.1, dumper met with an accident and Bhagat Singh had expired thereby. His income was pleaded and a compensation of Rs.12,50,000/- was demanded by the

claimants. Non-applicant no.4, father of the deceased was added as a formal party.

5. The respondent no.1 remained *ex-parte* before the Tribunal.

6. The respondent no.2 has submitted a written statement that except the respondent no.4 Deshpat Singh, there were no legal representatives or successor of the deceased Bhagat Singh and therefore, the claimants could not get the compensation. It was also pleaded that the deceased Bhagat Singh was working as a cleaner in the institution of the respondent no.2 and therefore, if any liability of payment of compensation arises then, the respondent no.2, the Insurance Company is responsible for that liability. It is also pleaded that an exaggerated sum has been claimed.

7. The respondent no.3, the Insurance Company has filed a written statement with the pleadings that the deceased was travelling in the dumper as a passenger and also the respondent no.1 did not have any valid and effective driving licence to drive the said vehicle, hence the dumper was driven in violation of policy conditions and therefore, the Insurance Company was not liable for payment of any compensation.

8. The Tribunal after considering the pleadings of the parties framed as many as five issues relating to negligence, violation of policy conditions, dependency of the claimants, computation of compensation, entitlement of the respondent no.4 and terms and conditions of the award. After getting the evidence of the parties recorded, the Tribunal has passed the award for a compensation of Rs.1,60,000/- granted to the claimants and the respondent no.4 against the respondent nos.1 & 2, whereas the Insurance Company was found absolved from its liability. It was also directed that 50% of the compensation will be received by the claimants and 50% compensation will be received by the respondent no.4 with the interest of 5.5% per annum. The compensation was payable from the date of filing of the application.

9. I have heard the learned counsel for the parties.

10. In Miscellaneous Appeal No.1053/2005, the appellants/claimants have preferred the said appeal for enhancement of the compensation amount. On the other hand, in Miscellaneous Appeal No.485/2005, the appellant/owner of the vehicle has challenged the award mainly on two counts, firstly, that the Insurance Company was liable to pay the compensation and secondly, the claimants were not entitled to get any compensation because

they were not the legal representatives of the deceased therefore, the award passed by the Tribunal may be set aside. It is also pleaded that the respondent no.6 Deshpat Singh father of the deceased Bhagat Singh of Miscellaneous Appeal No. 485/2005 did not pray for any compensation and therefore, no compensation could be given to the respondent no.6 Deshpat Singh.

11. After considering the submissions made by the learned counsel for the parties, it is apparent that by these two appeals, the point of negligence has not been challenged by any of the appellant. Only three points are to be considered out of several issues framed by the Tribunal at present. Firstly, the amount of compensation, secondly entitlement of the claimants to get the compensation and thirdly the liability of the Insurance Company for payment of compensation.

12. If the computation of compensation is examined then, it would be apparent from the evidence adduced by the claimants before the Tribunal that the deceased Bhagat Singh was the widower, who had no children of his own. Satendra Singh (AW-1) and Deshpat Singh (NA4W1) have stated that the deceased Bhagat Singh was prosecuting his agricultural work. However, Satendra Singh has added that

he was also working as a watchman alongwith his agricultural work. Both of these witnesses have also stated that the deceased Bhagat Singh was employee of the concerned Minerals Company and he was getting a salary. According to Satendra Singh, the deceased Bhagat Singh was getting the salary of Rs.3,000/- per month, whereas Deshpat Singh has accepted that the deceased Bhagat Singh was getting the salary of Rs.700/- per month. If original plea of the claimants is considered then, it would be apparent that it was mentioned that he was prosecuting the business of milk supply and he was cultivating his fields therefore, his income was of Rs.4,000/- per month. It appears that to make the Insurance Company liable, the pleadings of non-applicant no.2 were adopted by the witnesses when they were examined before the Tribunal. No document was shown either by the claimants or the non-applicant no.2 that the deceased Bhagat Singh was working with the non-applicant no.2 or he was a cleaner in that vehicle therefore, these witnesses have told about his salary on their own assumptions. There is a lot of contradictions regarding amount of salary given by these witnesses. Hence, in absence of pleadings, it cannot be accepted that the deceased Bhagat Singh was employee of the non-applicant

no.2 or was prosecuting a job of watchman.

13. So far as the agricultural income is concerned, it is apparent that the land left by the deceased Bhagat Singh has been occupied by the claimants and it was transferred in the name of claimant no.1. The Tribunal has counted a notional income of the deceased on the basis of IInd Schedule of the Motor Vehicle Act and his own expenditure was deducted therefore, the dependency of Rs.10,000/- per annum was found and looking to his age, the multiplier of 15 was granted. There is no reason to interfere in the calculation of income and dependency as done by the Tribunal. It would be apparent that non-applicant no.4 Deshpat Singh was resident of village Nivora, District Jhansi. He did not mention that the deceased was sending a portion of income to him. Since Yogendra brother of the deceased had already expired and the applicants were residing with the deceased Bhagat Singh hence, it appears that he was sharing his entire income with the applicants. However, there is no reason to enhance the compensation as assessed by the Tribunal. The Tribunal did proportionate the compensation between the claimants and non-applicant no.4 in equal portion, whereas it is apparent that the deceased did not continuously send some portion of his

income to the non-applicant no.4 and therefore, that dependency portion should be counted as 75% is to 25% between the claimants and non-applicant no.4.

14. The second point is that as to whether the claimants were not entitled to move the claim application or to get the compensation. In this context, the appellant of Miscellaneous Appeal No.485/2005 in its written statement took a plea that the claimants were not entitled for filing of such an application. Instead of a specific issue on this count, the issue no.4-B was framed by the Tribunal to find out whether the non-applicant no.4 was sole claimant to get the compensation. Learned counsel for the appellant of Eastern company has placed his reliance upon the judgment passed by the Single Bench of this Court in the case of **“M.P. State Road Transport Corporation Vs. Pehlad Bihari and others”** [1986 M.P.L.J. 140] in which, it is held that when father of the deceased was alive, brothers of the deceased were neither dependent nor legal representatives and therefore, they were not found entitled to claim any compensation. The Tribunal gave its stress on computation of compensation amount and the competency of the claimants was not at all considered however, it is a legal question and when it was raised before the Tribunal, it can

again be raised before this Court. According to the Provision of Section 166(1)(c) of the Motor Vehicle Act, it would be apparent that on death of a person, his legal representatives can file a claim application and if, any of the legal representative is not joined as a claimant then, he should be joined as a non-applicant. The definition of the “legal representatives” is given in Section 2 (11) of the C.P.C., which indicates that the legal representative of the person would be a person, who represents the estate of the deceased after his death and therefore, the legal representatives should be decided on the basis of Hindu Succession Act because, the deceased Bhagat Singh was a Hindu.

15. In Section 8 of the Hindu Succession Act, 1956, it is provided that the property of a male Hindu on dying intestate shall devolve firstly, upon the heirs of Class-I given in the Schedule. According to the Section 9 of that Act, the person shown in Class-I shall get an equal share in the property. If, there is no heir of Class-I then, heirs specified in Class-II of the Schedule shall get the property. For ready reference, first four categories of class-II in Schedule are given as under:-

I. Father.

- II. (1) Son's daughter's son,
(2) son's daughter's
daughter, (3) brother (4)
sister.
- III. (1) Daughter's son's son,
(2) daughter's son's daughter,
(3) daughter's daughter's son,
(4) daughter's daughter's
daughter.
- IV. (1) Brother's son, (2)
sister's son, (3) brother's
daughter, (4) sister's
daughter.

The matter is to be considered according to the Provisions of Sections 9 & 11 of the Hindu Succession Act for ready reference. Such Provisions are hereby mentioned as under:-

Section 9. Order of succession among heirs in the Schedule.- Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

Section 11. Distribution of property among heirs in class II of the Schedule.- The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they share equally.

According to the Sections 9 & 11 of that Act, if any heir of Class-I is available then, property shall not devolve on the heirs of Class-II of the Schedule and if, there is no heir available in the Class-I of the Schedule then, property shall be devolved amongst the heirs of category I in the Class-II equally and in absence of any heir in category I, the property shall be devolved amongst heirs of category II in Class-II.

16. In the present case, the deceased Baghat Singh had no wife, children or mother at the time of his death. Therefore, there was no heir available of Bhagat Singh in class-I. In class-II of that Schedule, in the first category, it is mentioned that the father alone would be an appropriate successor and in category II of class-II, it is mentioned that son's daughter's son, son's daughter's daughter, brother and sister of the deceased would be his successor. Hence, when Bhagat Singh has his father alive at the time of his death then, according to the Provisions of Sections 9 & 11 of the Hindu Succession Act, 1956 father of the deceased was the sole successor in the category I, of class-II of the Schedule and therefore, due to his presence, all the heirs of other categories are excluded. If, category of class-II is considered in respect of the claimants then, they do not even fall in the IInd category. They fall within the category IV of class-II in

which brother's son and brother's daughter were also shown being a successor of the deceased. Hence, objection raised by the appellant in Miscellaneous Appeal No. 485/2005 appears to be correct. Since non-applicant no.4 Deshpat Singh was alive, he was the sole successor, who was dependent upon the deceased Bhagat Singh and therefore, the claimants were not competent to file an application under Section 166 of the Motor Vehicle Act because they were not the successors of the deceased Bhagat Singh when non-applicant no.4 was alive and hence, they were not entitled to get any compensation after the death of the deceased Bhagat Singh.

17. Learned counsel for the appellant of Miscellaneous Appeal No.485/2005 has submitted that non-applicant no.4 did not claim any compensation. On the contrary, he was made as a party in the case as non-applicant and in absence of his claim, he was not entitled to get the compensation. However, in the light of Provision of Section 166 (1)(c) of the Motor Vehicle Act, the claim application may be filed by any of the legal representative or all of them and according to the proviso of Hindu Succession Act, the legal representatives may be joined in the application as non-applicant so that in future, no subsequent claim application may be filed. There

is no provision of limitation in the Motor Vehicle Act for filing of application under Section 166 of the Motor Vehicle Act therefore, if it is decided that the non-applicant no.4 is not entitled to get any compensation then, it is for the non-applicant no.4 to file a fresh claim application and it will cause the multiplicity of the proceeding. When the legal representative of the deceased has been added as a party in the case and if, it is found that he was entitled to get the compensation then, it is not required in the light of Provision of Section 166 (1)(c) of the Motor Vehicle Act to pray for his portion of compensation. Under these circumstances, such plea cannot be accepted at this stage.

18. As discussed above, the claimants are not entitled to get any compensation for death of the deceased Bhagat Singh and the non-applicant no.4 is entitled for 25% of the compensation. The Tribunal has assessed the total compensation of Rs.1,60,000/- and therefore, a sum of Rs.40,000/- is to be provided to the non-applicant no.4. It is also clear from the order dated 13.7.2004 passed by the Tribunal under Section 140 of the Motor Vehicle Act that the compensation of Rs.50,000/- was granted to the claimants and non-applicant no.4 jointly and therefore, such compensation cannot be reduced to the minimum limit,

which is fixed for no fault liability.

19. Third point in the case is that, as to whether the Insurance Company was liable for payment of compensation. It was tried by the appellant of Miscellaneous Appeal No.485/2005 to establish that the deceased was cleaner on the said dumper, however such plea was contrary to the pleadings as well as facts and circumstances. The claimants have pleaded that the deceased Bhagat Singh boarded on the dumper at Prathvipur to get down at Niwari railway station. If, he was a cleaner on the said dumper then, he was not required to board that dumper at Prathvipur. He must be available with the dumper from the very beginning when, the boulders were loaded in the dumper. After considering the plea taken by the appellant in Miscellaneous Appeal No.485/2005, Satendra Singh (AW-1) as well as Deshpat Singh (NA4W-1) have changed their evidence in contrary to their pleadings. If pleadings of the appellant of Miscellaneous Appeal No.485/2005 is examined then, it was mentioned that the deceased Bhagat Singh was working as a cleaner on the dumper bearing registration no. MP 07 A/6967, but the witness Satendra Singh could not get an appropriate hint on that defence. In para 1 of his statement, he has stated that at the time of incident, the deceased

Bhagat Singh was travelling in the dumper due to some work of the company. It was accepted by him in cross-examination that he was engaged for loading and unloading of boulders from the dumper and he was going with the dumper for unloading purposes.

20. If the deceased Bhagat Singh was appointed as a cleaner on a particular dumper then, he was not required to look after the loading or unloading of various dumpers for the eastern company. Deshpeth Singh, who was resident of village Nivora, District Jhansi (U.P.) did not know much about the job of the deceased Bhagat Singh and therefore, it was the duty of the non-applicant no.2 to submit the record relating to employment of the deceased Bhagat Singh and to produce the same before the Tribunal at the time of evidence, but no evidence has been advanced from the side of non-applicant no.2 and the appellant of Miscellaneous Appeal No.485/2005. Hence, it was not proved that the deceased Bhagat Singh was a servant in the company of non-applicant no.2 or he was travelling in the dumper in prosecution of his job. Hence, the Tribunal has rightly found that he was a passenger in a goods vehicle and therefore, the dumper was driven by the non-applicant no.1 in violation of policy conditions. Hence, the Tribunal has rightly found that

the Insurance Company was absolved from its liability to pay the compensation.

21. On the basis of aforesaid discussion, it is found that the claimants/appellants of Miscellaneous Appeal No.1053/2005 were not legal representatives of the deceased Bhagat Singh and therefore, they were not entitled to get any compensation. After computing the compensation, it is found that the Tribunal has already granted an appropriate compensation and therefore, no enhancement is permitted. Hence, Miscellaneous Appeal No.1053/2005 filed by the appellants/claimants cannot be accepted. Under these circumstances, the Miscellaneous Appeal No.1053/2005 is hereby dismissed. The parties shall bear their own cost in that appeal. The appellant of Miscellaneous Appeal No.485/2005 could not prove that the Insurance Company was liable to pay the compensation. However, it is proved that the claimants were not legal representatives of the deceased Bhagat Singh and therefore, they were not entitled to get the compensation but non-applicant no.4 was entitled to get the compensation of Rs.50,000/- only and he alongwith the claimants have already received a sum of Rs.50,000/- as compensation of no fault liability. Hence, the Miscellaneous Appeal No.485/2005 is hereby partly allowed.

The portion of award relating to payment of compensation to Smt. Nisha Tomar, Satendra Singh and Dushyant Singh is hereby set aside, whereas on the basis of aforesaid discussion the non-applicant no.4 Deshpat Singh would be entitled to get a sum of Rs.50,000/-, which is already received by him jointly with the claimants as an award under Section 140 of the Motor Vehicle Act. Hence, no further payment is required to be done to the non-applicant no.4 and therefore, the appellant of M.A. No.485/2005 shall be entitled to get the remaining amount back, if it was deposited before the Tribunal in compliance of the award for its payment to the claimants and non-applicant no.4. No order as to costs.

22. A copy of the order be sent to the claims Tribunal alongwith its record for information and compliance.

(N.K. GUPTA)
JUDGE
22.09.2015