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

**BEFORE
HON'BLE SHRI JUSTICE HIRDESH
ON THE 28th OF NOVEMBER, 2023**

MISC. APPEAL No. 1532 of 2008

BETWEEN:-

**YADORAO S/O SHESRAO GHAGHRE, AGED ABOUT 32
YEARS, R/O NEAR ASHOK KAVADKAR HOUSE,
KAMATH, TEH MULTAI, DISTT BETUL (MADHYA
PRADESH)**

.....APPELLANT

(BY SHRI VIKASH JYOTSHI - ADVOCATE)

AND

- 1. ASHOK S/O RAM KISHAN SHIVHARE, AGED
ABOUT 36 YEARS, BEHIND DONGRE DOCTOR
HOUSE, INDIRA GANDHI WARD, MULTAI BETUL
(MADHYA PRADESH)**
- 2. THE NEW INDIA INSURANCE COMPANY LTD.
GURUDWARA ROAD, BETULGANJ, BETUL
(MADHYA PRADESH)**

.....RESPONDENTS

(BY NONE)

MISC. APPEAL No. 2735 of 2008

BETWEEN:-

**THE NEW INDIA ASSURANCES CO. LTD. GURUDW4ARA
ROAD, BETULGANJ, BETUL THROUGH DIVISIONAL
MANAGER, NEW IDNIA ASSURANCES CO.LTD.,
DIVISIONAL OFFICE, 290, NAPIER TOWN, JABALPUR
(MADHYA PRADESH)**

.....APPELLANT

(BY SHRI V.K.PANDEY - ADVOCATE)

AND

1. **YADORAO S/O SHRI SHESHRAO GHAGHRE, AGED ABOUT 32 YEARS, R/O NEAR H.NO. ASHOK KAWARKAR, TAHSIL MULTAI, DISTRICT BETUL (MADHYA PRADESH)**
2. **ASHOK S/O RAMKISHAN SHIVHARE, AGED ABOUT 36 YEARS, R/O BEHIND THE HOUSE OF DR. DONGRE, INDIRA GANDHI WARD, MULTAI, THASIL BULTAI, DISTRICT BETUL (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI VIKASH JYOTSHI - ADVOCATE)

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These appeal coming on for hearing this day, the court passed the following:

ORDER

Since these appeals filed under section 173(1) of Motor Vehicles Act, 1988 arise out of same award dated 31.1.2008 passed by the Member Motor Accidents Claims Tribunal, Multai, District Betul in Claim Case No.35/2006 [Yadorao Vs. Ashok and another] whereby Tribunal awarded compensation of Rs.59,500/- alongwith interest @ 6% p.a. from the date of filing of claim petition till realisation, they were heard analogously and are being decided by this common order.

2. Misc.Appeal 1532/2008 has been preferred by claimant-Yadorao praying for enhancement of amount of compensation awarded by the Tribunal, whereas Misc.Appeal No.2735/2008 has been filed by the New India Assurance Company Limited (hereinafter referred to as the "Insurance Company") praying for setting aside the impugned award passed by the Tribunal.

3. Brief facts of the case are that Truck No.MP-48/H-0180 is owned by Ashok s/o Ramkishan (hereinafter referred to as the "owner"). Claimant-Yadorao was employed as a Driver in the said aforesaid Truck. On 23.12.2003, the Truck was proceeding towards Pardurna loaded with groundnut bags.

When the truck reached the place of unloading then at about 08.30 pm the claimant stepped on the loaded truck alongwith others and he was throwing the groundnut bags. Suddenly, the owner started the truck and consequently the driver fell down from it and sustained injuries. The claimant was admitted to Upadhyaya's Hospital at about 8.45 PM and, thereafter, he was treated at Abhay Jain Nursing Home, Pandurna w.e.f. 24.12.2003. The claimant was also given treatment at Nagpur where his hip and thigh bone operation was also performed.

4. After aforesaid accident the claimant filed claim petition under section 166 of the Motor Vehicles Act before the Tribunal by impleading owner and insurer of the truck. The claimant pleaded that since accident was caused by the negligence of driving of truck by the owner of vehicle, therefore, he is entitled for compensation to the tune of Rs.4,24,000/- alongwith interest.

5. After service of notice the owner of the truck neither filed any reply nor contested the case, hence the Tribunal proceeded ex parte against him.

6. The Insurance Company filed its reply denying the averments made in the claim petition and, *inter alia*, pleaded that no such accident took place involving the vehicle in question. At the relevant time the claimant after consuming liquor in intoxicated condition was sitting over the gunny bags of groundnuts at godown. Hence, the claimant is not entitled for compensation. The accident is not connected with the vehicle, therefore, prayed for dismissal of the claim petition.

7. On the basis of aforesaid pleadings of parties, the Tribunal framed issues, recorded evidence and after hearing the arguments advanced by parties before it, held that the accident took place due to negligent driving by owner of

the vehicle, in which, the claimant sustained 20% permanent disability and taking into consideration facts of the case awarded total compensation of Rs.59,500/-. The Tribunal also directed the Insurance Company to make payment of compensation on the principles of pay and recover in view of non-holding of driving licence by the driver of the vehicle.

8. Being aggrieved by the aforesaid impugned award the Insurance Company has preferred an appeal (M.A.No.2735/2008) on the grounds that Tribunal committed error in not going into the facts of case wherefrom it is established that after accident, no FIR was lodged at any Police Station; and the accident had not taken place by vehicle (MP-48/H-0180) but took place in godown when after consuming liquor the claimant in intoxicated condition stepped over the gunny bags and fell down from there. The Tribunal further erred in believing the statement of claimant without considering that whether FIR was lodged soon after the accident to corroborate the statement of claimant. He prayed that findings recorded by the Tribunal are bad in law and hence, the impugned award deserves to be set aside as against the Insurance Company.

9. Challenging the award passed by the Tribunal claimant filed an appeal (M.A.No.2735/2008) praying enhancement on the ground that amount of compensation of Rs.59,500/- is on lower side in view of 20% of permanent disability. The claimant was 32 years of age at the time of accident and Tribunal has not properly assessed the compensation on account of loss of income.

10. Learned counsel for the parties have advanced arguments in support their case and opposed the appeals of each other.

11. Heard the learned counsel for the parties and perused the record

of the Tribunal. The claimant-Yadorao (PW.1) stated in his examination-in-chief that on 23.12.2003 he was working as a driver in the truck owned by respondent-Ashok. On the said date at 08.30 PM he stepped up over the truck alongwith others for arranging groundnut bags and suddenly at that time respondent-owner (Ashok) started truck as a result of which claimant fell down from the vehicle in question bearing No.MP-48/H-0180 and sustained injuries. The other witnesses, namely, Satish (AW.2) and Pandari (AW.3) also supported the statement of claimant-Yadorao (AW.1). The doctor-AW.4 (Dr.C.D.Upadhyay) stated in his examination-in-chief that he had treated claimant (AW.1) on 23.12.2003. The person accompanying with injured informed him that claimant fell down from the truck.

12. Learned counsel for the Insurance Company submitted that on the relevant date the claimant was intoxicated. But, the claimant (AW.1) has denied that he had drunk on the date of accident. He stated that he stepped up on the loaded truck and fell down.

13. It is true that FIR was not registered in any Police Station and claimant accepted that he had not lodged any FIR against the respondent-owner (Ashok). Satish (AW.2) in paragraph 6 has stated that he will look-after everything, but he has not given any money for treatment and, therefore, they filed claim petition.

14. In *Brestu Ram Vs. Anant Ram*, 1990 ACJ 333 it was held that even if no report to the Police was made, no adverse inference can be drawn. The Tribunal has drawn certain inferences as if it was trying a criminal case. Such course is not available to the Tribunal.

15. In *Yashwant Singh Baghel and another Vs. Shiv Prasad Vishwakarma and others*, (2005) 4 MPLJ 531 it has been held that provisions

regarding claim under the Motor Vehicles Act are enacted by keeping in view the social welfare of the justice to the community and whenever the incident of vehicular accident takes place and in pursuance of it any person like claimant got injured and circumstances are proved then claimant is always entitled for compensation irrespective whether the Police has registered the offence regarding the incident or not, because no claim case can be left over on the mercy of Police. In this case it was also held that Tribunal can consider even in the absence of criminal case.

16. In *R.P.Gautam Vs. R.N.M.Singh and another*, AIR 2008 MP 68 the Coordinate Bench held that registration of offence and Police investigation is not a condition precedent for awarding the claim. The claim petition cannot be dismissed simply because FIR is not lodged. Even after registration of offence, the papers of such investigation cannot be treated as substantial piece of evidence for claim case. In paragraph 13 it has been held as under:-

"13. It is settled proposition of law that every civil case is decided on it's own facts and evidence without influencing the papers and decision of the criminal case. In such premises registration of the offence and police investigation is not a condition precedent for awarding the claim. Besides this due to on reason or another if the first information report of vehicular accident is not lodged with the police or the same was given at later stage and police neither registred the offence nor investigated the same, it does ot mean that righ of the victim for compensation who suffered the vehicular accident is washed away. The victim remains entitled for compensation on proving the facts and circumstances regarding such accident and factum of injuries sustained by him, he could not be deprived from such right, provided by the Motor Vehicles Act, although such compensation

may be awarded only on proving all relevant facts with all probabilities."

17. So from above discussion the point raised by the Insurance Company that where there is no FIR or no registration of case the claim case cannot be entertained, is not sustainable in the eye of law. Accordingly, the appeal (**M.A.No.2735/2008**) filed by the Insurance Company being devoid of substance stands **dismissed**.

18. As far as appeal filed by claimant is concerned, from perusal of record of the Tribunal it appears that compensation assessed by it is on lower side. In paragraph 7 it has been found by Tribunal that claimant suffered 20% permanent disability. Under said head Tribunal granted only Rs.20,000/-, which is not just and proper. The claimant was young person aged about 35 years. The accident occurred in the year 2003. Hence, considering the over all facts and circumstances of the case, age of the claimant at the time of accident, permanent disability and entitlement of amount under other heads, this is a fit case where amount of compensation can further be enhanced by a sum of **Rs.1,00,000/-** [Rupees One lac only], in addition to the amount already granted by the Tribunal. This enhanced amount shall be paid to the claimant alongwith interest at the rate awarded by the Tribunal from the date of claim petition till realisation. The enhanced amount shall be paid within two months from today. Hence, appeal preferred by claimant is partly allowed.

19. In the result, appeal filed by Insurance Company (**M.A.No.2735/2008**) stands **dismissed** and the appeal of claimant being **M.A.No.1532/2008** is **partly allowed**.

RM

