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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE HIRDESH
ON THE 3rd OF NOVEMBER, 2023
MISC. APPEAL No. 3417 of 2009**

BETWEEN:-

1. **LEELA W/O LATE SRIRAM RABDE, AGED ABOUT 39 YEARS, VILL. CHICHANDA TEH. MULTAI, BETUL (MADHYA PRADESH)**
2. **MUKESH S/O LATE SRIRAM RABDE, AGED ABOUT 19 YEARS, CHICHANDA, TAH. MULTAI, DISTT. BETUL (MADHYA PRADESH)**
3. **HEMLATA D/O LATE SRIRAM RABDE, AGED ABOUT 21 YEARS, CHICHANDA, TAH. MULTAI, DISTT. BETUL (MADHYA PRADESH)**
4. **RAMKALI D/O KISHANLAL, AGED ABOUT 30 YEARS, CHICHANDA, TAH. MULTAI, DISTT. BETUL (MADHYA PRADESH)**
5. **KISHANLAL S/O MOUJILAL, AGED ABOUT 78 YEARS, CHICHADA, TAH. MULTAI, DISTT. BETUL (MADHYA PRADESH)**
6. **NANTAH BAI W/O KISHAN LAL, AGED ABOUT 70 YEARS, CHICHADA, MULTAI, BETUL (MADHYA PRADESH)**

.....APPELLANTS

(BY SHRI VIKASH JYOTISHI - ADVOCATE)

AND

1. **KUNWAR LAL S/O AMARLAL, AGED ABOUT 34 YEARS, CHICHANDA, TEH. MULTAI, DISTT. BETUL (MADHYA PRADESH)**
2. **SMT. PHOOLMAT W/O UMALYA KALBHORE, AGED ABOUT 54 YEARS, CHICHANDA, TAH. MULTAI, DISTT. BETUL (MADHYA PRADESH)**
3. **BRANCH MANAGER THE NEW INDIA ASSURANCE**

.....RESPONDENTS

(BY SHRI RAKESH JAIN - ADVOCATE FOR RESPONDENT NO.3)

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

ORDER

This appeal is filed by the claimant under Section 173 of the Motor Vehicles Act, 1988 arising out of the award dated 30.07.2009 passed by the Additional MACT, Multai Distt. Betul in claim case No. 12/09 on the account of inadequacy of compensation seeking enhancement of the same.

2. Brief facts of the case are that on 04.01.2007 the tractor of Kunwar Lal was going from Chinchada to Boregaon for carrying bamboos to be used for fencing of orange orchard. The tractor was being driven by Kunwar Lal (respondent No.1). Vinodi, Jivatya and Bhopat were sitting on this tractor. At about 11:00 pm, due to rash and negligent driving by respondent No.1 (Kunwar Lal) accident of the vehicle took place, in which, husband of appellant Leela bai namely Sriram Rabde died on the spot.

3. Date of accident and negligence is not in dispute. However, the finding recorded by the Tribunal in this regard is not in question. As per finding of the Tribunal in the case of death of Vinodi the amount of compensation has been allowed excepting his earning Rs.3,000/- per month and the total compensation awarded by the Tribunal is Rs.2,71,000/- with interest.

4. Learned counsel for the appellants contended that compensation as awarded by the Tribunal except the earning of Rs.3,000/- per month is inadequate. Looking to the fact that deceased was skilled labour and an

agriculturist having garden of orange as also doing dairy business. So the Claims Tribunal erred in awarding compensation in lower side. He further submitted that Tribunal has not awarded proper compensation towards mental agony, love and affection and for future prospect. Therefore, he prays for reasonable amount of compensation may be awarded.

5. On the other hand, learned counsel for the Insurance Company contended that Claims Tribunal has rightly awarded amount of compensation and argued in support of amount of compensation.

6. Insurance company has also filed cross objection and submitted that on the date of accident deceased was travelling on the said tractor trolley. Deceased was travelling in tractor as a passenger and further submitted that offending vehicle was insured only for the agricultural purpose and premium for risk of driver was only paid. Deceased persons, who were travelling as gratuitous passenger or labour, were not covered under the policy. Tractor trolley was not a goods vehicle. Hence, claim petition against respondent No.3 may be dismissed.

7. Heard counsel for the parties and perused the record.

8. It was the case of the appellant that deceased have agricultural land and a dairy business. Claimant filed document in respect of agricultural land but not filed document of income in respect of agriculture. For the sake of arguments, it may be presumed for a moment that deceased have an agricultural land, but it is clear that agricultural land is still available with the appellants and their income has not been adversely affected. So, far as the question of income from the dairy business is concerned, claimant has not produced any single document that deceased was earning from the dairy business.

9. So, under these circumstances, the Tribunal has assessed the income

at Rs.3,000/- per month. The accident took place on 04.01.2007. The assessment of income by the Claims Tribunal does not appear to be erroneous. Accordingly, it is affirmed. Appellants would be entitled for the following compensation-

Sr. No.	Head	Compensation
i)	Monthly income	Rs. 3,000/-
ii)	Future Prospects @ 10%	Rs. 300/-
iii)	Monthly Income Future Prospects	Rs. 3,300/-
iv)	Personal expenses @1/4	Rs. 825/-
v)	Loss of Monthly Income	Rs. 2475/-
vi)	Yearly Income x 12	Rs. 29,700/-
vii)	Multiplier @ 11 x 29,700	Rs.3,26,700/-
viii)	Funeral Expenses	Rs.15,000/-
ix)	Lost of Estate	Rs. 15,000/-
x)	Consortium 40,000 x 6	Rs. 2,40,000/-
xi)	Total Compensation	Rs. 5,96,700/-
xii)	Awarded by Claims Tribunal	Rs. 2,71,000/-
xiii)	Enhanced By	Rs. 3,25,700/-

10. Accordingly, the compensation amount awarded by the Claims Tribunal is liable to be enhanced by a further sum of Rs. 3,25,700/-.

11. Cross objection raised by the Insurance Company is that deceased was travelling as gratuitous passenger and Insurance company gas taken premium for the risk of driver only.

12. On the other hand, Claimant's counsel submitted that deceased were 3rd party.

13. On the perusal of the record of Tribunal it is submitted that at the time of accident deceased was travelling in trolley. According to the Insurance policy (Ex-D/1), it is clear that Insurance Company took premium for 3rd party @ Rs.785/- compulsory PA to owner-cum driver Rs. 100/- WC to employee Rs.25/- and witness of the Insurance Company has stated that there is no premium taken by the Insurance Company for passenger or labour or owner of the goods.

14. Coordinate Bench of this Court in **National Insurance Co. Ltd. Vs. Bakaridan & Ors., 2017 ACJ 2524** held that if death of the passenger travelling on the mudguard of tractor met with accident due to its rash and negligent driving, the Insurance Company cannot be fastened liability as sitting capacity of tractor is only one person i.e. driver and no premium is paid for carrying passenger by the side of driver and thus only owner and Insurance Company will be responsible for the payment of compensation.

15. In the present case, it is undisputed that deceased was travelling in trolley as a passenger. Tribunal held that deceased was 3rd party but such finding of the Tribunal that deceased was 3rd party, in the present case, is not correct. That apart he was sitting in the trolley and travelling as a passenger or labour and there is no premium taken by the Insurance company for labour or passenger travelling in the trolley.

16. The Apex Court in **New India Assurance Co. Ltd. Vs. Asha Rani & Others, AIR 2003 SC 607** held that since passenger is not allowed on the tractor, thus Insurance Company cannot be fastened with the liability and claimants will be entitled to recover the awarded compensation only from the owner and driver of the tractor, who shall be jointly and severally liable to pay the compensation.

17. In the present case, it is undisputed that deceased was travelling in trolley and Insurance Company not taking premium of any passenger or labour travelling in the tractor or trolley so Insurance Company is not liable to pay compensation and Insurance Company is totally exonerated and claimants are entitled to recover awarded compensation only from tractor owner and driver of the tractor and trolley who shall be severally liable to pay compensation.

18. Accordingly, this appeal in above terms is hereby **disposed of**.

Akm



**(HIRDESH)
JUDGE**