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MA-2561-2010

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE HIMANSHU JOSHI

ON THE 15<sup>th</sup> OF OCTOBER, 2025MISC. APPEAL No. 2561 of 2010*SAHABLAL AND OTHERS**Versus**SHEKH JIBRAEEL AND OTHERS*

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Appearance:

*Shri Kapil Patwardhan - Advocate for the appellants.**Shri Diwakar Nath Shukla - Advocate for respondent no.3.*  
.....WITHMISC. APPEAL No. 3489 of 2010*SHIEKH JIBRAYEEL AND OTHERS**Versus**SAHABLAL AND OTHERS*

.....  
Appearance:

*Shri Aryan Shukla - Advocate for appellants.**Shri Diwakar Nath Shukla - Advocate for respondent no.3.*  
.....

ORDER

These appeals relate to the similar facts, therefore, are being decided analogously.

2. Misc. Appeal No.2561/2010 under Section 173 of Motor Vehicles Act, 1988 has been filed by the appellants/claimants being aggrieved with award dated 31.03.2010 passed by Additional Member Motor Accident Claims Tribunal, Chhindwara in M.V.C. No.132/2008, whereby the learned Tribunal partly allowed the claim petition and awarded a compensation to



the tune of Rs.63,500/- alongwith interest @ 6% p.a. to the claimants (father and mother) on account of death of their son- Sonu, aged about 1 month, who died in a road accident. The amount was to be paid by non-applicants no.1 and 2/owner and driver jointly and severally. In this matter, insurance company has been exonerated on two grounds, firstly that the offending vehicle involved in the accident was being driven by driver holding LMV licence without there being any endorsement to drive transport vehicle and secondly that there is breach of terms and conditions of the permit issued by the transport authority. M.A. No.3489/2010 has been filed by the non-applicants no.1 and 2/owner and driver of offending vehicle challenging the same award for exoneration from liability to pay compensation.

3. Facts of the case in short are that on 09.04.2005, due to rash and negligent driving of non-applicant No.1 while driving the offending vehicle, i.e. Mini Bus bearing Registration No.MP-28-A-0135 owned by non-applicant no.2 the offending vehicle turned turtle and accident occurred. As a result, several persons sitting in the minibus suffered grievous injuries and son of appellants/claimants died.

4. Learned counsel for the appellants/claimants submits that the learned Tribunal erred in awarding the compensation to the claimants/appellants. The learned Tribunal has wrongly held that the income of deceased-child cannot be assessed, whereas it has been settled by the Hon'ble Apex Court in the case of **Kishan Gopal and other vs. Lala and other** reported in (2014) 1 SCC 244 that in the case of child death, the income of child can be assessed upto Rs.30,000/- per annum. The learned Tribunal has also awarded meager



amount under the other conventional heads. Counsel for appellants relying upon the citation passed by Hon'ble Supreme Court in the case of **Mukund Dewangan vs. Oriental Insurance Co. Limited AIR Online 2016 SC 330** stated that a 'transport vehicle' which gross vehicle weight (or unladen weight) does not exceed 7,500 kg would fall within the definition of 'light motor vehicle' for licence-purposes and thus, an LMV licence suffices for such vehicle; no separate transport-vehicle licence is required for that weight class.

5. On the other hand, learned counsel for respondent/insurance company opposed the submission made by learned counsel for appellants as well as of owner and driver while submitting that learned Tribunal has rightly exonerated the insurance from its liability to pay the compensation at the time of accident the offending vehicle was carrying passengers more than capacity and the driver of said vehicle did not possess the valid license to drive the transport vehicle. Since, the vehicle was plying under the breach of insurance policy and therefore, liability to pay compensation is on the owner.

6. Counsel for driver and owner submitted that they have separately filed an appeal bearing M.A. No.3489/2010 challenging the impugned award in respect of their liability to pay compensation. He further submitted that the Hon'ble Apex Court has consistently laid down this principle in a catena of judgments particularly, in the case of **M/S Bajaj Alliance General Insurance Co. Ltd. vs. Rambha Devi and others, {Civil Appeal No.841/2018}** whereby Hon'ble Apex has held that a licence to drive a Light Motor Vehicle (LMV)



includes a licence to drive a transport vehicle, provided the vehicle falls within the weight limit prescribed for an LMV. A transport vehicle, which weight does not exceed 7500 kilograms, qualifies as a Light Motor Vehicle (LMV). He further submitted that the learned Tribunal erred in not appreciating the fact that respondent no.1/driver held a valid driving licence and the vehicle falls within the weight limit. It was also contended that the Tribunal failed to consider the statements of the driver and owner, as well as other documents produced in their support, which demonstrate that the accident did not occur due to any negligence on the part of respondent No.1. On the contrary, the evidence discloses that respondent No.1 was driving cautiously and on his correct side of the road. It was, therefore, submitted that in the interest of justice, respondents No.1 and 2 (owner and driver) ought to be exonerated from liability, and the impugned award deserves to be set aside.

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

8. In respect of child death case in a motor accident, law has already been settled by the Hon'ble Supreme Court in various pronouncement viz. **Kishan Gopal (supra)** and **Thangavel & Others Vs. The Managing Director, Tamil Nadu State Transport Corporation & Others** passed in **Civil Appeal No.3395 of 2024**, holding that the income of deceased child can be considered as Rs.30,000/- per annum and there should be no deduction under the head of personal expenses. Therefore, after applying the law laid-down by Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi** reported in (2017) 4 ACJ 270 and **Sarla Verma & Others Vs.**



**Delhi Transport Corporation & Others reported in (2009) 6 SCC 121**, the claimant is entitled to get the compensation as under:-

| Heads                 | Amount of Compensation (in Rupees)                                                             |
|-----------------------|------------------------------------------------------------------------------------------------|
| Loss of<br>Dependency | (30,000*15 = 4,50,000/- + 40% Future<br>Prospects = 1,80,000/- = 6,30,000/-)<br>Rs. 6,30,000/- |
| Loss of<br>Consortium | Rs. 40,000/-                                                                                   |
| Funeral<br>Expenses   | Rs. 15,000/-                                                                                   |
| Loss of<br>Estate     | Rs.15,000/-                                                                                    |
| <b>Total</b>          | <b>Rs. 7,00,000/-</b>                                                                          |

Therefore, the appellants/claimants of M.A. No.2561/2010 are entitled to get the compensation amount of Rs.7,00,000/- in place of Rs.63,500/-. The enhanced amount i.e. Rs.6,36,500/- shall also carry the same interest as has been awarded by the learned Tribunal.

9. On the issue of exoneration of the Insurance Company, this Court is of the considered view that the learned Tribunal erred in exonerating the Insurance Company on the grounds of invalid driving licence going to the root of breach of policy conditions. In this regard, the Hon'ble Apex Court in the case of **Mukund Dewangan (supra)**, it has been held that person holding a driving licence for a “light motor vehicle” (LMV) under Motor Vehicles Act, 1988 can drive a “transport vehicle of light motor vehicle class” whose gross/unladen weight is not more than 7,500kg without a separate licence or separate endorsement for the transport-vehicle class.

10. On perusal of record, this Court finds that there is no dispute that the driver of offending vehicle was having valid LMV licence and the insurance company has failed to prove that the offending vehicle does not fall within



the weight limit i.e. 7,500 kg.

11. Further, the learned counsel for the insurance company also raised the ground of over crowded in the vehicle and in the said context the record indicates that the insurance policy covers upto 36 passengers and the insurance company has failed to point out particular number of over loaded passengers in the vehicle, rather, statements of witnesses indicates that the 15 to 20 passengers were traveling. Therefore, this Court deems fit to set aside the exoneration of insurance company to pay the compensation to the claimants and accordingly it is hereby set aside. The insurance company is liable to indemnify the claimants.

12. The Respondent/Insurance Company shall deposit with the Tribunal the total award amount in favour of the claimants within three months from the date of this order.

13. **The appeals are accordingly disposed of.** In view of the nature of the case, the parties shall bear their own costs. The impugned award is modified to the extent indicated hereinabove, subject to the following conditions:—

i. The respondent no.3 is directed to deposit the compensation amount within 60 days from the date of this order, failing which the execution can be initiated against it.

ii. The claimants are directed to pay the requisite Court-fee, if required in the present case. Office is also directed to verify the fact as to whether any Court-fee is payable in the case; if yes, then the same may be intimated to the counsel for the appellants.



iii. On such deposit, the claimants would be permitted to withdraw the amount with accrued interest, by filing a proper application before the learned Tribunal.

iv. The record be sent back to learned Tribunal within three weeks from this day.

v. As a sequel, interlocutory applications pending consideration, if any, shall stand closed.

(HIMANSHU JOSHI)  
JUDGE