

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

BEFORE

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

MISC. APPEAL No. 1187 of 2011

BETWEEN:-

**1. IFFCO TOKIYO GENERAL INSURANCE CO.
LTD. THROUGH SHAKHA PRABANDHAK, OFFICE
– 84, NARMADA ROAD, JABALPUR, TEHSIL &
DISTRICT – JABALPUR**

.....APPELLANT

***(SMT. AMRIT KAUR RUPRAH – ADVOCATE FOR THE APPELLANT/NON-
APPLICANT NO.3)***

AND

**1. RAM SINGH KEER, AGE ABOUT 35 YEARS, S/O
BALARAM KEER**

**2. SMT. SUKHWATI BAI, AGED ABOUT 30 YEARS,
W/O RAMSINGH KEER BOTH ARE R/O GRAM
NIMSADIYA, TEHSIL AND JILA HOSHANGABAD,
M.P.**

.....RESPONDENTS/CLAIMANTS

**3. BHAGWANDAS KORI, AGED ABOUT 26 YEARS,
S/O GYARSI KORI, NIWASI HOUSE NO.54, PATEL
WARD, TEHSIL GADARWARA, JILA
NARSINGHPUR**

.....NON APPLICANT NO.1

**4. KHOBSINGH, AGED ABOUT 31 YEARS, S/O
KOMAL SINGH, R/O NIRANJAN WARD,
GADARWARA, TEHSIL GADARWARA, JILA
NARSINGHPUR**

.....NON APPLICANT NO.2

.....RESPONDENTS

(SHRI PRIYANK KHANDELWAL – ADVOCATE FOR THE RESPONDENT NOS.1 AND 2 AND SHRI MOHAN SINGH – ADVOCATE FOR THE RESPONDENT NOS.3 AND 4)

Reserved on : 20/06/2023

Passed on : 13/09/2023

*This Miscellaneous Appeal having been heard and reserved for order, coming on for pronouncement on this day, **Justice Amar Nath (Kesharwani)** passed the following:*

ORDER

Appellant-Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 being aggrieved by the award dated 22.12.2010 passed by learned Motor Accidents Claims Tribunal, Hoshangabad (M.P.) in MACC No.16/2010, whereby learned Tribunal has awarded Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand only) with interest of 6% per annum from the date of filing of claim petition and thereafter, if the payment is not made within two months then the insurance company shall be liable to pay interest @7% per annum.

2. Brief facts of the case are that the son of respondent Nos.1 and 2 namely Raja aged about 8 years had died in an accident dated 28.09.2009 by a vehicle (Jeep) bearing Registration No.MP-49-0438. The offending vehicle was being driven in rash and negligent manner by respondent No.4 as a result of which Raja was died on the spot. Report of the incident was lodged at Police Station – Hoshangabad. After investigation, challan was filed against the respondent No.4 under Section 304-A of the Indian Penal Code and a criminal case was registered before the Court of Chief Judicial Magistrate, Hoshangabad

(M.P.) having jurisdiction of the case. Being legal representatives of deceased Raja, respondent Nos.1 and 2 have filed the claim petition under Section 166 read with Section 140 of the Motor Vehicle Act before the Motor Accident Claims Tribunal, Hoshangabad claiming Rs.16,50,000/- (Rupees Sixteen Lakh Fifty Thousand) as a compensation where it was alleged that at the time of accident the deceased was a healthy and intelligent child who after his education could have helped in upbringing the financial condition of his family in the future, hence, prayed for award as claimed in the petition.

3. Respondent Nos.3 and 4 have appeared before the Claim Tribunal and denied the pleadings mentioned in the claim petition and submitted that offending vehicle was insured with the appellant and pleaded that driver was not driving the offending vehicle in a rash and negligent manner and accident did not occur due to his act or action and the offending vehicle was falsely implicated in the case. It is also pleaded that in the First Information Report which was lodged on the same day, registration number of offending vehicle was not mentioned in the FIR. Hence, respondent Nos.3 and 4 are not liable to pay any compensation to the respondent Nos.1 and 2. It is further pleaded that the respondent No.3 is the registered owner of the offending vehicle which was insured with the appellant-Insurance Company and respondent No.4 was holding a valid driving license at the time of incident and if the learned Claims Tribunal has come to the conclusion that the alleged accident took place with the vehicle bearing registration No.MP-49-0438 and was driven by the respondent No.4, and awarded the compensation amount in favour of the claimants then appellant-Insurance Company will be liable to satisfy the award.

4. Appellant-Insurance Company in their written statement has denied the averments mentioned in the claim petition and pleaded that the information regarding accident was not provided by the owner of offending vehicle respondent No.3 to the Insurance Company and at the time of incident respondent No.4 had no valid and effective driving license to drive the offending vehicle. Claimants have falsely implicated the offending vehicle in the case in conspiracy with respondent Nos.3 & 4. Hence, Insurance Company is not liable to pay any compensation.

5. Learned Claims Tribunal has framed the issue and recorded the statement of witnesses. Respondent No.1/claimant No.1 Ram Singh examined himself as AW-1 and Laxman Singh was examined as AW-2 in support of the claim petition.

6. After considering the evidence placed on record and considering the arguments of learned counsel for the parties, the learned Tribunal has awarded the compensation as mentioned in para-1, being aggrieved by the impugned award, appellant-Insurance Company has preferred this miscellaneous appeal.

7. Learned counsel for the appellant submits that FIR was lodged against the unknown vehicle. No eye-witness of the incident was examined in the case. Tribunal has passed the impugned award in a very hasty manner without affording an opportunity to the appellant-Insurance Company to adduce the evidence. Application was moved before the Tribunal for giving the opportunity to record the statement of witnesses and for taking the document on record but learned Tribunal has dismissed the application vide orders dated 15.12.2010 and 21.12.2010. Learned counsel for the appellant further submitted that it is the duty of the claimants to prove his case. The claimants have failed to prove the involvement of vehicle (Jeep) bearing registration No.MP-49-

0438 in the alleged accident. The deposition regarding involvement of vehicle number is based on the information given by the police personal. Statement of Laxman Singh (AW-2) is based on the hearsay evidence without disclosing the name of person who gave him the information. Hence, impugned award has been passed by the Claims Tribunal on the conjecture and surmises and has based on no evidence, hence, prayed to set aside the impugned award. It is further submitted that the compensation amount awarded by the Tribunal is also at higher side. At the most maximum Rs.1,50,000/- (One Lakh Fifty Thousand) may be awarded for a child of aged about 8 years. Learned counsel for the appellant has not cited any case law in support of her arguments.

8. Learned counsel for the respondent Nos.1 and 2/claimants has submitted that FIR was lodged on the same day without any inordinate delay. Offending vehicle was seized during the investigation of the criminal case. Hence, it is denied that offending vehicle has been falsely implicated in the case and claim petition was filed with the conspiracy of respondent Nos.3 and 4 and submits that learned Tribunal has passed the impugned award after proper appreciation of the evidence on the record. Appellant has not proved the collusion between the claimants and respondent Nos.3 and 4. Insurance Company has not proved his defence by adducing cogent oral and documentary evidence. It is not proved in the case that the offending vehicle was falsely implicated in the case. Appellant-Insurance Company could call the driver of offending vehicle to prove his pleading but Insurance Company has failed to prove the same. Hence, prays for dismissal of the appeal.

9. Learned counsel for the claimants/respondent Nos.1 & 2 in support of his arguments placed reliance on *Kusum Lata and others vs. Satbir and others* reported in (2011) 3 SCC 646, *Sunita & ors. vs.*

Rajasthan State Road Transport Corporation & Anr. passed in Civil Appeal No.1665 of 2019 judgment dated 14.02.2019, *Meena Devi vs. Nunu Chand Mahto @ Nemchand Mahto & ors.* passed in SLP (Civil) No.5345 of 2019 judgment dated 13.10.2022 and *Daulatram and others vs. Akhlesh Kumar and others* reported in *2006(III) MP Weekly Notes 117.*

10. I have considered the arguments advanced by the learned counsel for the parties, gone through the record and citations placed reliance by the learned counsel for the respondent Nos.1 and 2.

11. Appellant-Insurance Company has challenged the impugned order on the following grounds :-

i- The driver of the alleged vehicle did not have a valid and effective driving license to drive the offending vehicle on the date of incident.

ii- The FIR was lodged against an unknown vehicle and alleged vehicle was falsely implicated in the case with conspiracy of respondent Nos.3 and 4 i.e. owner and driver of the alleged vehicle.

iii- Tribunal has passed the impugned award in hasty manner without affording an opportunity to appellant to adduce the evidence in support of his pleadings.

iv- Amount of award is at higher side.

12. Firstly I dealt with the arguments regarding false implication of the alleged vehicle in the case. It reveals from the certified copy of the FIR (Ex.P-1) that date and time of the incident was 28.09.2009 at 5:45 am and FIR was lodged on the same day at 10:40 am, hence, it is clear that in lodging the FIR, inordinate delay has not been caused. It is also reveals that the FIR (Ex.P-1) was lodged by eye-witness of incident i.e.

Laxman Singh Thakur, S/o Mannu Singh Thakur who has been examined before the Tribunal as AW-2. AW-2 has supported the pleadings of the petition regarding incident. FIR (Ex.P-1) was lodged against the driver of White colour Pick-Up vehicle. In page-2 of the Postmortem report (Ex.P-2), it is mentioned that death was occurred due to accident from Pick-Up vehicle. Site map was prepared on 30.09.2009 i.e. the second day of incident and in the site map (Ex.P-2) vehicle number was disclosed. Appellant-Insurance Company has not adduced any evidence to prove his pleadings regarding false implications of the alleged vehicle in the case. Hence, the facts regarding false implication of vehicle No. MP-49-0438 are not proved. {Relied on **Kusumlata and Others Vs. Satbir and others (2011) 3 SCC 646** and **Sunita and Others Vs. Rajasthan State Road Transport Corporation and another (2020) 13 SCC 486 para Nos.21 & 23 {Civil Appeal No.1665/2019 - SLP (Civil No.33757 of 2018 judgment dated 14.02.2019) }** }.

13. Now I have considered the arguments that on the date of incident respondent No.2 had no valid and effective driving license to drive the offending vehicle. Certified copy of charge-sheet (Ex.P-4) shows that copy of Registration Certificate, Insurance Policy, Permit of seized vehicle and Driving license were seized but those are not enclosed with the record of Tribunal. Appellant-Insurance Company has filed the chief-examination of his Officer namely Raghavendra Singh Tomar on affidavit under Order 18 Rule 4 of CPC in support of his pleadings on 21.12.2010 but he was not cross examined on behalf of opposite party because appellant-Insurance Company has closed his evidence on previous date i.e. 15.12.2010. Despite that if statement of Raghavendra Singh Tomar is taken into consideration then also it is of no use to the

appellant-Insurance Company because it is not disputed by the Insurance Company, that on the date of incident, non-applicant No.2/respondent No.2 had a driving license to drive the Light Motor Vehicle (LMV). It is not contended in the case by the appellant-Insurance Company that offending vehicle is not under the category of LMV and it is not the argument of learned counsel for the appellant that unladen weight of alleged Pick-Up was more than 7500 kg.

14. Light motor vehicle is defined in Section 2(21) of the Motor Vehicles Act, 1988, according to which 'light motor vehicles' means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms. The submissions of learned counsel for the appellant regarding driving license is no more relevant in the light of law as laid down by Hon'ble Apex Court in the case of **National Insurance Co. Ltd. Vs. Mukund Devangan, (2017) 14 SCC 663** and therefore, mere absence of endorsement on the driving license is not a sufficient circumstance to exonerate the insurance company.

15. So far as the arguments of learned counsel for appellant-Insurance Company on the point that Tribunal has passed the award in a hasty manner and not afforded appellant-Insurance Company proper opportunity to adduce the evidence Company is taken into consideration, and it is found that claimants have closed their evidence on 09.12.2010 and fixed the case for non-applicant's evidence for 15.12.2010. It reveals from the record of Tribunal that on the date fixed for evidence, no witnesses were present on behalf of appellant-Insurance Company. As per order-sheet dated 15.12.2010 an application under Order 16 Rule 1 and under Order 26 Rule 1 read with Section 151 of CPC was filed before the Tribunal for issuance of a summon to call the

employee of R.T.O. Office, Narsinghpur, are for issuance of a commission for recording the statement of employee of R.T.O. Office, Narsinghpur, but that application was dismissed on the same day, after hearing of the rival parties. As per the order-sheet dated 15.12.2010, no witnesses were present on behalf of Insurance Company and counsel for non-applicant/Insurance Company declared his evidence as closed. Hence, it cannot be said that no opportunity was given to appellant-Insurance Company to adduce the evidence in support of their pleadings.

16. Learned counsel for the appellant submits that since deceased was a child aged about 8 years, hence, maximum Rs.1,50,000/- (One Lakh Fifty Thousand) may be awarded in the case, whereas Tribunal has awarded Rs.2,50,000/- (Two Lakh Fifty Thousand) which is at higher side.

17. Learned counsel for respondent Nos.1 and 2 submitted that awarded amount is neither excessive nor at higher side.

18. I have considered the arguments of learned counsel for the parties and perused the citations placed by counsel for respondent Nos.1 and 2.

19. Hon'ble Apex Court in a recent case **Meena Devi Vs. Nunu Chand Mahto @ Nemchand Mahto and Others (2023) 1 SCC 204**, in a case of death of a child aged about 12 years in road accident who was studying in Class-5 at Private School, has awarded Rs.5,00,000/- (Five Lakhs) as compensation. In another case of **Kishan Gopal and Another Vs. Lala and Others (2014) 1 SCC 244**, in a case of death of 10 years old child, Hon'ble Apex Court has awarded Rs.5,00,000/- (Five Lakhs) as compensation. In case of **Kurvan Ansari @ Kurvan Ali and another Vs. Shyam Kishor Murmu and another (2022) 1 SCC 317**,

in case of death of 7 years old child Hon'ble Apex Court has awarded a sum of Rs.4,70,000/- (Four Lakhs Seventy Thousand).

20. Whereas in the present case, the deceased was aged about 8 years and Tribunal has awarded only Rs.2,50,000/- (Two Lakhs Fifty Thousand) which is neither found excessive nor at higher side. Hence, contention of learned counsel for appellant is not acceptable that awarded amount is at higher side.

21. Accordingly, there is no substance in the appeal, hence, appeal sans merit and is hereby dismissed.

22. Let the record of Tribunal be sent back to the concerned Claim Tribunal along with copy of this order for information and necessary action.

No order as to costs.

**(AMAR NATH (KESHARWANI))
JUDGE**

DPS