

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

**HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH**

**ON THE 11<sup>th</sup> OF AUGUST, 2023**

**MISC. APPEAL NO. 2444 OF 2012**

**Between:-**

**THE NEW INDIA ASSURANCE COMPANY LTD.  
DISTRICT ARUNADIYA, MARKET ROAD, CUTTACK  
THROUGH ASSISTANT MANAGER,  
DIVISIONAL OFFICE, 290 NAPIER TOWN,  
JABALPUR (M.P.)**

**....APPELLANT**

**(BY SHRI U.S. TIWARI - ADVOCATE**

**AND**

- 1. ADESH S/O UMASHANKER CHANDRAWANSHI  
AGED ABOUT 28 YRS, R/O GARHIPURA,  
KASERA MOHALLA, HARDA, TEHSIL HARDA,  
DISTRICT HARDA (M.P.)**
- 2. VISHNU MOHAN PRADHAN  
AGED ABOUT 55 YRS, S/O HARI PRADHAN,  
R/O HARIPURA, POST BAKSHI BAZAAR,  
P.S. PURIGHAT, DISTRICT – CUTTACK (M.P.)**
- 3. VIKRAM KUMAR NAYAK  
S/O RAM CHANDRA NAYAK,  
AGED ABOUT 36 YRS, C/O MUKUND PRASAD,  
FLAT NO.6-304, BASANTVILLA APARTMENT,  
LAXMISAGAR, DISTRICT KHURDA, ORISSA.**
- 4. TAPAN KUMAR MAHANTI  
S/O MATHURANAND MAHANTI,  
R/O KALAKATI, DISTRICT KHURDA (M.P.)**
- 5. GOVINDCHANDRA  
S/O RAMCHANDRA MAHAPATRA,**

**R/O BASELI SAHI, P.S. PURI TOWN,  
DISTRICT PURI, ORISSA**

**.....RESPONDENTS**

**(BY SHRI K.K. KUSHWAHA - ADVOCATE)**

.....  
*Reserved on* : 26.07.2023

*Pronounced on* : 11.08.2023  
.....

*This application coming on for hearing this day, Justice Avanindra Kumar Singh passed the following:*

**ORDER**

This appeal under Section 173(1) of Motor Vehicles Act, 1988 has been preferred by the appellant- New India Assurance Company Ltd. (hereinafter referred to as the "Insurance Company) against the impugned award dated 22.02.2011 passed in Case No.15/08 by Member Motor Accident Claims Tribunal, Harda (M.P.) whereby, compensation of Rs.12,95,819/- has been awarded to the respondent No.1-claimant.

1(a). It is not disputed that the appellant- Assurance Company had filed a review petition before the Claims Tribunal which was registered as Misc. Civil Case No.6/2011, the same was dismissed on 29.07.2012 on account that there is no provision for review under the Motor Vehicles Act, 1988. In the said review petition ground of wrong totaling of bills was raised by Insurance Company.

2. The facts of the case in brief are that respondent no.1 was travelling on 31.05.2003 in Tata Indica Taxi Car bearing registration No. OR-02-8901 which was driven by

respondent No.2-Vishnu and respondent No.3-Vikram, when they reached Shishupalgarh, Orissa, a bus bearing registration No. OR-9009 which was owned by respondent No.4-Tapan Kumar and driven by respondent No.5-Govindchandra was coming from opposite direction in rash and negligent manner and hit the car. As a result of which, appellant has sustained grievous injury and was hospitalized from 05.06.2003 to 20.06.2003 and his hip was operated and he was advised for 6 months bed rest.

3. On account of injury sustained, he filed a claim petition bearing No.15/2008 before the Tribunal claiming compensation of Rs.20,000/- for the injury sustained by the respondents. The owner and drivers of Tata Indica Taxi Car and bus remained ex-parte and did not file any written statement.

4. The appellant filed its written statement stating that the driver of the bus or car were not possessing valid driving licence and there was violation of Insurance Company and consequently, he is not liable to indemnify the award.

5. It is further submitted at the time of final argument by counsel for appellant that in Ex.88, 89, 90, 91 and 92 bills previous carry over amount has wrongly been added and not as per simple mathematical calculation and Ex. 53 and 54 bill amount has been paid again in bill Ex. P/216 and Appellate Court has not taken notice that this was a matter of contributory negligence. Hence, prayer for allowing this appeal for modifying the award.

6. Learned counsel for respondents submit that learned Claims Tribunal has given a correct award, which needs no interference hence, prays for dismissal of this appeal.

7. Question before this Court whether in the facts and circumstances of the case on the basis of documentary evidence adduced by the claimant, the award dated 22.02.2011 needs modification.

**8.** Perused the record of Claims Tribunal, learned trial Court has given specific finding in Issue No.3 that looking to the FIR and statements adduced in the Claims Tribunal, the Bus Driver negligence is not proved hence, decided the issue on the basis of evidence adduced in the Claims Tribunal. In considered opinion of this Court on the basis of evidence adduced by the parties in Tribunal, it cannot be said that Driver of the bus was negligent hence, appeal on this ground cannot be allowed. As regard the second ground, after hearing learned counsel for the parties and going through the bills, it is seen that Ex.92 is a Bill for Rs. 1,60,796.73 dated 30.03.2005 therefore, this amount becomes total of Rs. 1,60,796.73 is to be allowed whereas in Ex.88 bill dated 14.04.2005 actual amount of Rs.2250/- old balance Rs.1,25,779.8/- in bill Ex.89 dated 12.04.2005 amount is of Rs.6040/- old balance Rs.1,17,488.63 in bill Ex.90 dated 05.04.2005 amount is of Rs.4029.25/- old balance is Rs.1,13,459.38/- and in bill Ex.91 dated 31.03.2005 amount is of Rs.2662.65/- old balance Rs.1,10,796.73/-. This mistake occurred because of the fact that while recording evidence before the learned Claims Tribunal, both parties as well as the learned Tribunal failed to recognize that bills have not been filed in order of ascending dates, they have been filed haphazardly hence, only bill of Rs.1,60,796.6/- Ex.92 is allowed in total whereas, balance amount in bills Ex.88, 89, 90 and 91 from total amount of award is liable to be discounted. Similarly Ex.216 is only an estimate of operation of Rs.1,60,000/- it is not actually a bill but the estimate of hip replacement of Rs.1,60,000/- which has been added in the award whereas, amount of this operation has been claimed and allowed by the learned trial Court as per bills Ex.53 and 54.

**9.** Accordingly, amount of Rs. 1,60,000/- Ex.216 is liable to be deducted from the award and also total old balance amount in Ex.88 (Rs. 1,23,529.08), Ex.89 (Rs.1,17,488.63/-), Ex.90 (Rs.1,13,459.38/-) and Ex.91 (Rs.1,10,796.73/-) totaling Rs. 6,25,273.82/- is liable

to be deducted. Accordingly, the award of Tribunal is reduced from Rs.12,95,819 - Rs. 6,25,273.82 = 6,70,545.18/-

**10.** Accordingly, appeal is partly allowed and award of learned Claims Tribunal stands modified to that extent. Accordingly, appeal stands **disposed of**.

**(AVANINDRA KUMAR SINGH)**  
**JUDGE**

*Shubh*