

**HIGH COURT OF MADHYA PRADESH JABALPUR**

**M.A. No.2576/2012**

**Shriram General Insurance Company Ltd.**

**Vs.**

**Jagdish Prasad Dubey and others**

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**Present : Hon'ble Smt. Justice Anjali Palo, Judge**  
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***Whether approved for reporting: Yes/No***

***Name of counsel for the parties:***

Shri Rakesh Jain, counsel for the appellant.

Shri Arun Nema, counsel for the respondents no.1 & 2.

Shri G. Rajput, counsel for the respondent no.3.

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***Law laid down:-*** If tractor insured for agricultural purpose was being used for other purpose, this is breach of terms and condition of Insurance Policy. Hence, the Insurance Company is not liable to pay compensation to the claimant.  
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***Significant Paragraphs:-*** 4, 5, 6 & 7.  
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**ORDER**  
(14.09.2017)

The appellant/Insurance Company has filed present appeal under Section 173(1) of the Motor Vehicle Act 1988 against the award dated 27<sup>th</sup> August, 2012 passed by Motor Accident Claims Tribunal, Narsinghpur in M.V.C. No.8/2012.

**2.** Learned counsel for the appellant/Insurance Company has mainly challenged the impugned award on the ground that the insurance

company has not covered the risk of third party in this case as the offending vehicle bearing registration No. MP-49 M/ 0631 was used other than agricultural purpose at the time of accident therefore, company is liable to be exonerated from the liability to pay the compensation. He has placed reliance upon the judgments in the cases of **"Bhav Singh Vs. Savirani and others, 2008 (1) M.P.L.J. 72** and **"Mithlesh w/o Late Parmal Singh and others Vs. Brijendra Singh Baghel and others" 2007 (1) M.P.L.J. 315.**

**3.** Learned counsel for the respondents vehemently opposed the contention of learned counsel for the appellant/Insurance Company. He claimed that at the time of accident the risk of two persons (including one driver) was covered under the insurance policy. The deceased was working on the tractor as driver as it is stated by Lekhram (NW-1) in his affidavit. Father of the deceased Jagdish (AW-1) rebutted the testimony of Lekhram. He did not know Lekhram nor he stated that before the incident, the deceased was driver of the respondent no.1. Therefore, the testimony of Sheikh Sahabuddin (NAW-1) is found reliable that at the time of accident, the aforesaid tractor was used other than agricultural purpose. However, the statement is contradictory with the pleadings of claimant.

**4.** In para 4 of the application under Section 166 of the Motor Vehicles Act 1988, the profession of the deceased shown as "cleaner". In para 16(a), it was pleaded that at the time of accident, the deceased was travelling in the tractor and due to rash and negligent driving of the driver, the deceased was fell down from the tractor and sustained injuries. Therefore, it is apparently clear that statement of the respondent no.1 is

totally false and concocted to escape from his liability because the deceased was not possessing driving licence at the time of accident.

**5.** In case of "**Bhav Singh Vs. Savirani and others, 2008 (1)**

**M.P.L.J. 72**, the Full Bench of this Court has held that:-

"Liability of insurer, employee of owner of vehicle is third party. Insurer company is liable only if employee falls in category mentioned in sub clauses (a), (b) and (c) of proviso clause (1) of Section 147 (1).

Third party covers any person other than insurer and insured vehicle, who are parties to the insurance policy. Mere fact that passenger is 'third party' will not fasten liability on Insurer. Insurer will be liable in respect of third party only if term and condition of policy fixed liability on insurer."

**6.** The respondent no.1 is owner and driver of the offending vehicle. He has failed to prove that at the time of accident, the tractor was used for agricultural purpose. The accident was occurred at Kareli Square. The address of respondent no.1 is shown in the FIR (Ex.A/2) as Kishani Ward Police Station Kotwali, Narsinghpur, whereas in the claim application, the address of respondent no.1 is shown as Ward No.26, Mahobiya Mohalla, Kishani Ward, Chhindwara Madhya Pradesh, which also creates a doubt that at the time of accident, the aforesaid tractor was used for agricultural purpose.

**7.** In case of "**Mithlesh w/o Late Parmal Singh and others Vs. Brijendra Singh Baghel and others" 2007 (1) M.P.L.J. 315**, it is

held that:

"If tractor insured for agriculture purpose was being used for other purposes in breach of terms and conditions of the policy. Insurance Company not liable for payment of compensation."

**8.** After considering the submissions made by learned counsel for the parties and in view of the principles laid down in the cases of Bhav Singh and Mithlesh (supra), this Court finds that the learned Tribunal has committed an error in passing the impugned award and wrongly held that the insurance company is liable to pay the compensation.

**9.** Accordingly, appeal filed by the appellant/Insurance Company is hereby allowed. The impugned award passed by the Motor Accident Claims Tribunal, Narsinghpur in MVC No.8/2012 is hereby set aside.

**10.** It is directed that the insurance company is exonerated from the liability to pay the compensation. The amount deposited by the insurance company be recovered from the respondent no.1 in accordance with law.

**(Smt. Anjali Palo)**  
**JUDGE**