

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

BEFORE

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

MISC. APPEAL No. 2630 of 2016

BETWEEN:-

**1. HARYANA ROADWAYS REWADI THROUGH THE
GENERAL MANAGER HARYANA ROADWAYS
REWADI, DISTT. REWADI, HARYANA**

(OWNER OF OFFENDING VEHICLE)

**2. RAJVEER SINGH S/O SHRI JAL SINGH R/O
SULKHA TEHSIL BAVAL, THANA RAMPURA,
DISTRICT REWADI HARYANA THROUGH GENERAL
MANAGER HARYANA ROADWAYS DISTRICT REWADI**

(HARYANA)

(DRIVER OF OFFENDING VEHICLE)

.....APPELLANTS

(BY SHRI DHANANJAY ASATI – ADVOCATE)

AND

**1. MST. SOMWATI SAHU W/O LATE SHRI KRIPAL
SAHU, AGED ABOUT 33 YEARS**

**2. NATHUA SAHU S/O LATE SHRI SHIVDAYAL
SAHU, AGED ABOUT 56 YEARS**

**3. SMT. RAMLALI SAHU @ LOLIYA W/O SHRI
NATHUA SAHU, AGED ABOUT 55 YEARS**

**4. KU. PUJA SAHU D/O LATE KRIPAL SAHU, AGED
ABOUT 14 YEARS**

**5. KU. ARTI SAHU D/O LATE KRIPAL SAHU, AGED
ABOUT 12 YEARS**

6. KU. SANDHYA SAHU D/O LATE KRIPAL SAHU,
AGED ABOUT 8 YEARS

7. HARSH SAHU S/O LATE KRIPAL SAHU, AGED
ABOUT 6 YEARS

NON-APPLICANT NO.4 TO 7 THROUGH NATURAL
GUARDIAN MOTHER RESPONDENT NO.1 MST.
SOMWATI SAHU AGED 33 YEARS, WD/O LATE KRIPAL
SAHU

ALL RESIDENT OF VILLAGE MEHEVA THANA
AMAANGANJ TEHSIL GUNOR DISTRICT PANNA
MADHYA PRADESH

8. REGIONAL MANAGER NEW INDIA GENERAL
INSURANCE COMPANY LIMITED REWA ROAD
DISTRICT SATNA (MADHYA PRADESH)

.....RESPONDENTS

(NONE FOR RESPONDENTS NO. 1 TO 7 THOUGH SERVED)

(SHRI ANEES CHOUKSEY – ADVOCATE FOR RESPONDENT NO.8)

Reserved on : 20/02/2024

Passed on : 20/05/2024

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

ORDER

This Miscellaneous Appeal under Section 173(1) of the Motor Vehicles Act 1988 has been filed by the appellant/owner of the offending vehicle being aggrieved with the award dated 18.03.2016 passed by learned Second Additional Motor Accident Claims Tribunal, Satna (M.P.) in CT.No.19/2014 whereby, the learned Tribunal has awarded a

sum of Rs.10,14,000/- (Ten Lakhs Fourteen Thousand) with interest @ 7.5% from the date of filing of petition till the date of payment and directed that the insurer will pay first the award amount to the claimants and then he may recover the same from appellants i.e. owner & driver of the offending vehicle.

2. Brief facts of the case are that on 05.10.2013 deceased Kripal Sahu was travelling with his wife/respondent No.1 from Rewadi to Patodi in offending bus bearing registration No.HR-47/B-9138. It is alleged that the driver of the offending vehicle while driving the vehicle rashly and negligently stopped the bus and then without giving any signal drove the bus, due to which deceased Kripal Sahu fell down and got hit with electricity pole and got injured. The deceased was sent to Rewadi Hospital where he was declared dead. Thus, by way of filing claim petition claimants, claimed a sum of Rs.25,30,000/- (Twenty Five Lakhs Thirty Thousand) as compensation on account of death of Kripal Sahu, who died in motor vehicle accident.

3. Appellant No.1 and 2/non-applicant Nos.1 & 2 (owner and driver of the offending vehicle) by filing written statement denied the averments mentioned in the claim petition. However, it was alleged that on the date of incident the offending vehicle was insured with respondent No.8-Insurance Company, therefore, if any amount of compensation is found to be awarded, then it is the respondent No.8-insurance company who will be liable to pay the compensation.

4. Respondent No.8-insurance company in its written statement denied the averments mentioned in the claim petition and pleaded that the alleged incident occurred due to negligence on the part of deceased himself. It was also alleged that at the time of incident the offending vehicle was being driven in violation of the terms and conditions of the

policy. At the time of incident, the non-applicant No.2 (owner) was not having permit to ply the vehicle on the said route, hence, respondent No.8/insurance company has no liability to pay any compensation and prayed for dismissal of the petition against the insurance company.

5. Learned Claims Tribunal framed the issues and recorded the evidence and after considering the evidence placed on the record and considering the argument advanced by the learned counsel for the parties, awarded compensation amount to the tune of Rs.10,14,000/- (Ten Lakhs Fourteen Thousand) and directed the respondent No.8/Insurance Company to pay first the amount of compensation to the claimants and thereafter recover the same from appellants i.e. owner and driver of the offending vehicle. Being aggrieved by the impugned award, appellants (owner and driver) have preferred the present miscellaneous appeal.

6. Learned counsel for the appellant submits that the learned Tribunal awarded a sum of Rs.10,14,000/- (Ten Lakhs Fourteen Thousand), breakup of which is as under :-

Rs.8,64,000/-	Towards loss of dependency
Rs.1,00,000/-	Towards loss of consortium to the claimants
Rs.25,000/-	Towards funeral expenses
Rs.25,000/-	Towards care of minor children

7. Learned counsel for the appellant further submitted that the finding of learned Tribunal in Para-19 of the impugned award regarding pay and recover the amount from appellants i.e. owner and driver of the offending vehicle is erroneous, because the deceased himself was negligent as he was peeping from the window of the bus and suddenly his head struck with an electric pole, due to which he sustained injuries and ultimately he died. Learned counsel drew the attention of this Court towards Para-12 of the impugned award and submitted that the learned Tribunal has erred in

holding that the owner was not having permit to ply the vehicle on the said route, infact as per the notification of the State of Haryana, the alleged vehicle was exempted from permit. On these grounds, it is prayed that the impugned award be set-aside and appellants be exonerated from the liability to pay the amount of compensation.

8. Learned counsel for the respondent No.8-Insurance Company submitted that on the date of incident, the owner was plying the vehicle in breach of insurance policy, therefore, liability cannot be saddled on the Insurance company alone to pay compensation. It is submitted that the learned Tribunal after due appreciation of oral as well as documentary evidence available on record, passed the impugned award, which requires no interference. Hence, prays for dismissal of appeal

9. I have heard the arguments advanced by the learned counsel for the parties and perused the record.

10. Learned claims Tribunal has found proved that on the date of incident i.e. on 05/10/2013 non-applicant No.1/appellant No.2, who was the driver of the offending vehicle bearing registration No.HR-47/B-9138 owned by non-applicant No.2/appellant No.1, was being driven rashly and negligently and caused the death of the deceased and in the said incident the deceased was not negligent. The above finding of the Tribunal is based on proper appreciation of evidence on record, hence there is no scope of interference.

11. Learned counsel for the appellants has mainly assailed the finding of the learned Tribunal that the permit was required for plying the offending vehicle and in absence of the permit, order for pay and recover was passed against the appellants to be payable jointly and severely.

12. Appellants have examined appellant No.2 (NAW-1) in support of their pleadings. NAW-1 has stated in his chief examination filed on

affidavit under Order 18 Rule 4 of CPC, that permit of offending vehicle was available on the date of incident to ply the vehicle on the route. In support of his statement NAW-1 has exhibited the documentary evidence i.e. true copy of insurance policy (Ex.D-1), Driving licence (Ex.D-2), Certificate of registration of vehicle (Ex.D-3), notification issued by the Haryana Government (Ex.D-4) and permit (Ex.D-5).

13. In support of his pleadings, Insurance company/non-applicant No.3/respondent No.8 has examined Yogesh Kumar (Assistant), RTO Office Rewari as (NAW-2) and Anand Kalbande, Administrative Officer, Insurance Company (NAW-3). Yogesh Kumar (NAW-2) has stated in his chief-examination that permit (Ex.D-5) was issued for the route of bus stand Rewari-Railway Station-bus stand (circular road) valid from 01.11.2013 to 31.10.2018. Anand Kalbande (NAW-3) has stated in his chief-examination that on the date of incident there was no permit to ply the offending vehicle on the route where the incident took place.

14. Ex.D-4 which is the notification issued by the Haryana Government, Transport Department dated 03.11.1993, deals with the scheme for State Transport undertaking. That notification does not relate to the exoneration from obtaining the permit to ply the vehicle. Whereas, necessity of permit has been mentioned in Insurance Policy of the offending vehicle (Ex.D-1) to cover the liability arising from that policy. Permit (Ex.D-5) was filed on behalf of the appellants which shows that necessity of permit to ply the offending vehicle is not done away with but it was necessary and for that reason permit (Ex.D-5) was issued by the concerning RTO which was valid from 01.11.2013 to 31.10.2018, whereas, date of incident in this case is 05.10.2013 which shows that on the date of incident, appellant No.1 Haryana Roadways did not had the

permit to ply the offending vehicle, hence it is proved that offending vehicle was plying in breach of the conditions of Insurance Policy.

15. Hence, finding of learned tribunal on issue No.2 was based on proper appreciation of evidence, hence no interference is required.

16. As discussed above, in the considered opinion of this, there is no perversity in the impugned award for calling interference. Accordingly, appeal sans merit and is hereby dismissed.

17. Let record be sent back to the concerned tribunal alongwith copy of this order.

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

@s/as