

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

**BEFORE**

**HON'BLE SHRI JUSTICE HIRDESH**

**ON THE 12<sup>th</sup> OF JANUARY, 2024**

**MISC. APPEAL No. 4093 of 2018**

**BETWEEN:-**

**THE DIVISIONAL MANAGER, THE ORIENTAL  
INSURANCE COMPANY LTD, T.P. HUB, IN FRONT OF  
JUBLI GATE, RAISEN ROAD, BHOPAL (MADHYA  
PRADESH)**

**.....APPELLANT**

***(BY MS. ANUSHRI CHOURASIYA - ADVOCATE )***

**AND**

- 1. NAEEM KHAN S/O KALLU KHAN , AGED 16 YEARS,  
MINOR THR ITS NATURAL GUARDIAN MOTHER SMT.  
HAMEEMA BI W/O SHRI KALLU KHAN, AGED ADULT,  
R/O GRAM BHAUNRI THANA KHAJURI ROAD,  
DISTRICT BHOPAL (MADHYA PRADESH)**
- 2. RAEES KHAN S/O SHRI AZEEZ KHAN, AGED ABOUT  
ADULT, R/O GRAM BHAUNRI, THANA KHAJURI  
ROAD, DISTRICT BHOPAL (MADHYA PRADESH)**
- 3. KALLU KHAN S/O SHRI CHHOTE KHAN, AGED ADULT,  
R/O GRAM BHAUNRI, THANA KHAJURI ROAD,  
DISTRICT BHOPAL (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI R.P. MISHRA - ADVOCATE )***

**MISC. APPEAL No. 2799 of 2018**

**BETWEEN:-**

**NAEEM KHAN S/O SHRI KALLU KHAN, AGED ABOUT 16  
YEARS, OCCUPATION: MINOR THR. NATURAL  
GUARDIAN MOTHER SMT. HALEEMA BEE W/O SHRI  
KALLU KHAN R/O. GRAM BHAURI PS KHAJOORI  
SADAD, DISTRICT BHOPAL (MADHYA PRADESH)**

.....APPELLANT

*(BY SHRI R.P. MISHRA - ADVOCATE)***AND**

1. RAEES KHAN S/O AJEEZ KHAN R/O. GRAM BHAURI PS  
KHAJOORI SADAD, DISTT. BHOPAL (MADHYA  
PRADESH)
2. KALLU KHAN S/O CHOTE KHAN R/O GRAM BHAURI,  
PS KHAJOORI SADAK, DISTT. BHOPAL (MADHYA  
PRADESH)
3. ORIENTAL INSURANCE COMPANY LIMITED,  
THROUGH DIVISIONAL MANAGER, T.P HUB, IN  
FRONT OF JUBLI GAIT, RAISEN ROAD DISTT. BHOPAL  
(MADHYA PRADESH)

.....RESPONDENTS

*(BY Ms. ANUSHRI CHAURASIYA – ADVOCATE FOR RESPONDENT NO.3)*-----  
*Reserved on* : 14.12.2023*Pronounced on* : 12.01.2024  
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*These appeals having been heard and reserved for orders, coming on for pronouncement this day, the Court passed the following:*

**ORDER**

As both these appeal arise out of the same award, these are being decided by common order.

- 2) M.A.No. 4093 of 2018 has been filed by the Insurance Company for exonerating it from the liability to pay compensation or reducing the compensation amount and M.A.No. 2799 of 18 has been filed by the claimants for enhancing the amount of compensation.
- 3) Both these appeals arise out of the award dated 7.5.2018 passed by the 14<sup>th</sup> AMACT, Bhopal in claim case No. 568/2016.

4) Brief facts of the case are that injured Naeem Khan along with Raees Khan was returning home on Motor Cycle bearing registration no MP04-NZ-3842 owned by father of injured Naeem Khan. As soon as they reached Highway by-pass road, Gram Barkheda Bonder, PS Khajuri Sadak, Bhopal at that fateful moment on 13/02/2016 the insured vehicle dashed the divider due to rash and negligent driving by Raees Khan and hence only claimant sustained severe injuries including head injury. Naeem Khan through Guardian Mother filed the claim petition for grant of compensation to the tune of Rs. 74,00,000 along with interest against driver Raees Khan and Kallu Khan, father of the injured.

5) The owner and driver of the offending vehicle were proceeded ex-parte.

6) The Insurance Company filed the reply and denied all the allegations and pleaded that it is a case of implant of insured vehicle as the FIR was lodged with delay of 6 days.

7) Learned Tribunal framed the issues and recorded the evidence and awarded compensation to the tune of Rs. 13,38,000/- with interest to the claimants.

8) Being aggrieved by the impugned award, the Insurance Company filed this appeal on the ground that the F.I.R. was lodged after a delay of 6 days of the accident, no information was given by the owner of the motor-cycle to the police and the Insurance Company. No information was given by the owner of motor cycle to police and Insurance Company and no in-

formation was given by Authority of Hospital to the Police. Even nobody disclosed the kind of vehicle as well as number of vehicle to anyone by which the accident occurred. Therefore it is clear that the story of claimant is concocted to extort undue compensation. Further it was pleaded that it is a case of breach of condition of insurance policy as the driver of the insured vehicle did not possess valid and effective driving license.

9) On these grounds, the Insurance Company prays that the appeal be allowed and the appellant/ Insurance Company be exonerated from liability to pay compensation. In the alternative, the amount of compensation be reduced.

10) On the other hand, learned counsel for the respondents prays for rejection of the appeal preferred by the Insurance Company.

11) MA 2799 of 2018 has been preferred by the claimants for enhancement of compensation. He contended that the trial Court assessed income of the injured at Rs.5,000/- per month, which is inadequate looking to the fact that at the time of the accident i.e. 13.12.2016, according to the notification issued by the Labour Ministry, income of unskilled labour is Rs.6,950/- per month. He submits that compensation should be calculated accepting monthly income as Rs.6,950/-, adding future prospects, applying suitable multiplier etc.

12) On the other hand, learned counsel for the Insurance Company contended that the Claims Tribunal has awarded compensation on higher side

and prayed for rejection of the appeal preferred by claimant i.e. MA.No. 2799 of 2018.

13) Heard the learned counsel for the parties and perused the record.

14) First of all, let take into consideration appeal preferred by Insurance Company i.e. MA.No. 4093 of 2018. The Insurance Company contended that the F.I.R. was lodged after a delay of 6 days. According to the FIR, Ex. P/1 accident occurred on 13.02.2016 and on 19.02.2016 ASI went to Tripti Hospital for enquiring PCLC Sanha. It is settled principle of law that delay in filing the F.I.R. is not fatal either in criminal case or claim case provided that sufficient and cogent reason for delay in filing the F.I.R is given. In the case of **Ravi Vs. Badrinarayan and others, AIR 2011 SC 1226**, Apex Court held in paragraphs 20 and 21 as under :-

“20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant’s case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.”

15) The Insurance Company examined Sher Singh, A.S.I. He stated in his examination in chief that from Tripti Hospital information about the accident was sent on 13.02.2016 which is mentioned in Ex.P/2 pre-MLC, so according to the evidence of Sher Singh information was given to the police from the hospital on the same date and police investigated the matter. Thereafter, police registered the case in respect of the offending vehicle and the owner of that vehicle so delay in lodging the FIR is sufficiently explained.

16) Considering the evidence adduced before the Tribunal, it is found that the information of the accident was immediately sent by the hospital to the police station and police wrote it in *Roznamcha* and after investigation filed charge-sheet against the driver of the offending vehicle so delay in lodging the F.I.R. is not fatal in claim case, hence the argument of the Insur-

ance Company that delay of FIR was for planting the offending vehicle for seeking compensation has not substance.

17) Learned counsel for the claimant submitted that the Tribunal assessed the income of the injured on lower side. He submitted that on the date of the accident i.e. 13.02.2016, according to the notification of the Labour Ministry, per month income of unskilled labour was Rs. 6,575/- so this amount should be taken as per month income of the injured while calculating compensation. As per the record of the Tribunal, on the date of the accident, the claimant was only about 16 years old and he was a student. He was not doing any labour work. In the considered opinion of this Court, assessment of income of claimant as Rs 5,000/- per month by the Tribunal is correct. After perusal of the impugned award, it is found that the Tribunal has not added future prospects keeping in view the judgment passed in **National Insurance Company Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.**

18) Learned counsel for the Insurance Company pleaded that the Tribunal has committed error in assessing 100% disability of the claimant. He submitted that the claimant was disabled only upto 50% but without any evidence or documents in support thereof, the Tribunal has assessed 100% disability. In this regard, considering the evidence of Dr. Sumit Raj, it is found that the skull of the injured was severely damaged and due to injuries on the head, in the considered opinion of this Court, the Tribunal has rightly assessed that claimant was 100% disabled. Hence, in the considered

opinion of this Court, the finding of the Tribunal in this regard requires no interference.

19) After hearing learned counsel for the parties and perusing the record, in the considered opinion of this Court, just and proper calculation of compensation of the claimant would be as follows :-

1.	Per month income of deceased	Rs. 5,000/-
2.	Towards future prospects (addition of 40%)	Rs. 7,000 /-
3.	Annual Income	Rs.84,000/-
4.	On applying multiplier of 18	Rs.15,12,000/-
5.	For Special Diet	Rs.5,000/-
6.	For pain and suffering	Rs.30,000/-
7.	For loss of consortium	Rs.50,000/-
8.	For loss of estate	Rs 50,000/-
9.	For supporting expenditure	Rs. 5,000/-
9.	Total compensation	Rs.16,52,000/-
10.	Compensation awarded by Tribunal	Rs. 13,38,000/-
11.	Enhanced Compensation [ 9 -10]	<b>Rs. 3,14,000/-</b>

20. The claimants have valued the appeal to the extent of Rs. 3,00,000/- and paid the court fees. However, for the rest of the amount, the Court fee shall be paid within a period of one month from the date of receipt of certified copy of this order and thereafter the amount shall be released by the Insurance Company on receiving the certificate. In case the certificate is not filed before the Insurance Company within a period of three months, the claimants shall not be entitled to interest on the enhanced amount of compensation.



21. In view of aforesaid , **MA 4093 / 2018** filed by the Insurance Company is **dismissed** and **M.A.No. 2799/2018** filed by the claimant is **partly allowed** to the above extent.

Rest of the findings of the Tribunal shall remain intact.

**(HIRDESH)**  
**JUDGE**

*Vikram*