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

**BEFORE
HON'BLE SHRI JUSTICE HIRDESH
ON THE 18th OF JANUARY, 2024**

MISC. APPEAL No. 2293 of 2019

BETWEEN:-

1. **KAZI MOHAMMED SHAMEEM S/O KAZI MOHAMMED SHAHEED, AGED ABOUT 40 YEARS, R/O MISSION CHOWK, P.S. KOTWALI, DISTRICT KATNI (MADHYA PRADESH)**
2. **DHEERAJ PATEL S/O LATE LALLARAM PATEL, AGED ABOUT 39 YEARS, R/O VILLAGE BASADI, P.S. BADWARA, DISTRICT KATNI (MADHYA PRADESH)**

.....APPELLANTS

(BY SHRI ISHTEYAQ HUSSAIN - ADVOCATE)

AND

1. **SMT. TARA BAI W/O LATE SANJAY SINGH, AGED ABOUT 30 YEARS, VILLAGE GHUGHARI P.S. AND TASHIL VIJAYRAGARH, DISTRICT KATNI (MADHYA PRADESH)**
2. **DAYARAM SINGH S/O GAREEB SINGH, AGED ABOUT 64 YEARS, R/O VILLAGE GHUGHRI P.S AND TEHSIL VIJAYRAGHAVGARH, DISTRICT KATNI (MADHYA PRADESH)**
3. **PUTTI BAI W/O DAYARAM SINGH, AGED ABOUT 62 YEARS, R/O VILLAGE GHUGHRI P.S AND TEH. VIJAYRAGHAVGARH, DISTRICT KATNI (MADHYA PRADESH)**
4. **SAKSHI D/O LATE SANJAY SINGH, AGED ABOUT 13 YEARS, OCCUPATION: MINOR THROUGH NEXT FRIEND AND NATURAL GUARDIAN-MOTHER SMT. TARA BAI VILLAGE GHUGHRI P.S AND TEH. VIJAYRAGHAVGARH, DISTRICT KATNI (MADHYA PRADESH)**
5. **SHALINI SINGH D/O LATE SANJAY SINGH, AGED**

ABOUT 7 YEARS, OCCUPATION: MINOR THROUGH NEXT FRIEND AND NATURAL GUARDIAN -MOTHER SMT. TARA BAI, R/O VILLAGE GHUGHRI P.S AND TEH. VIJAYRAGHAVGARH, DISTRICT KATNI (MADHYA PRADESH)

6. SOURABH SINGH S/O LATE SANJAY SINGH, AGED ABOUT 5 YEARS, OCCUPATION: MINOR THROUGH NEXT FRIEND AND NATURAL GUARDIAN -MOTHER SMT. TARA BAI, R/O VILLAGE GHUGHRI, P.S AND TEH. VIJAYRAGHAVGARH, DISTRICT KATNI (MADHYA PRADESH)
7. SHRIRAM GENERAL INSURANCE CO.LTD THROUGH ITS GENERAL MANAGER HEAD OFFICE E-6, EPP RIKO INDUSTRIAL AREA, SEETAPUR JAIPUR (RAJASTHAN)

....RESPONDENTS

(RESPONDENTS NO.1 TO 6 BY NONE)
(RESPONDENT NO.7 BY SHRI T.S.LAMBA - ADVOCATE)

Reserved on : 04.12.2023

Pronounced on : 18.01.2024

This appeal having been heard and reserved for order, coming on for pronouncement this day, JUSTICE HIRDESH passed the following:

ORDER

This appeal under section 173(1) of the Motor Vehicles Act, 1988 by the appellants who are owner and driver against impugned award dated 10.4.2019 passed by Motor Accidents Claims Tribunal, Katni (for short the “Tribunal”) in MACC No.281/2017 for setting aside the award as against them.

2. Brief facts of the case are that respondents No.1 to 6/claimants filed claim petition under section 166 of the Motor Vehicles Act before the Tribunal stating that deceased-Sanjay Singh was husband of respondent No.1, son of respondents No.2 & 3 and father of respondents No.4 to 6. On 28.6.2016 at

about 10 p.m. the deceased was sitting as a labourer in carrier 'Dala' of the Truck bearing registration No. MP-1/GA-0332 and was travelling from Katni to Basadi. The deceased fell asleep in 'Dala' of the Truck and the appellant No.2 (driver) rashly and negligently got the sand filled in 'Dala' of truck by proclain machine due to which the deceased came beneath the sand and died of having been buried in the sand. On the next day morning i.e. 29.10.2016 when the sand was dumped the body of deceased was found dead. It was further contended by the claimants that at the time of accident with offending vehicle was owned by appellant No.1, driven by appellant No.2 and insured with the respondent No.7-Shriram General Insurance Co.Ltd. (hereinafter referred to as the "Insurance Company"). After recording of Marg, the Police Station, Kuthla, District Katni registered offence as Crime No.72/17 under section 304 of IPC. At the time of accident the deceased was aged 34 years and was earning Rs.6,000/- per month as a labourer. The respondents/claimants claimed Rs.19,64,000/- as compensation with interest from appellants and respondent No.7 jointly and severally. सत्यमेव जयते

3. The appellants filed written statement and denied the adverse allegations. They contended that on 29.10.2016 the truck was driven carefully and no accident took placed with said truck. The respondents/claimants have filed false and fabricated claim in order to get the compensation. The truck was insured with respondent No.7/Insurance Company. The truck was operated in accordance with the conditions of policy. The appellant/driver was possessing a valid driving licence and was competent to drive the said truck. Hence, they claimed dismissal of claim petition.

4. The respondent No.7/Insurance Company also filed its written statement contending that deceased was not travelling in truck as a labourer.

Infact, the deceased alongwith his friends had consumed country made liquor in a shop situated at Ghantaghar, Katni in night hours. When the truck stationed at Julha Bye-pass the deceased without informing the driver and conduct of the truck sat inside 'Dala' of truck. Due to intoxication he felt asleep in 'Dala' and in night hours sand was loaded in 'Dala' of truck and he came underneath the sand as a result he expired. When the sand was unloaded in next day morning then dead body of deceased was found. The act of the driver and conductor for not checking 'Dala' of truck in the nigh while loading the same does not fall in the category of rash and negligent act. It was also contended that deceased was not travelling in the truck as a labourer or gratuitous passenger or paid passenger, but was travelling as an unauthorized person without knowledge of the driver. The truck was being driven by appellant No.2 with permission of appellant No.1 without possessing valid driving licence, valid permit and fitness. Therefore, it is not liable to indemnify on account of breach of terms and conditions of insurance policy.

5. The Tribunal framed five issues and after recording evidence as hearing both the parties passed the impugned award dated 10.4.2019 and awarded compensation of Rs.10,78,000/- alongwith interest at the rate of 6% per annum. The Tribunal exonerated the respondent/Insurance Company from its liability to pay compensation and saddled the same on the appellants.

6. Being aggrieved by the aforesaid impugned award, the owner and driver of the truck have preferred instant appeal on the ground that Tribunal committed grave illegality in holding that deceased was travelling as a gratuitous passenger in the offending vehicle, because it was nobody's case that deceased was travelling as a gratuitous passenger. As per statements of witnesses,

namely, Mahendra Gond, Satai Singh Gond, Rajesh Singh Gond and Tan Singh under section 161 Cr.P.C. the deceased boarded the truck in night at Julha bye-pass after consuming liquor quietly in dark without informing the driver or conduct at his own risk, therefore, claimants have no cause action to file the claim petition and hence, it ought to have been dismissed. Therefore, Tribunal committed grave legal error in passing impugned award against the appellants and hence, it be set aside as against them.

7. On the other hand, learned counsel for the respondent No.7/Insurance Company has supported the impugned award and prayed for rejection of instant appeal.

8. Heard learned counsel for both the parties and perused the record of the Tribunal. Considering the impugned award it is found that Tribunal held that deceased was travelling as a gratuitous passenger in the offending vehicle, therefore, the owner and driver are liable for payment of compensation. Learned counsel for the appellants submitted that claimants had filed FIR (Exhibit-P/2) and final report (Exhibit-P/1) and they relied on it. He further submitted that in the FIR it has been mentioned that during investigation the statements of persons working with deceased, namely, Mahendra Gond, Satai Singh Gond, Rajesh Singh Gond and Tan Singh were recorded who stated that on 28.10.202016 they after working with deceased in Mandi were returning at 10 p.m. in night and they went to Ghantaghar for country made liquor and visited Jhuhala bye-pass where deceased rushed and boarded in the empty Dumper (vehicle) belonging to 'Bhajjan'.

9. The Apex Court in the case of *Oriental Insurance Company Limited Vs. Premlalta Shukla and others*, (2007) 13 SCC 476 while dealing with an issue of proof of contents of documents and took note of that

document once proved and then if part thereof can be later resiled from, it has been held that contents have been proved the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise. In the above case the Apex Court further held that a party objecting to the admissibility of a document must raise its objection at the appropriate time. Further, if the objection is not raised and the document is allowed to be marked, one cannot be permitted to turn round and raise a contention that the contents of the document had not been proved and, thus, should not be relied upon. In the present case, the respondents/claimants filed FIR (Exhibit-P/2). Once it has been exhibited by the party and both the parties intended to rely upon it, therefore, it cannot be permitted to party rely on the contents of Exhibit-P/2 (FIR) and party deny. Thus, in the instant case according to FIR the deceased boarded the truck from the back side in night hours and sat in 'Dala' without informing and knowledge of driver and conductor the vehicle. Though claimant-Tara Bai stated that her husband was travelling in the offending vehicle as a labour, but she stated in cross-examination that she was not present on the spot at the time of accident and she was informed by Amol Singh.

10. The Applicant Witness No.2- Amol Singh who has been examined by claimant stated that on the date of accident the deceased (Sanjay Singh) sat in the truck as a labourer and in night hours he slept and on the next day when the sand was unloaded the deceased was found to have died. In the cross-examination this witnesses that when truck was loaded he was not present on the spot. He informed the Police. After perusing the documents produced before the Tribunal it is apparent that deceased sat in the truck in darkness while

the vehicle was standing at Juhala bye-pass. There is no evidence that driver, owner or the conductor of the offending vehicle had given the lift to deceased on his request. The oral evidence led by the claimants is contrary to the documents produced by them. It is important that documentary evidence more reliable than the oral evidence. First Information Report (Exhibit-P/2) was filed by the respondents/claimants, therefore, the claimants cannot deny the contents of Exhibit-P/2, as has been held by Apex Court in *Premlalta Shukla* (supra).

11. Thus, in view of above discussion, such type of passenger cannot be treated as a gratuitous passenger. The driver of the truck also cannot be asked to ask such type of passengers to get down from the vehicle. The law cannot help such type of passenger who travels at his own risk without permission or payment. The deceased travelled in the vehicle at his own risk without informing or seeking permission from the driver or owner or conductor of the offending vehicle.

12. In the present case from perusal of the documents of criminal record it is clear that there is lack of evidence that deceased was permitted to board the vehicle or driver had any information. Thus, the deceased was unauthorized person in the vehicle. So, he cannot be deemed to be a passenger. Therefore, after considering the evidence available on record and impugned award, the Tribunal has wrongly held that deceased was a gratuitous passenger. In the present case, from evidence produced on behalf of claimant it is found that deceased boarded the truck in darkness while it was standing Juhulaha Bye-pass without any knowledge of anyone. There is no evidence that driver or owner or conductor gave lift to deceased at his request.

13. Consequently, in considered opinion of this Court, respondents/claimants had no cause of action for filing of the claim petition and

hence, they are not entitled to get any compensation. The impugned award passed by the Tribunal is set aside.

14. In the result, the appeal is allowed.

**(HIRDESH)
JUDGE**

RM

