

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 20th OF FEBRUARY, 2023

MISC. APPEAL No. 6569 of 2019

BETWEEN:-

**THE ORIENTAL INSURANCE CO LTD
DIVISIONAL MANAGER, CITY TRADE CENTER
NEAR BUS STAND CHOURASIYA BUILDING
REWA ROAD SATNA MP THROUGH ITS
INCHARGE, T. P. HUB OFFICE, 1561, NAPIER
TOWN DR. BARAT ROAD, RUSSELL CROSSING
JABALPUR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SURESH RAJ- ADVOCATE)

AND

- 1. MUS ANITA TIWARI W/O LT JAGPATI
TIWARI, AGED ABOUT 32 YEARS, POST
MEHUTI TEHSIL BIRSINGHPUR SATNA
(MADHYA PRADESH)**

- 2. OMSI TIWARI D/O LATE JAGPATI
TIWARI, AGED ABOUT 14 YEARS,
THROUGH NATURAL GUARDIAN
MOTHER MUS.ANITA TIWARI W/O LATE
JAGPATI TIWARI, R/O VILLAGE POST
MEHUTI TEHSIL BIRSINGPUR (MADHYA
PRADESH)**

- 3. ANUKALP TIWARI S/O LATE JAGPATI
TIWARI, AGED ABOUT 9 YEARS,
THROUGH NATURAL GUARDIAN
MOTHER MUS.ANITA TIWARI W/O LATE
JAGPATI TIWARI, R/O VILLAGE POST
MEHUTI TEHSIL BIRSINGPUR, DISTRICT
SATNA (MADHYA PRADESH)**

4. ADARSH TIWARI S/O LATE JAGPATI TIWARI, AGED ABOUT 5 YEARS, THROUGH NATURAL GUARDIAN MOTHER MUS.ANITA TIWARI W/O LATE JAGPATI TIWARI, R/O VILLAGE POST MEHUTI TEHSIL BIRSINGPUR, DISTRICT SATNA (MADHYA PRADESH)

5. MUS.KUSMA TIWARI W/O NATHURAM TIWARI, AGED ABOUT 65 YEARS, R/O VILLAGE POST MEHUTI TEHSIL BIRSINGPUR, DISTRICT SATNA (MADHYA PRADESH)

6. DADULAL KUSHWAHA S/O RAMLAKHAN KUSHWAHA, AGED ABOUT 32 YEARS, R/O VILLAGE BHATWATOLA JASO THANA TEHSIL NAGAUD, DISTRICT SATNA (MADHYA PRADESH)

7. ANJANAI KUMAR GAUTAM S/O PREMLAL GAUTAM, R/O JHINGODHAR THANA JASO TEHSIL NAUGAUD, DISTRICT SATNA (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ARUBENDRA SINGH PARIHAR- ADVOCATE FOR RESPONDENTS NO.1 TO 5)

This appeal coming on for admission this day, the court passed the following:

ORDER

This Misc. Appeal under Section 173 of Motor Vehicles Act has been filed against the award dated 20-6-2019 passed by 3rd Member, Motor Accident Claims Tribunal, Nagod, Distt. Satna in M.A.C.C. No.47/2017.

2. The Claimants filed a claim petition under Section 166 of Motor Vehicles Act pleading *inter alia* that on 26-6-2017, the deceased Jagpati Tiwari was going on his motor cycle. As soon as he reached near Karsara culvert, he received a mobile call. Therefore, after stopping the motor cycle, he was talking to the caller and was standing by the side of the road. At that time, the driver of the offending vehicle i.e., car bearing registration No. MP 19 CA 7852, by driving the vehicle in a rash and negligent manner dashed the deceased as a result he sustained injuries on his head, face and other parts of the body. The deceased died on the spot. FIR was lodged.

3. The Appellant filed its written statement and denied that any accident took place. It was the stand of the Appellant that the deceased while driving the motor cycle was talking on his mobile phone, as a result he himself fell down from the motor cycle.

4. The Claims Tribunal after framing issues and recording evidence, allowed the claim petition and awarded compensation of Rs. 12,79,600/- with 6% interest.

5. Challenging the award passed by the Claims Tribunal, it is submitted by the Counsel for the Appellant that the FIR was lodged belatedly, which clearly indicates that the offending vehicle was planted after due deliberations. The vehicle number was not mentioned in the merger intimation.

6. *Per contra*, the Counsel for the claimants has supported the award.

7. Heard the learned Counsel for the parties.

8. According to the claimants, the accident took place on 26-6-2017 at 7:30. The merg intimation, Ex. P/3, was given by Ram Krishna Tiwari on 26-6-2017 itself. It is true that in the merg intimation, the number of the offending vehicle was not mentioned, but Ram Krishna Tiwari was not an eye witness. In the merg intimation itself, it was mentioned that after receiving telephonic information, he reached on the spot and found that the deceased was lying dead on the spot. However, it was specifically mentioned in the merg intimation, that an information was received that the deceased has met with a road accident. Since, the merg intimation was not given by an eye witness, therefore, the non-mention of registration number of offending vehicle will not have any adverse effect.

9. However, one thing is clear. The merg intimation was given on the very same date. But the police did not enquire into the matter, and the FIR, Ex.-P/2 was lodged on 23-7-2017 after recording the merg statements of the witnesses. If the police was sleeping and did not enquire into the matter immediately and recorded the statements of the witnesses belatedly, then the claimants cannot be blamed for such a belated act of the enquiry officer. The Supreme Court in the case of **Gohar Mohammad Vs. Utter Pradesh State Road Transport Corporation & Others** by judgment dated 15.12.2022 passed in **C.A. No. 9322/2022** has held as under:-

“62. Accordingly, this appeal is decided with the following directions:

i) The appeal filed by the owner challenging the issue of liability is hereby dismissed confirming the order passed by the High Court and MACT.

ii) On receiving the intimation regarding road accident by use of a motor vehicle at public place, the SHO concerned shall take steps as per Section 159 of the M.V. Amendment Act.

iii) After registering the FIR, Investigating Officer shall take recourse as specified in the M.V. Amendment Rules, 2022 and submit the **FAR** within 48 hours to the Claims Tribunal. The **IAR** and **DAR** shall be filed before the Claims Tribunal within the time limit subject to compliance of the provisions of the Rules.

iv) The registering officer is duty bound to verify the registration of the vehicle, driving licence, fitness of vehicle, permit and other ancillary issues and submit the report in coordination to the police officer before the Claims Tribunal.

v) The flow chart and all other documents, as specified in the Rules, shall either be in vernacular language or in English language, as the case may be and shall be supplied as per Rules. The Investigating Officer shall inform the victim(s)/legal representative(s), driver(s), owner(s), insurance companies and other stakeholders with respect to the action taken following the M.V. Amendment Rules and shall take steps to produce the witnesses on the date, so fixed by the Tribunal.

vi) For the purpose to carry out the direction No. (iii), distribution of police stations attaching them with the Claim Tribunals is required. Therefore, distribution memo attaching the police stations to the Claim Tribunals shall be issued by the Registrar General of the High Courts from time to time, if not already issued to ensure the compliance of the Rules.

vii) In view of the M.V. Amendment Act and Rules, as discussed hereinabove, the role of the Investigating Officer is very important. He is

required to comply with the provisions of the Rules within the time limit, as prescribed therein. Therefore, for effective implementation of the M.V. Amendment Act and the Rules framed thereunder, the specified trained police personnel are required to be deputed to deal with the motor accident claim cases. Therefore, we direct that the Chief Secretary/Director General of Police in each and every State/Union Territory shall develop a specialized unit in every police station or at town level and post the trained police personnel to ensure the compliance of the provisions of the M.V. Amendment Act and the Rules, within a period of three months from the date of this order.

viii) On receiving **FAR** from the police station, the Claims Tribunal shall register such **FAR** as Miscellaneous Application. On filing the **IAR** and **DAR** by the Investigating Officer in connection with the said **FAR**, it shall be attached with the same Miscellaneous Application. The Claims Tribunal shall pass appropriate orders in the said application to carry out the purpose of Section 149 of the M.V. Amendment Act and the Rules, as discussed above.

ix) The Claim Tribunals are directed to satisfy themselves with the offer of the Designated Officer of the insurance company with an intent to award just and reasonable compensation. After recording such satisfaction, the settlement be recorded under Section 149(2) of the M.V. Amendment Act, subject to consent by the claimant(s). If the claimant(s) is not ready to accept the same, the date be fixed for hearing and affording an opportunity to produce the documents and other evidence seeking enhancement, the petition be decided. In the said event, the said enquiry shall be limited only to the extent of the enhancement of compensation, shifting onus on the claimant(s).

x) The General Insurance Council and all insurance companies are directed to issue

appropriate directions to follow the mandate of Section 149 of the M.V. Amendment Act and the amended Rules. The appointment of the Nodal Officer prescribed in Rule 24 and the Designated Officer prescribed in Rule 23 shall be immediately notified and modified orders be also notified time to time to all the police stations/stakeholders.

xi) If the claimant(s) files an application under Section 164 or 166 of the M.V. Amendment Act, on receiving the information, the Miscellaneous application registered under Section 149 shall be sent to the Claims Tribunal where the application under Section 164 or 166 is pending immediately by the Claims Tribunal.

xii) In case the claimant(s) or legal representative(s) of the deceased have filed separate claim petition(s) in the territorial jurisdiction of different High Courts, in the said situation, the first claim petition filed by the claimant(s)/legal representative(s) shall be maintained by the said Claims Tribunal and the subsequent claim petition(s) shall stand transferred to the Claims Tribunal where the first claim petition was filed and pending. It is made clear here that the claimant(s) are not required to apply before this Court seeking transfer of other claim petition(s) though filed in the territorial jurisdiction of different High Courts. The Registrar Generals of the High Courts shall take appropriate steps and pass appropriate order in this regard in furtherance to the directions of this Court.

xiii) If the claimant(s) takes recourse under Section 164 or 166 of the M.V. Amendment Act, as the case may be, he/they are directed to join Nodal Officer/Designated Officer of the insurance company as respondents in the claim petition as proper party of the place of accident where the FIR has been registered by the police station. Those officers may facilitate the Claims Tribunal

specifying the recourse as taken under Section 149 of the M.V. Amendment Act.

xiv) Registrar General of the High Courts, States Legal Services Authority and State Judicial Academies are requested to sensitize all stakeholders as early as possible with respect to the provisions of Chapters XI and XII of the M.V. Amendment Act and the M.V. Amendment Rules, 2022 and to ensure the mandate of law.

xv) For compliance of mandate of Rule 30 of the M.V. Amendment Rules, 2022, it is directed that on disputing the liability by the insurance company, the Claims Tribunal shall record the evidence through Local Commissioner and the fee and expenses of such Local Commissioner shall be borne by the insurance company.

xvi) The State Authorities shall take appropriate steps to develop a joint web portal/platform to coordinate and facilitate the stakeholders for the purpose to carry out the provisions of M.V. Amendment Act and the Rules in coordination with any technical agency and be notified to public at large.”

10. Therefore, this Court is of the considered opinion, that merely because the FIR was lodged belatedly, it cannot be held that the vehicle was involved after due deliberations. Furthermore, the driver of the offending vehicle also did not appear in the witness box. The Appellant also did not examine any witness in its support. Thus, it is held that the Appellant has been rightly held jointly and severally responsible along with driver and owner of the vehicle to pay compensation amount.

11. No other argument is advanced by the Counsel for the Appellant.

12. *Ex-consequenti*, the award dated 20-6-2019 passed by 3rd Member, Motor Accident Claims Tribunal, Nagod, Distt. Satna in M.A.C.C. No.47/2017 is hereby **affirmed**.

13. The Appeal fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

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