

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 10th OF APRIL, 2023
MISC. APPEAL No. 2668 of 2021**

BETWEEN:-

**THE NEW INDIA INSURANCE COMPANY
LIMITED THROUGH ITS MANAGER, MICRO
OFFICE PLOT NO. 68, OPPOSITE DAL SAGAR,
GURUBHAWAN BHAIROGANJ RAOD, SEONI
(M.P.) (MADHYA PRADESH)**

**(INSURANCE COMPANY OF VEHICLE
MOTORCYCLE NO. MP-22-MB-2953)**

.....PETITIONER

(BY SHRI ROHIT JAIN- ADVOCATE)

AND

- 1. GYANVATI W/O LATE KRISNAKUMAR,
AGED ABOUT 25 YEARS, R/O VILLAGE
NAGANDEVI, POLICE STATION
DHOOMA, TEHSIL LAKHNADAUN, DISTT.
SEONI (MADHYA PRADESH)**

- 2. SURAJ S/O LATE KRISHNAKUMAR, AGED
ABOUT 8 YEARS, NATURAL GUARDIAN
MOTHER GYANVATI W/O LATE
KRISHNAKUMAR R/O VILLAGE
NAGANDEVI, POLICE STATION
DHOOMA, TEHSIL LAKHNADAUN, DISTT.
SEONI (MADHYA PRADESH)**

- 3. SANSKAR S/O LATE KRISHNAKUMAR,
AGED ABOUT 6 YEARS, NATURAL
GUARDIAN MOTHER GYANVATI W/O
LATE KRISHNAKUMAR, R/O VILLAGE**

**NAGANDEVI, POLICE STATION
DHOOMA, TEHSIL LAKHNADAUN, DISTT.
SEONI (MADHYA PRADESH)**

4. **SANTOSH KUMAR VISHWAKARMA, S/O
KHUBBILAL AGED ADULT, R/O VILLAGE
GHURWADA, POLICE STATION
DHOOMA, TEHSIL LAKHNADAUN,
DISTRICT SEONI (MADHYA PRADESH)**

**(VEHICLE DRIVER OF MOTORCYCLE
NO. MP-22-MB-2953)**

5. **NITESH TIWARI, S/O NARAYAN TIWARI,
AGED ADULT, R/O VILLAGE KHANDASA,
POLICE STATION AND TEHSIL KURAI,
DISTRICT SEONI (MADHYA PRADESH)**

**(VEHICLE OWNER OF MOTORCYCLE
NO. MP-22-MB-2953)**

.....RESPONDENTS

(BY SHRI ABHINAV TIWARI- ADVOCATE FOR RESPONDENT NOS. 1 TO 3)

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

JUDGMENT

This miscellaneous appeal under Section 173 (1) of the Motor Vehicles Act, 1988 has been filed against the award dated 16.08.2021 passed by First Additional Motor Accident Claims Tribunal, Lakhnadaun, District Seoni in M.A.C.C. No.14/2017.

2. According to the Claimants, on 24.12.2016 the deceased Krishnakumar was going from Gotegaon to his house on motorcycle

bearing Registration No. MP-22-MB-2953. He himself was driving. When he reached near culvert of Shyamnagar, Village Bandarjhiriya, he fell down in the pit as there was no sign of danger, accordingly, he suffered head injury and died on the spot. The respondent No. 4 was the registered owner of the offending vehicle.

3. It is the case of the appellant that according to the claimants the deceased was driving the motor cycle of the insurer and, therefore, he stepped into the shoes of the owner and the liability of the Insurance Company will be to the extent of Rs.1,00,000/- only. To buttress his contention, the counsel for the appellant relied upon by the judgment passed by the Supreme Court in the case of **Ramkhiladi and Another Vs. United India Insurance Company and Another**, reported in **(2020) 2 SCC 550**.

4. On the contrary, the counsel for the respondent Nos. 1 and 2 has supported the award passed by the Claims Tribunal and submits that in fact the deceased was going for the work of the owner and, therefore, he will not step into the shoes of the owner.

5. Considered the submissions made by the counsel for the parties.

6. The claimants in the Claim Petition which was filed before the Claims Tribunal under Section 163-A of the Motor Vehicles Act have specifically stated that on 24.12.2016, the deceased had gone to the family of his relatives and on 25.12.2016 at about 07:00 am, he was coming back on a motorcycle bearing Registration No. MP-22-MB-2953 and because of a pit in the mid of the road, he fell down and suffered head injury which resulted in his death.

7. Gyanwati (A.W.-1) has also stated the same fact in her affidavit filed under Order 18 Rule 4 of C.P.C. However, in cross-examination by the counsel for the appellant, a suggestion was given that the husband of this witness was going on the motorcycle of the registered owner in connection with the work of registered owner. This suggestion was accepted by the witness.

8. Once, a suggestion is given by the appellant himself that the deceased was going on the motorcycle of the registered owner in connection with the work of the registered owner, then the appellant is bound by such suggestion.

9. The Supreme Court in the case of **Balu Sudam Khalde and Another Vs. The State of Maharashtra** by judgment dated 29.03.2023 passed in **Cr.A.No.1910/2010** has held that the suggestion made by the defence counsel to a witness in the cross-examination, if found to be incriminating in nature in any manner, would definitely bind the accused and the accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client.

10. Once, the counsel for the appellant himself has given a suggestion that the deceased was going on the motorcycle of the insurer in connection with the work of the insurer, then the said suggestion is binding on the appellant. The Claims Tribunal has rightly held that the appellant has failed to prove that the deceased had stepped into the shoes of the owner.

11. The Supreme Court in the case of **National Insurance Company Limited Vs. Sinitha and Others**, reported in **(2012) 2 SCCD 6675** has

held as under:-

“19. To substantiate his second contention, it would be essential for the petitioner to establish, that Shijo having occupied the shoes of the owner, cannot be treated as the third party. Only factual details brought on record through reliable evidence, can discharge the aforesaid onus. During the course of hearing, despite our queries, learned counsel for the petitioner could not point out the relationship between Shijo and the owner of the motorcycle involved in the accident. Shijo is not shown to be the employee of the owner. He was not even shown as the representative of the owner. In order to establish the relationship between the Shijo and the owner, the petitioner-Insurance Company could have easily produced either the owner himself as a witness, or even the claimants themselves as witnesses. These, or other witnesses, who could have brought out the relationship between the owner and Shijo, were not produced by the petitioner herein, before the Tribunal. The petitioner has, therefore, not discharged the onus which rested on its shoulders. Since the relationship between the Shijo and the owner has not been established, nor the capacity in which he was riding the vehicle has been brought out, it is not possible for us to conclude, that Shijo while riding the motorcycle on the fateful day, was an agent, employee or representative of the owner. It was open to the petitioner to defeat the claim for compensation raised by the respondents by establishing, that the rider Shijo represented the owner, and as such, was not a third party, in terms of the judgment rendered by this Court in Oriental Insurance Company Limited case (supra). The petitioner failed to discharge the said onus. In view of the above, it is not possible for us to accede to the second contention advanced at the hands of the learned counsel for the petitioner.”

12. Occasional use of motorcycle of the owner even for the work of the owner would not bring the person within the category of agent, employee or representative of the owner. Since, the appellant himself had given a suggestion to the Claimant that the deceased was going on a motorcycle in connection with the work of the owner, this Court is of the considered opinion that it cannot be held that the deceased had borrowed the motorcycle from the owner. Under these circumstances, it cannot be said that the deceased had stepped into the shoes of the owner. Accordingly, it is held that the deceased was a 3rd party and the Claims Tribunal has rightly awarded the compensation amount.

13. Accordingly, the award dated 16.08.2021 passed by First Additional Motor Accident Claims Tribunal, Lakhnadaun, District Seoni in M.A.C.C. No.14/2017 is hereby **affirmed**.

14. The appeal fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

ashish