

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

HON'BLE SHRI JUSTICE HIRDESH

ON THE 18th OF JANUARY 2024

MISC. APPEAL No. 2347 of 2022

Between :-

**BRANCH MANAGER NATIONAL
INSURANCE CO. LTD. BRANCH
OFFICE KHANDELWAL BUILDING,
FIRST FLOOR, RAILWAY STATION
ROAD BALAGHAT TAHSIL AND
DISTRICT BALAGHAT THROUGH THE
INCHARGE TP HUB VIJAY NAGAR
JABALPUR (M.P.)**

.....APPELLANT

(SMT. AMRIT KAUR RUPRAH - ADVOCATE)

VS.

- 1. AGHAN SINGH MERA VI S/O LATE
SHRI PAKLU MERA VI AGED 43 YEARS**
- 2. DUKHIYA MERA VI S/O SHRI AGHAN
SINGH MERA VI AGED ABOUT 14
YEARS**
- 3. ROHIT MERA VI S/O SHRI AGHAN
SINGH MERA VI AGED 11 YEARS**
- 4. SADHANA MERA VI S/O SHRI AGHAN
SINGH MERA VI AGED 08 YEARS**
- 5. SANDEEP MERA VI S/O SHRI AGHAN
SINGH MERA VI AGED ABOUT 05
YEARS**

RESPONDENT NOS. 2 TO 5 THROUGH
FATHER AND NATURAL GUARDIAN
AGHAN SINGH MERAVI ALL CASTE
BAIGA R/O VILLAGE KUNDEKASA,
TAHSIL AND POLICE STATION BIRSA
DISTRICT BALAGHAT (M.P.)

6. PRAVEEN RAMTAKE S/O SHRI
GOPAL RAMTAKE AGED 25 YEARS
CASTE MAHAR R/O WARD NO. 19
AMBEDKAR CHOWK DAMOH THANA
AND TAHSIL BIRSA DISTT. BALAGHAT
(M.P.)

7. SMT. NAMRATA AGRAWAL W/O
SHRI PANNALAL AGRAWAL AGED 45
YEARS R/O VILLAGE
REGHAKHARKALA TAHSIL BODLA
DISTT. KABEERDHAM (C.G.)

...RESPONDENTS

*(SHRI SANTOSH KUMAR MESHARAM – ADVOCATE FOR
RESPONDENT NOS. 1 TO 5 AND SHRI D.K. TIWARI –
ADVOCATE FOR RESPONDENT NO. 7)*

MISC. APPEAL No. 2357 OF 2022

BRANCH MANAGER NATIONAL
INSURANCE CO. LTD. BRANCH
OFFICE KHANDELWAL BUILDING,
FIRST FLOOR, RAILWAY STATION
ROAD BALAGHAT TAHSIL AND
DISTRICT BALAGHAT THROUGH THE
INCHARGE TP HUB VIJAY NAGAR
JABALPUR (M.P.)

...APPELLANTS

(SMT. AMRIT KAUR RUPRAH - ADVOCATE)

1. PANDU MARKAM S/O LATE SHRI
TOKSINGH MARKAM AGED 43 YEARS

2. SMT. SAVNI MARKAM, W/O SHRI
PANDU MARKAM AGED ABOUT 41
YEARS BOTH CASTE BAIGA R/O
VILLAGE KUNDEKASA POLICE
STATION AND TAHSIL BIRSA, DISTT.
BALAGHAT (M.P.)

3. PRAVEEN RAMTAKE, S/O SHRI
GOPAL RAMTAKE AGED 25 YEARS
CASTE MAHAR R/O WARD NO. 19,
AMBEDKAR CHOWK DAMOH THANA
AND TAHSIL BIRSA DISTRICT
BALAGHAT (M.P.)

4. SMT. NAMRATA AGRAWAL W/O
SHRI PANNALAL AGRAWAL AGED 45
YEARS R/O VILLAGE
REGHAKHARKALA TAHSIL BODLA
DISTT. KABEERDHAM (C.G.)

....RESPONDENTS

*(SHRI SANTOSH KUMAR MESHAM – ADVOCATE FOR
RESPONDENT NOS. 1 AND 2 AND SHRI D.K. TIWARI –
ADVOCATE FOR RESPONDENT NO. 4)*

RESERVED ON - 06.12.2023

DELIVERED ON – 18.01.2024

*These misc. appeals having been heard and reserved for
orders, coming on for pronouncement this day, the Court
passed the following :*

ORDER

1. These appeals have been filed by the appellant/insurance company under Section 173(1) of Motor Vehicles Act being aggrieved with the common award dated 26.02.2022 passed by Member, Motor Accident Claims Tribunal, Baihar, Distt. Balaghat in MACC No.07/2019 and MACC No.08/2019, whereby the learned Claims Tribunal awarded a total sum of Rs.10,94,464/- in MACC No.07/2019 and Rs.14,33,152/- in MACC No.08/2019, with interest from the dated of filing of petition till realization to the claimants by way of compensation on account of death of Sarvan Markam and Chhari Bai in motor accident which allegedly took place on 04.11.2018.

2. In M.A. No. 2347/2022 it is alleged that deceased Sarwan Markam was travelling in pick up van CG-09-B-1547 which was being driven by respondent Praveen Ramtake negligently. It was owned by the respondent Namrata Agrawal and insured by the appellant/insurance company. Due to negligent driving, it overturned and consequently deceased sustained injuries and died.

3. In MA No. 2347/2022, claimant filed a claim petition that deceased Chhari Bai was walking on the road then the driver of that vehicle bearing registration No. CG-09-B-1547, namely, Praveen Ramteke was driving the vehicle at high speed and negligently and then the vehicle overturned then deceased Chhari Bai sustained injuries and died.

4. Claimants of both deceased Chhari Bai and Sarvan Markam filed claim petitions for seeking compensation against the owner, driver and insurance company.

5. Driver and owner of the offending vehicle denied and stated that no accident has been caused by them. They pleaded that offending vehicle was insured with the insurance company. So they are not liable for compensation.

6. On the other hand, learned counsel for appellant (in both appeals) denied the allegation and taken defence that driver and owner, breaches the term and policy of the insurance company and deceased were travelling in pick up van as a gratuitous passengers. Offending vehicle was registered as a transport vehicle and it has capacity for travelling of only two persons driver and helper. It was not for carrying passengers, so it is a breach of insurance policy so insurance company is not liable.

7. Tribunal framed the issues and recorded the evidence and thereafter, claim petitions of the claimants were partially accepted and awarded the compensation.

8. Being aggrieved by the impugned award appellant/insurance company filed these appeals on ground that offending vehicle was insured as a transport vehicle and not for carrying passengers. Both the deceased were travelling in the vehicle as passengers in offending

vehicle. It had a capacity of carrying only two persons, driver and helper and deceased was not a helper, so insurance company prays for exoneration from their liability.

9. Per contra, learned counsel appearing on behalf of the respondents/claimants in both the appeals submitted that Tribunal passed impugned award after due appreciation of evidence that came on record which requires no interference and pray for rejection of this appeal.

10. Considered the arguments advanced by learned counsel for the parties and perused the record of the Tribunal.

11. Learned counsel for the appellants submitted that deceased were travelling as passengers in the offending vehicle. In MACC No. 07/2019, P.W. 1 Pandu Markam stated in evidence in Para No. 1 by way of affidavit under Order 18 Rule 4 that his son Sarvan Markam was returning from Damoh market to his village Kudekasa in the said pick van which was being driven by the driver of the offending vehicle who was driving it rashly and negligently and overturned the vehicle, due to that his son Sarvan Markam received injuries and thereafter, he died. P.W. 1 Pandu Markam in his cross-examination in Para 7 stated which is as under :-

“यह कहना सही है कि दुर्घटनाग्रस्त वाहन पिकअप

क्रमांक सी.जी. 09 बी 1547 में गांव के अन्य लोग भी बैठे

थे। यह कहना भी सही है कि दुर्घटनाग्रस्त वाहन में मेरे पुत्र के अतिरिक्त 15 से 20 लोग बैठे हुए थे। यह कहना भी सही है कि दमोह और हमारे गांव के बीच चैनडीह के जंगल में वाहन पलटने से उक्त दुर्घटना घटी थी। यह कहना भी सही है कि उसी दौरान वाहन के पलटने के कारण चारी बाई और मेरा पुत्र दबकर मर गए थे। यह कहना भी सही है कि वाहन में बैठे अन्य 15-20 लोगों को चोट लगने के कारण सामुदायिक स्वास्थ्य केन्द्र बैहर ले जाया गया था।”

12. Claimant of MACC No.08/19, P.W. 2 Aghan Singh Meravi

stated in cross-examination in Para 7 which is as under :-

“यह कहना सही है कि दुर्घटना दिनांक को मेरी पत्नी चारी बाई और पाण्डु का पुत्र सरवन तथा गांव के अन्य 15-20 लोग ग्राम दमोह से बाजार करके लौटते दौरान वाहन के पलट जाने से उसके नीचे दब जाने के कारण दोनों की मृत्यु कारित हुई थी। यह कहना भी सही है कि दुर्घटना कारित वाहन पिकअप के पलट जाने के कारण बैठे गांव के अन्य लोगों को चोट आ जाने के कारण उन्हें सामुदायिक स्वास्थ्य केंद्र बैहर लेकर गए थे। यह कहना भी सही है कि उक्त दुर्घटना चैनडीह के जंगल के समीप वाहन पिकअप के पलट जाने के कारण हुई थी। यह कहना सही है कि मेरे गांव के लालसिंह पिता सवनु द्वारा प्रथम सूचना रिपोर्ट प्रदर्श ए-1 दर्ज कराई गई थी। यह कहना भी सही है कि साक्षी लालसिंह द्वारा प्रथम सूचना रिपोर्ट में उल्लेख किया गया था कि मेरी पत्नी चारी बाई, पाण्डु का पुत्र सरवन और गांव के अन्य 15-20 लोग वाहन पिकअप से बाजार करके किराए पर लेकर वापस लौटते वक्त दुर्घटना हुई थी। यह कहना

सही है कि प्रकरण में प्रस्तुत अंतिम प्रतिवेदन प्रदर्श एन ए-1 में इस बात का इंड्राज है कि पिकअप वाहन के पलटने से मेरी पत्नी चारी बाई और पाण्डू का पुत्र सरवन की मृत्यु कारित हुई थी। यह कहना भी सही है कि प्रदर्श एन ए 1 में इस बात का उल्लेख है कि पिकअप वाहन पलटने से गांव के 15-20 लोग घायल हुए थे। यह कहना सही है कि मेरे द्वारा प्रकरण में मृतिका की आय के संबंध में कोई दस्तावेज पेश नहीं किया गया है।”

13. So in pursuance of the evidence of P.W. 1 Pandu Markam in MACC No. 07/2019 and P.W. 2 Aghan Singh in MACC No. 08/2019, it is clear that both the deceased were sitting in the offending vehicle and there is no evidence that they were labourers in the offending vehicle. In pursuance of the evidence and document of the criminal record, it is clear that they were travelling as a passengers in the offending vehicle.

14. Eye witness P.W. 3 Mantu Singh Parte also stated in cross-examination, in para No. 3 that it is true that deceased Chhari Bai and Sarvan Markam and all other injured were in the offending vehicle and witness of the insurance company i.e. D.W. 1 Sumit Kumar Soni stated that offending vehicle was goods carrying vehicle and it has sitting capacity of only two persons, driver and helper and witness of the insurance company i.e. D.W. 2 Lal Singh Rahangdale stated in his evidence that offending vehicle was goods carrying

vehicle and insurance company had not taken premium of passengers.

15. So considering the evidence adduced by the claimants, it is clear that deceased were travelling as passengers and they were not travelling as a labourers.

16. So in the considered opinion of this Court that Tribunal has committed serious error that Sarvan Markam was travelling as a helper in the offending vehicle and also committed error that Chhari Bai met with accident when she was walking on the road.

17. So in the facts and circumstances of the case, this Court has no hesitation to hold that the deceased were travelling in the offending vehicle as gratuitous passengers and in view of the matter it is found that appellant is not liable to pay compensation to the claimants.

18. Claimants will be entitled to recover the awarded compensation only from the owner and driver of the offending vehicle who shall jointly and severally liable to pay compensation.

19. In above terms, appeal is disposed of.

**(HIRDESH)
JUDGE**