

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

HON'BLE SHRI JUSTICE HIRDESH

ON THE 12th OF JANUARY, 2024

MISC. APPEAL No. 1808 of 2022

BETWEEN:-

CHOLAMANDALAM MS GENERAL INSURANCE COMPANY LTD, 1133/1, PAWAN COMPLEX, OPPOSITE HATHITAL GURUDWARA, HATHITAL, JABALPUR, TEHSIL AND DISTRICT JABALPUR M.P. (MADHYA PRADESH) THROUGH ITS MANAGER (INSURANCE COMPANY)

.....APPELLANT

(BY SHRI MOHD. SIDDIQUI - ADVOCATE)

AND

- 1. SMT. BUDHNI BAI W/O LATE MOHANLAL MARKAM, AGED ABOUT 56 YEARS**
- 2. FUNDARI BAI W/O LATE MOHANLAL MARKAM, AGED ABOUT 54 YEARS**
- 3. RAM SHOBHE S/O LATE MOHANLAL MARKAM, AGED ABOUT 45 YEARS,
ALL ARE R/O VILLAGE PANDKALAN, POLICE STATION GHUGHARI, DISTRICT MANDLA (MADHYA PRADESH)**
- 4. UMESH NANDA S/O PATIRAM NANDA, AGED ABOUT 25 YEARS, AGED ABOUT 25 YEARS, R/O VILLAGE SAILWARA, POLICE STATION AND TEHSIL GHUGHARI, DISTRICT MANDLA (M.P.)
(VEHICLE DRIVER)**
- 5. PATIRAM NANDA S/O JAGESHWAR NANDA, AGED ABOUT 40 YEARS, OCCUPATION: VEHICLE OWNER R/O VILLAGE SAILWARA, POLICA STATION AND TEHSIL GHUGHARI, DISTRICT MANDLA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI PRIYANK TIWARI – ADVOCATE FOR THE RESPONDENTS NO. 1 TO 3)

MISC. APPEAL No. 3689 of 2022

BETWEEN:-

1. SMT. BUDHANI BAI W/O LATE MOHANLAL MARKAAM, AGED ABOUT 56 YEARS
 2. FUNDARI BAI W/O LATE MOHANLAL MARKAAM, AGED ABOUT 54 YEARS
 3. RAM SHOBHE S/O LATE MOHANLAL MARKAAM, AGED ABOUT 45 YEARS
- ALL ARE RESIDENTS OF GRAM PANDKALA THANA GHUGHRI DISTRICT MANDLA M.P. (MADHYA PRADESH)

.....APPELLANTS

(BY SHRI PRIYANK TIWARI - ADVOCATE

AND

1. UMESH NANDA S/O PATIRAM NANDA, AGED ABOUT 25 YEARS, R/O GRAM SAILVARA THANA / TEHSIL GHUGHRI DISTRICT MANDLA M.P. (MADHYA PRADESH)
2. PATIRAM NANDA S/O JAGESHWAR NANDA, AGED ABOUT 40 YEARS, R/O GRAM SAILVARA, THANA / TEHSIL GHUGHRI DISTRICT MANDLA M.P. (MADHYA PRADESH)
3. CHOLA MANDALAM M.S. GENERAL INSURANCE COMPANY LIMITED, THROUGH BRANCH MANAGER 1133/1, PAVAN COMPLEX, OPPOSITE HATHITAAL, GURUDWARA, HATHITAAL, JABALPUR, TEHSIL / DISTRICT JABALPUR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI A.K. PANDEY – ADVOCATE FOR RESPONDENT NO.1 AND SHRI MOHD. SIDDIQUI – ADVOCATE FOR RESPONDENT NO.3.)

Reserved on : 04.12.2023

Pronounced on : 12.01.2024

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

ORDER

1) As both these appeals arise out of the same award, they are being decided by a common order. The Insurance Company in M.A.No. 1808 of 2022 and claimants in M.A.No. 3689 of 2022 have filed these appeals being aggrieved by the award dated 4.1.2022 passed by M.A.C.T, Mandla, District Mandla in M.A.C.C. No. 45/2020 whereby the Tribunal awarded a

sum of Rs.4,26,400/- with interest from the date of filing of petition till its realization in favour of claimants by way of compensation on account of death of Mohanlal in motor accident which allegedly took place on 6.12.2019.

2) The brief facts of the case are that claimants filed a claim petition under Section 166 of the Motor Vehicle Act to the effect that on 6.12.2019 at about 12:00 hrs deceased Mohanlal Markam was travelling in a pick up vehicle bearing No. M.P.20.J.B. 3393 to Ghughari Bazar. When the vehicle reached in front of house of Sandeep Choudhary at village Pandkala's main road, the driver applied brake all of a sudden. As a result, Mohanlal fell on the ground and sustained grievous injuries. He was taken to Gughari Hospital for treatment, where he died.

3) Claimants further pleaded that deceased was 55 years old healthy man and by means of agriculture and labour work, he used to earn Rs.8,000/- per month, which helped him to meet his expenses as well as that of his dependents. Claimants claim Rs.19,00,000/- along with interest. The owner and driver remained ex-parte whereas the Insurance Company filed reply and denied the allegations. It was pleaded by the Insurance Company that in case of delay in lodging FIR, therefore, implant is writ large. It was also pleaded that the vehicle insured was a goods carrying vehicle and the deceased was travelling as an unauthorized gratuitous passenger not covered in the policy. He was sitting on the loading portion and which is also not permissible and thus the breach of policy has

occasioned and therefore the company be exonerated. It was pleaded that it is a case of non-possession of valid and effective driving license and permit with evidence and thus the breach of policy has also occurred due to the said negligence and thus the company be exonerated.

4) Issues were framed and evidence was recorded and the Tribunal awarded Rs.4,26,400/- with interest in favour of claimants.

5) Being aggrieved by the impugned award, the appellant/ Insurance Company has preferred M.A.No.1808 of 2022 on the ground that the deceased was not sitting in the cabin of vehicle meant for passengers. He was sitting in the loading portion. Deceased was an unauthorized gratuitous passenger and was not covered in the policy. Insurance Company, by way of Ex.D-1 claims that the driver did not have valid and effective driving license on the date of the accident. Besides this, the compensation awarded by the Tribunal is on higher side. Under these grounds, learned counsel for the Insurance Company pleaded that the Insurance Company be exonerated from the liability of paying compensation or in the alternative, the quantum of compensation be reduced.

6) The claimants or appellants in M.A. No. 3689/ 2022 have filed this appeal for enhancement of compensation amount and contended that the Tribunal has wrongly assessed the income of the deceased as on the date of the accident i.e. 06.12.2019, Collector rate was Rs.7,950/- for unskilled labour.

- 7) Both the appellants pray for rejection of appeal of each other.
- 8) First of all, let's take into consideration the appeal filed by the Insurance Company. The Insurance Company submitted that the offending vehicle was goods carrying vehicle and instead of sitting in the cabin meant for passengers, the deceased was sitting in the loading portion of the vehicle, which is against the policy, hence breach of policy has occurred, therefore, Insurance Company be exonerated from making payment of compensation.
- 9) The Insurance Company adduced the evidence of A.W.1 Pawan Prajapati, who deposed that the deceased was unauthorized passenger, hence not covered under the policy. He exhibited policy Ex. D/1. He further stated by way of affidavit that vehicle was goods carrying vehicle and at the time of alleged accident, it was being used as a passenger carrier and Insurance Company had not taken any premium from gratuitous passengers.
- 10) From perusal of the relevant documents filed by the claimants it is evident that deceased was sitting in the offending vehicle with his goods (*Dhaan ki bori*). In **New India Assurance Company Limited Vs. Asha Rani and others, (2003) 2 SCC 223**, Hon'ble Apex Court has held that in goods carrying vehicle, passenger who is owner of the goods is permissible and his risk is covered under the Insurance Policy.
- 11) P.W.1 Kundribai stated in cross-examination that her husband was sitting with his goods in the offending vehicle and he had not paid any rent,

therefore, it is clear that deceased was not gratuitous passenger and Tribunal has rightly held that deceased was not gratuitous passenger so in view of the aforesaid discussion, it is evident that the Tribunal has not committed any error in holding that deceased was sitting in the offending vehicle as owner of the goods. Hence, in this regard argument of the Insurance Company has no substance.

12) Taking into consideration the prayer of claimants for enhancement of compensation and the prayer of Insurance Company for reduction of compensation, it is evident from the record that accident took place on 06.12.2019. Tribunal assessed income of the deceased as Rs.4,500/- per month, but at the relevant time Collector rate of unskilled labour was Rs.7,950/- per month, so it is found that Tribunal has erred in assessing the income of the deceased.

13) In the considered opinion of this Court, just and proper income of the deceased would be as follows :-

Per month income of deceased	Rs. 7,950 /-
Towards future prospects (addition of 10%)	Rs. 8,745 /-
Dependency of claimants (2/3)	Rs. 5,830/-
Annual Dependency of claimants	Rs.69,960/-
On applying multiplier of 9	Rs.6,29,640/-
For Funeral expenses	Rs. 16,500/-
For Loss of estate	Rs.16,500/-
For loss of consortium (Rs.44,000 x 3)	Rs. 1,32,000/-
Total compensation	Rs. 7,94,640/-
Compensation awarded by Tribunal	Rs. 4,26,400/-

Enhanced Compensation	Rs. 3,68,240 /-
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14) In view of the aforesaid, **M.A.No. 1808 of 2022** filed by the Insurance Company, being devoid of the merit, is **dismissed**.

15) In **M.A.No. 3689 of 2022**, the appellants have valued the appeal only to the extent of Rs. 2,00,000/- 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.

16) Rest of the findings of the Tribunal shall remain intact.

17) **M.A.No. 3689 of 2022** is **partly allowed** to the extent above.

(HIRDESH)
JUDGE

Vikram