

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

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 12th OF JANUARY, 2024

MISC. APPEAL No. 4685 of 2022

BETWEEN:-

**NATIONAL INSURANCE COMPANY LTD. THROUGH ITS
DIVISIONAL MANAGER, OFFICE M.R. 4 ROAD, VIJAY
NAGAR, JABALPUR (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI VAIBHAV JAIN - ADVOCATE)

AND

- 1. SMT. CHANDA BAI W/O LATE SHRI SHEELCHAND @
SILLU, AGED ABOUT 49 YEARS, OCCUPATION:
HOUSEWIFE**
- 2. MAHENDRA KUMAR S/O LATE SHRI SHEELCHAND
@ SILLU, AGED ABOUT 28 YEARS, OCCUPATION:
EDUCATION**
- 3. PRASANT S/O LATE SHEELCHAND @ SILLU, AGED
ABOUT 26 YEARS, OCCUPATION: EDUCATION**
- 4. ABHILASHA D/O LATE SHEELCHAND @ SILLU,
AGED ABOUT 24 YEARS, OCCUPATION: EDUCATION**

**ALL ARE R/O VILLAGE PADRIYA THANA TIKRIYA
DISTRICT MANDLA (MADHYA PRADESH)**

- 5. AMIT KUMAR SONI S/O SHRI D.L. SONI AGED
ACOUT : NOT KNOWN R/O BARELA, THANA BARELA,
DISTRICT JABALPUR (MADHYA PRADESH)**
- 6. R/O HOUSE NO. 376/17 KASTRUBA WARD, JABALPUR
(MADHYA PRADESH)**

.....RESPONDENTS

(BY MS. PRIYANKA TIWARI - ADVOCATE)

Reserved on : 07.12.2023

Pronounced on : 12.01.2024

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

ORDER

This appeal has been filed by the appellant/ Insurance Company under Section 173(1) of the Motor Vehicles Act being aggrieved by the award dated 9.7.2022 passed by the Third Additional Motor Accidents Claims Tribunal, Jabalpur in M.A.C.C. No.2466/2018 whereby the Tribunal has awarded a total sum of Rs.9,11,188/- with interest @ 6% from the date of filing of the petition till its realization in favour of claimant by way of compensation on account of death of one Sheelchand @ Sillu Patel.

2. The brief facts of the case are that claimants (respondents No. 1 to 4) are legal heirs of the deceased, who had filed an application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of the death of Sheelchand @ Sillu Patel due to accident that occurred on 24.04.2018.

3. It is alleged in the claim case that deceased along with two other persons were loading wheat in respondent no.6's pickup (good carriage) vehicle bearing registration number M.P. 20 GA 2856. At around 17.30 P.M, after unloading wheat when they came back towards his residence village Tikriya. The pickup vehicle was jumped up due to rash and negligent driv-

ing of respondent no.5 and deceased Sheelchand @ Sillu Patel fell down and sustained grievous injuries. He was immediately taken to Government hospital, Tikriya for treatment from where he was referred to Government Medical Hospital Jabalpur and during the course of treatment he died. The claimants alleged rash and negligent driving of the aforesaid pickup by the respondent no.5, which was owned by the respondent no.6 and insured with the appellant / Insurance Company at the time of accident.

4. Claimants submitted that they are entitled for compensation as claimed in respective claim case from the owner, driver and insurance company.

5. The owner/ driver of the vehicle in question remained ex-parte and did not file written statement. The appellant/ Insurance Company denied its liability to pay compensation on the ground that the vehicle in question was being used contrary to the terms and conditions of the Insurance Company. He submitted that the driver of the said vehicle did not possess valid and effective driving license at the time of accident. The said vehicle is transport vehicle and the driver did not have transport driving license. The fitness certificate is valid from 01.08.2016 to 31.07.2017 and accident occurred on 24.04.2018. The deceased person was an unauthorized passenger of the vehicle. Therefore, insurance company is not liable to pay compensation to claimants.

6. The Tribunal framed issues and taking evidence of both the parties held that alleged accident occurred due to rash and negligent driving of the

Respondent No.5, in which Sheelchand @ Sillu Patel died and awarded compensation to the tune of Rs. 9,11,188/- by assessing monthly income of the deceased as Rs.9,156.25/-.

7. Being aggrieved by the aforesaid award, the Insurance Company has filed appeal on the ground that Section 56 of the 1988 act provides that the transport vehicle shall mandatorily carry the Certificate of Fitness in such form containing such particulars and information as may be prescribed by the Central Government and issued by the concerned authority and in absence of such Certificate of Fitness, a transport vehicle shall not be deemed to be registered for the purpose of Section 39 thereof. For that, it is undisputed position that since the vehicle in question is a transport vehicle and it did not carry Certificate of Fitness at the time of accident, the same cannot be said to be validly registered under Section 39 of 1988 Act, and that being so, such vehicle cannot be driven in a public place.

8. He further submitted that deceased was an unauthorized passenger. Hence the Insurance Company is not liable to pay compensation to carry an unauthorized passenger. Moreover, the Tribunal awarded compensation on higher side. He, therefore, prays for setting aside the impugned award or in the alternative, exonerating the Insurance Company to pay compensation.

9. On the other hand, learned counsel for the respondents submitted that the Tribunal has rightly awarded the compensation and argued in support of the award passed by the Tribunal.

10. Heard the learned counsel for the parties and perused the record.

11. The first ground raised by the Insurance Company is that on the date of the accident i.e. 24.04.2018, there was no Certificate of Fitness in respect of the offending vehicle. **In Oriental Insurance Company Ltd. Vs. Manoj and others, 2014 ACJ 2389**, it is held that when Insurance Company disputes its liability on the ground that there was violation of the terms and conditions of policy as the offending vehicle was plied without fitness certificate, then the Insurance Company is required to specify the terms of the policy showing the necessity of fitness certificate and also prove the violation of conditions stipulated under Section 439 of the Motor Vehicle Act.

12. In the present case, Himanshu Gupta, who is witness of Insurance Company, admitted in cross-examination that in policy it was not clearly mentioned that fitness of the offending vehicle is necessary. So, in cross-examination of this witness, it is admitted that there is no specific mention in the insurance policy that fitness certificate is necessary. In absence of such specific mention of the requirement, this argument of Insurance Company has no substance.

13. Insurance Company further submitted that deceased was unauthorized passenger. It is argued that offending vehicle was pick up vehicle and deceased was unauthorized passenger of the vehicle so Insurance Company is not liable to pay compensation in respect of unauthorized passenger.

14. In this regard, claimants pleaded that deceased along with two other persons were coming back after unloading wheat from respondent No.6's pick up vehicle, when they were coming back towards their residence village Tikriya. The pickup vehicle was jumped up due to rash and negligent driving of respondent no.5 and deceased Sheelchand @ Sillu Patel fell down and sustained grievous injuries. During treatment, he died.

15. P.W.1 Prashant Kumar stated in cross-examination that his father was working as a labourer in offending vehicle for loading and unloading of goods. From perusal of cross-examination of this witness, it is evident that Insurance Company has not put single question to this witness that the deceased was not working as labourer in offending vehicle for loading and unloading of goods. On this point, the evidence of A.W.1 Prashant was unrebutted and there is no reason to disbelieve him.

16. From perusal of the award it is found that the Tribunal discussed this point in detail in paragraphs 15 and 16 of the award and found that the deceased was not a gratuitous passenger. He was a labourer doing loading and unloading work in offending pick-up so considering the evidence of Prashant (A.W.1) it is found that he was unrebutted in his evidence so claimants proved that deceased was sitting in the offending vehicle as a labourer and not gratuitous passenger.

17. In view of the aforesaid discussion, arguments put up by the Insurance Company has no substance. It is further submitted on behalf of the Insurance Company that the driver of the offending vehicle has no valid and

effective driving license at the time of the accident but according to the evidence of A.W.1 and A.W.2, driver of the offending vehicle had license to drive Light Motor Vehicle. In the case of **Mukund Devangan Vs. Oriental Insurance Company, 2017 AIR (SC) 3668**, Hon'ble Apex Court has held as under :-

“(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motorvehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence todrive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicleweight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumeratedabove. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form”

In view of the aforesaid, it is clear that no separate endorsement on license is required to drive transport vehicle so this argument has also no substance.

18. Insurance Company also contended that the Tribunal awarded compensation on higher side but on perusal of the award it is found that the Tribunal assessed the income of the deceased according to Collector rate i.e. 7,325/- per month, which is just and proper. The tribunal assessed dependency half of the total income of the deceased, which is correctly assessed. On perusal of paragraphs 23, 24, 25, 26 and 27 of the award, it is

found that Tribunal awarded just and proper compensation, which cannot be held to be on higher side.

19. In view of the aforesaid discussion, the appeal being devoid of merit is hereby **dismissed**.

(HIRDESH)
JUDGE

Vikram