

NEUTRAL CITATION NO. 2025:MPHC-JBP:53201



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE PRADEEP MITTAL
ON THE 15th OF OCTOBER, 2025
MISC. APPEAL No. 4920 of 2022
SMT. RAMSHRI ANURAGI AND OTHERS
Versus
*SANTRAM PANDEY AND OTHERS***

Appearance:

Shri Sourabh Singh Thakur - Advocate for the appellant.

Shri Somesh Shukla – Advocate for respondent No.2.

Shri Rajendra Kumar – Advocate for respondent No.1.

ORDER

1. The present miscellaneous appeal under Section 173 of the Motor Vehicles Act, 1988, has been filed by the appellants/claimants assailing the award dated 12.09.2022, passed by the Motor Accident Claims Tribunal, Chhatarpur (M.P.) in MACC No. 218/2021, whereby the learned Tribunal rejected the claim petition filed by the appellants.
2. The appellants/claimants had filed the claim petition under Section 166 read with Section 167 of the Motor Vehicles Act, seeking compensation of Rs. 32,00,400/- (Thirty-Two Lakhs Four Hundred only) for the death of

Khannulal Anuragi, who died in an accident involving a J.C.B. machine bearing registration number MP 16 DA 0520.

3. As per the appellants, on 07.12.2020, the deceased Khannulal was employed by Respondent No.1 as a driver/operator of the said J.C.B. vehicle. On the date of the incident, while operating the J.C.B. at the field of one Sunder Yadav in village Barbaspura, due to a technical fault, the deceased got off the J.C.B. to inspect the issue. During the inspection, due to sudden movement caused by the pushing of a lever, the deceased got caught between the loader bucket and the body of the J.C.B., leading to his death on the spot. A Marg Intimation was duly registered at the concerned police station.
4. The claimants, being legal representatives of the deceased, including his wife and minor children, filed a compensation claim against the respondents, i.e., the employer/owner of the J.C.B. and the insurance company, on the ground that the accident occurred during the course of employment and that the vehicle was duly insured with an additional premium covering the risk of the driver.
5. The learned Claims Tribunal, after framing seven issues, appreciated the evidence on record and, vide impugned award dated 12.09.2022, dismissed

the claim, holding that the deceased died due to his own negligence and was not entitled to compensation under the Motor Vehicles Act.

6. Learned counsel for the appellant submits that learned Tribunal committed an error in law and fact by failing to appreciate the oral and documentary evidence placed on record, including the testimony of material witnesses and medical documents supporting the cause of death. The statements of Babulal and Nathhu @ Nathuram, who categorically deposed that the deceased was operating the J.C.B. at the time of the accident and died during the course of his employment, were not considered in the correct perspective. Their deposition established the employer-employee relationship and the cause of death being accidental in nature. The medical documents and Marg report clearly established that the deceased died due to accidental injury caused while inspecting the J.C.B. machine. The Tribunal failed to appreciate this uncontroverted evidence.
7. It is further submitted that the Tribunal erred in observing that the deceased died due to his own negligence and was thus not entitled to compensation. It overlooked the fact that the vehicle was validly insured with Respondent No.2, and an additional premium had been paid to cover the risk of the driver, as evidenced by Exhibit P-4 (insurance policy). It is also submitted that the claim petition was filed under Section 166 read with Section 167 of

the Motor Vehicles Act, providing the claimants with an option to pursue the claim under the Motor Vehicles Act in lieu of the Workmen's Compensation Act. The Tribunal failed to consider the claim in accordance with Section 167, rendering the rejection of the claim unsustainable. The Tribunal failed to consider the fact that the deceased left behind six minor children, who were entirely dependent upon him for livelihood. The number of dependents and their helpless condition was a vital factor requiring consideration for just compensation. The Tribunal was bound to award just, fair, and reasonable compensation in accordance with the settled principles of law. The outright rejection of the claim, despite clear evidence on record, is arbitrary, unjust, and liable to be set aside.

8. Claim petition dismissed only the ground of that the deceased was himself negligent to drive the vehicle. The short question before this Court is that whether claim petition ought to be allowed on the ground of no-fault liability under 163A or section 4 Workman Compensation Act ?
9. Learned counsel for the appellant has placed reliance on *National Insurance Co. Ltd. v. Prembai Patel, (2005) 6 SCC 172*, and argued that in spite of the negligence of the deceased driver, the claim of the legal heir of the deceased would be allowed. The facts of the above case were that the deceased driver was an employee, and his legal heir filed a claim petition under Section 166

of the Motor Vehicles Act, which was dismissed on the ground that the deceased driver himself was negligent in driving the offending vehicle. In appeal, the High Court reversed the finding and held that the owner of the vehicle was negligent, not the deceased driver. Accordingly, the claim was awarded to the legal heir of the deceased. Against the finding of the High Court, the insurance company filed an appeal and challenged the award on the ground that the policy was issued for limited liability and the company was only liable to pay the award as per Section 4 of the Workmen's Compensation Act. The Hon'ble Apex Court held that the High Court, in the impugned judgment, had held that if the legal representatives of the deceased employee approach the Motor Accidents Claims Tribunal for payment of compensation by moving a petition under Section 166 of the Act, the liability of the insurance company is not limited to the extent provided under the Workmen's Act, and on this basis, directed the appellant insurance company to pay the entire amount of compensation to the claimants. However, as shown above, the insurance policy taken by the owner contained a clause that it was a policy for "Act Liability" only. This being the nature of the policy, the liability of the appellant would be restricted to that arising under the Workmen's Act. The judgment of the High Court, therefore, needed to be modified accordingly. The facts of the

present case are different from the above judgment; hence, this judgment does not help the appellant.

10. Learned counsel for the appellant has submitted that the claim petition had been filed under 166 along with 167 motor vehicle act, which permitted to the claimant to file petition under 166 motor vehicle act or section 4 Workman Compensation Act. Therefore, his claim petition ought to be awarded under the section 4 of the Workman Compensation Act. Learned counsel for the appellant has placed the reliance on *National Insurance Co. Ltd. v. Prembai Patel, (2005) 6 SCC 172*. The Honourable Apex Court held section 167 of the Motor vehicle Act 1988 lay down that notwithstanding anything contained in the Workman Compensation Act, 1923 where the death or bodily injury to any person gives rise to a claim for compensation under the act and also Workman Compensation Act, the person entitled to compensation may without prejudice to the provision of the Chapter X claim such compensation under either of the both act but not under both act. Above judgement cannot help the appellant because the argument of the appellant is that the claim petition filed under the both provision section 163A or 166 which is not acceptable.
11. Learned counsel for the appellant has placed reliance on the judgment of the Hon'ble Uttarakhand High Court, (2005) 4 ACC 647, *Nandi Devi v. Mangal*

Singh. In the above judgment, it was held that the claimant has a choice to file his claim either under the Motor Vehicles Act or the Workmen's Compensation Act in the appropriate forum, but not under both Acts. On this basis, he argued that his claim petition ought to be accepted under the Workmen's Compensation Act under Rule 167 of the Motor Vehicles Act. The facts of the case in the above judgment were that the applicant had withdrawn his petition under Section 4 of the Workmen's Compensation Act and filed a new application under Section 166 of the Motor Vehicles Act, which was allowed by the said judgment. The facts of the present case are different, therefore, this judgment cannot help the appellant. The claimant is given the right to choose the forum only once. Once he chooses one forum, he cannot change it after the judgment of the case.

12. Learned counsel for the appellant has submitted that the owner of the vehicle had paid the premium for the risk coverage of the driver to the insurance company; therefore, there is no need to establish the negligence of the driver for compensation under Section 166 of the Motor Vehicles Act. He has placed reliance on the judgment of the Hon'ble Gujarat High Court in *Valiben Laxmanbhai Thakore v. Late Laxmabai Ramsingbhai*. In the facts of the case in the said judgment, the claim petition under Section 166 of the Motor Vehicles Act was dismissed by the Tribunal on the ground that the

deceased driver was himself negligent. The Hon'ble Gujarat High Court observed that since the driver was insured under the policy, the insurance company is liable to pay compensation under the Workmen's Compensation Act. With respect to the observations made in the judgment, I am of the opinion that if a claim petition is filed under Section 166 of the Motor Vehicles Act, it is necessary to establish the negligence of the driver. If the driver himself was negligent while driving the vehicle, then the legal heirs of the deceased driver must file an application either under Section 163A of the Motor Vehicles Act or under Section 4 of the Workmen's Compensation Act before the appropriate forum. Under the Workmen's Compensation Act, the appropriate forum is the Labour Court or the Commissioner for Workmen's Compensation, not the Motor Accident Claims Tribunal. Therefore, if the deceased was himself negligent while driving the vehicle, a claim cannot be made under Section 166 of the Motor Vehicles Act.

13. Now the question arises that once the claimant chooses the option under Section 167 of the Motor Vehicle Act, whether under the appeal, the claimant can opt or change the forum under no-fault liability or as under the Workmen Compensation Act or Motor Vehicle Act. This point has already been decided by the Honourable Supreme Court in the case of *Deepal Girishbhai Soni vs. United India Insurance Company Ltd.* It was held that

once the claim has been made under one section, not both sections, as both remedies are final and independent. The criteria to compute the compensation are different under no-fault liability in both Acts, i.e., the Workmen Compensation Act and the Motor Vehicle Act. In the present case, in my opinion, under the appellate jurisdiction, the claim petition cannot be changed under no-fault liability.

14. AIR 2004 SUPREME COURT 2107 Deepal Girishbhai Soni And Ors vs United India Insurance Co. Ltd honourable supreme court held that We may notice that Section 167 of the Act provides that where death of, or bodily injury to, any person gives rise to claim of compensation under the Act and also under the Workmen's Compensation Act, 1923, he cannot claim compensation under both the Acts. The Motor Vehicles Act contains different expressions as, for example, "under the provision of the Act", "provisions of this Act", "under any other provisions of this Act" or "any other law or otherwise". In Section 163-A, the expression "notwithstanding anything contained in this Act or in any other law for the time being in force" has been used, which goes to show that the Parliament intended to insert a non- obstante clause of wide nature which would mean that the provisions of Section 163-A would apply despite the contrary provisions existing in the said Act or any other law for the time being in force. Section

163-A of the Act covers cases where even negligence is on the part of the victim. It is by way of an exception to Section 166 and the concept of social justice has been duly taken care of.

15. A bare perusal of the above provision would disclose that the claimants have the option either to move the Claims Tribunal under the MV Act or the Commissioner under the WC Act, but not under both. The concept of awarding compensation under the MV Act and the WC Act is quite different and distinct. The provisions of the MV Act would disclose that when a motor vehicle is in use and causes injury to any person, then the liability to pay compensation arises, and the Claims Tribunal can adjudicate upon the liability and determine the just compensation. The administration of justice under the MV Act is based on the principle of law of torts. A reading of Sections 166 to 175 of the MV Act makes it clear that while determining the quantum of compensation, which a person is liable to pay, the Claims Tribunal has to keep the principle of negligence in view, with an exception to Section 140 of the MV Act (no-fault liability).

16. Under the MV Act, the insurer is liable to indemnify the liability, which may be incurred by the insured in respect of death or bodily injury caused to a person by or arising out of the use of the vehicle in a public place. But under the WC Act, unless it is shown that the accident arose out of and in the

course of employment, the insurer and the insured are not liable to pay compensation irrespective of whether there is negligence on the part of the workmen or not. In the instant case, the claimants did not establish that the accident occurred due to the wrongful act or default or negligence on the part of the owner of the vehicle or any other person. In the absence of such finding, the claim made by the claimants under the MV Act, cannot be sustained. In my view, the claim for compensation under the MV Act can be entertained by the Claims Tribunal only when it is shown that the accident occurred is due to actionable negligence on the part of the driver of the vehicle or its, causing injury or death to a third party. In the instant case, the accident occurred due to the negligence on the part of the deceased himself, and as such, no claim by his legal representatives could be entertained by the Claims Tribunal under Section 166 of the M.V Act. the Claims Tribunal under the MV Act has no power to grant compensation, which is to be determined and awarded under the WC Act, In APSRTC v. Shaik Amecla Begum, (1) 1998 (2) ALT 246. A Division Bench of this Court upon consideration the said question, held: We have to hold that the Claims Tribunal cannot enquire into the compensation that can be claimed and be awarded under the Workmen's Compensation Act on the basis of statutorily

imposed strict liability under the Workmen's Compensation Act de hors negligence.

17. It is not disputed by the party that on the date of the incident, while operating the J.C.B. at the field of one Sunder Yadav in village Barbaspura, due to a technical fault, the deceased got off the J.C.B. to inspect the issue. During the inspection, due to sudden movement caused by the pushing of a lever, the deceased got caught between the loader bucket and the body of the J.C.B., leading to his death on the spot. There is no evidence regarding the negligence of the owner of vehicle regarding the poor maintenance of the vehicle.
18. Upon hearing the learned counsel for the parties, and considering the various provisions of the MV Act, and the judgments of various Courts, governing the field, I am of the opinion that for laying a claim under the MV Act, it is necessary to plead and prove that the accident was the result of some actionable negligence of the third party. Without proving such actionable negligence on the part of the respondents, the claim petition for compensation under the MV Act is not maintainable. In the instant case, the facts on record disclose that the driver met with an accident due to his own negligence. Unless the claimants prove and establish that they have some cause of action against the party respondents, they cannot lay a claim under

the MV Act. In the instant case, it is not the case of the claimants that the accident occurred due to some mechanical break-down or the owner is negligent in maintaining the vehicle, and that the owner failed to discharge his duty cast on him or has acted in a careless manner. In the absence of such negligence on his part, the insured and the insurer cannot be made liable to pay compensation. There is neither any pleading nor any evidence on record to show that there is some breach committed by the owner of the vehicle in discharging his legal obligation.

19. In my view, the right to receive compensation can only be against the person, who failed to perform his legal obligation. The Claims Tribunal, constituted under the provisions of the MV Act renders justice on the basis of common law and law of torts. Under the MV Act, unless the owner is legally liable, the insurer who is an indemnifier is not liable to pay compensation.
20. After considering all facts and laws, I am of the considered opinion that the claimants are not entitled to get compensation under Section 166 of the Motor Vehicle Act due to the deceased driver being himself negligent. The applicants chose the forum of the Motor Vehicle Act under Section 166 of the Motor Vehicle Act, after the judgment of the Tribunal, they cannot change their case under no-fault liability. Under the Workmen

Compensation forum, the criteria of compensation are different, therefore, this appeal deserves to be dismissed. Hence, the appeal is **dismissed**. Both parties shall bear their own suit costs.

(PRADEEP MITTAL)

JUDGE

Praveen