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

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 31st OF OCTOBER, 2023

MISC. APPEAL No. 5896 of 2022

BETWEEN:-

CHOLAMANDALAM MS GENERAL INS. CO. LTD. FIRST FLOOR CALCUTTA AUTOMOBILES NAGPUR ROAD JABALPUR M.P. THROUGH MANAGER (LEGAL) CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD. 1133/1 PAWAN COMPLEX OPPOSITE HATHITAL GURUDWARA HATHITAL JABALPUR M.P. (MADHYA PRADESH)

.....APPELLANT

(BY SHRI T. S. LAMBA - ADVOCATE)

AND

- 1. ABDUL KARIM KHAN S/O JABBAR KHAN, AGED ABOUT 55 YEARS, VILLAGE JHIRIYA TEHSIL MOHKHED DISTRICT CHHINDWARA M.P. (MADHYA PRADESH)**
- 2. JUBEDA KHAN D/O ABDUL KARIM KHAN, AGED ABOUT 20 YEARS, R/O VILLAGE JHIRIYA, TAHSIL MOHKHED, DISTRICT CHHINDWARA (MADHYA PRADESH)**
- 3. TAHIR KHAN S/O ABDUL KARIM KHAN, AGED ABOUT 15 YEARS, OCCUPATION: MINOR THROUGH NEXT FRIEND FATHER ABDUL KARIM KHAN R/O VILLAGE JHIRIYA, TAHSIL MOHKHED, DISTRICT CHHINDWARA (MADHYA PRADESH)**
- 4. VINOD WADBUDE S/O MAHADEV WADBUDE R/O VILLAGE TARA, TAHSIL MOHKHED, DISTRICT CHHINDWARA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI M.R. VERMA - ADVOCATE)

MISC. APPEAL No. 5895 of 2022

BETWEEN:-

CHOLAMANDALAM MS GENERAL INS. CO. LTD. FIRST FLOOR CALCUTTA AUTOMOBILES NAGPUR ROAD JABALPUR M.P. THROUGH MANAGER (LEGAL) CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD. 1133/1 PAWAN COMPLEX OPPOSITE HATHITAL GURUDWARA HATHITAL JABALPUR M.P. (MADHYA PRADESH)

.....APPELLANT

(BY SHRI T.S. LAMBA - ADVOCATE)

AND

1. **SMT. MADHURI PAWAR W/O LATE MEKSHYAM PAWAR @ MEGHRAM PAWAR, AGED ABOUT 24 YEARS, VILLAGE JHIRIYA TEHSIL MOHKHED DISTRICT CHHINDWARA M.P. (MADHYA PRADESH)**
2. **SMT. KACHRA BAI W/O RAMLAL PAWAR, AGED ABOUT 65 YEARS, R/O VILLAGE JHIRIYA TAHSIL MOHKHED DISTRICT CHHINDWARA (MADHYA PRADESH)**
3. **RAMLAL PAWAR S/O LATE LALAJI PAWAR, AGED ABOUT 70 YEARS, R/O VILLAGE JHIRIYA TAHSIL MOHKHED DISTRICT CHHINDWARA (MADHYA PRADESH)**
4. **DIVYANSH PAWAR S/O LATE MEKSHYAM PAWAR @ MEGHRAM PAWAR, AGED ABOUT 1 YEARS, OCCUPATION: THROUGH NEXT FRIEND MOTHER SMT. MADHURI PAWAR R/O VILLAGE JHIRIYA TAHSIL MOHKHED DISTRICT CHHINDWARA (MADHYA PRADESH)**
5. **VINOD WADBUDE S/O MAHADEV WADBUDE R/O VILLAGE TARA TAHSIL MOHKHED DISTRICT CHHINDWARA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI M.R. VERMA - ADVOCATE)

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

ORDER

Dictated in Open Court:

These appeals are filed by the insurance company being aggrieved of the award dated 01.07.2022 passed by Motor Accident Claims Tribunal, Chhindwara in MACC No.411 of 2018 and MACC No.412 of 2018 on the ground that deceased and injured were gratuitous passengers in a pickup van and there being no coverage for the gratuitous passengers, order of pay and recover is contrary to the law laid down by the Supreme Court in the case of **New India Assurance Co. Ltd. v. Asha Rani, AIR 2003 SC 607.**

2. Shri T.S. Lamba, learned counsel for the appellant insurance company reading FIR (Exhibit P-4) submits that it is clearly mentioned by the author of the FIR that deceased, injured and the author of the FIR - Akku s/o Abdul were travelling in a Pickup van bearing registration MP 28 G 4513 along with Megshyam Pawar and Sahil Musalman. The vehicle was being driven rashly and negligently as a result, it turned turtle and Sahil s/o Kalim Musalman died due to crush injuries whereas Megshyam Pawar sustained injuries and succumbed to the same.

3. Shri M.R. Verma, learned counsel for the claimants, in his turn, reading evidence of Akku submits that PW-2 who has said that in fact the injured and deceased were respectively standing by the side of the road when Vinod had driven the pickup vehicle in a rash and negligent manner as a result of which both Sahil and Megshyam sustained injuries coming in the grip of the vehicle which turned turtle.

4. It is submitted that in terms of the judgment of the Coordinate Bench of this Court in **Satishchandra Upadhyay and Others v. Harnamsingh and Others, 2020 (3) MPLJ 158**, FIR cannot be used to corroborate the evidence therefore, FIR could not have been used to contradict or corroborate

Akku. On the other hand, Shri T.S. Lamba places reliance on the decisions of the Supreme Court in the cases of **Oriental Insurance Co. Ltd. v. Premlata Shukla and Others**, (2007) 13 SCC 476 and **National Insurance Company Ltd. v. Rattani and Others**, (2009) 2 SCC 75 to submit that if party is relying on FIR in support of their claim, then they cannot be allowed to partly admit the contents of the FIR and partly deny the same.

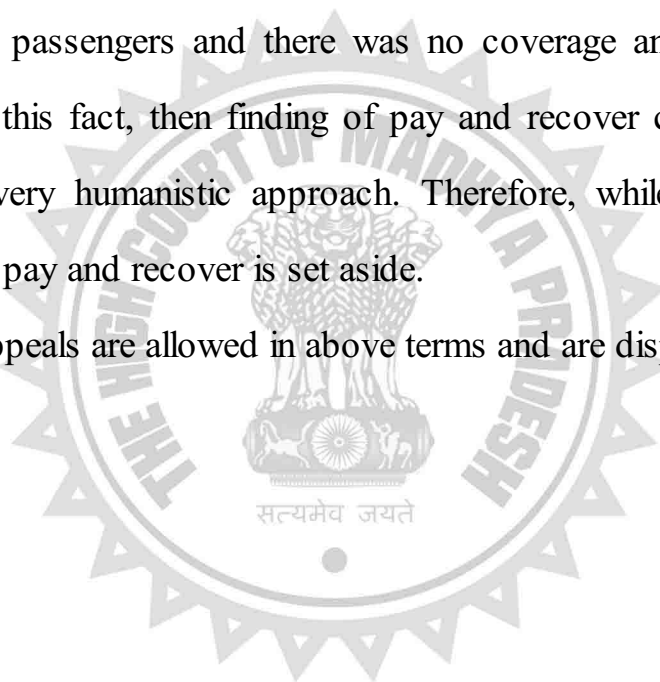
5. After hearing learned counsel for the parties and going through the record, firstly the decision in **Satishchandra Upadhyay (supra)** as quoted by Shri M.R. Verma, advocate is out of context. The law laid down in the said case placing reliance on the decision of the Supreme Court in the case of **State of MP v. Surbhan, AIR 1996 SC 3345** is that FIR cannot be used to corroborate evidence of a third party but it can be used either to corroborate or for contradiction of its maker. In the present case, since maker of FIR is Akku and he himself narrated the fact that Akku along with Sahil and Megshyam were travelling in a goods vehicle therefore, it was not open to Akku to change his version and say that his signatures were obtained by police on blank papers. Thus, the judgment in **Satishchandra Upadhyay (supra)** has no application in the facts and circumstances of the present case.

6. Though the Claims Tribunal has relied on the judgment of the Supreme Court in the case of **Shivaraj v. Rajendra and another, (2018) 10 SCC 432** but it is true that the said judgment failed to take into consideration a three-Judge Bench decision in the case of **New India Assurance Co. Ltd. v. Asha Rani (supra)** wherein it is held that if there is no coverage, then there will be no liability to pay compensation. When this aspect is taken into consideration, then it is true that when there is no coverage for gratuitous passengers travelling in a

goods carrying vehicle which too had capacity of only two persons i.e. driver and one more, and three persons were admittedly travelling besides the driver then a direction to pay and recover, though appears to be humanitarian but cannot be sustained in the eye of law as there was no coverage for the gratuitous passengers in the insurance policy.

7. Before parting, it would be necessary to clarify that admittedly there is no pleading that the passengers were owners of the goods. Had there been a pleading or dispute whether they were owners of the goods or not, then the fate of these appeals would have been different. But when admittedly they were gratuitous passengers and there was no coverage and there is no dispute in regard to this fact, then finding of pay and recover cannot be sustained even taking a very humanistic approach. Therefore, while maintaining the award, finding of pay and recover is set aside.

8. Appeals are allowed in above terms and are disposed of.



VIVEK AGARWAL)
JUDGE