

HIGH COURT OF MADHYA PRADESH**Bench : Sunita Yadav, J.****Date of Decided on: 21-03-2024**

Misc. Appeal No. 1318 of 2009

ICICI LOMBARD MOTOR INSURANCE CO. LTD.**Vs.****GOPAL SINGH AND OTHERS****Legislation:**

Motor Vehicles Act, 1988

Subject: Appeal against the award by the Motor Accident Claims Tribunal regarding compensation for a road traffic accident causing death.**Headnotes:**

Appeal Against Tribunal's Award – Appeal filed by ICICI Lombard Motor Insurance against award dated 22.7.2009 by Third Additional Judge to First Additional Motor Accident Claims Tribunal, Gwalior in Claim Case No. 50/2009 – Challenge to compensation amount awarded for death in a road accident. [Para 1]

Factual Background – Respondents/claimants sought compensation for the death of Sonu @ Shankar Pratap Singh Jadoun in an accident involving a loading auto – Vehicle's driver and owner (Respondents No. 3 and 4) proceeded ex-parte. [Paras 2-3]

Insurance Company's Denial of Liability – Appellant (Insurance Company) denied liability citing breach of policy terms – Offending vehicle allegedly plied in violation of policy conditions. [Para 4]

Tribunal's Decision – Claims Tribunal partly allowed the claim, granting Rs. 1,96,912/- with 7% interest per annum – Directed driver, owner of the vehicle, and insurance company to pay jointly and severally. [Para 5]

Appellant's Arguments – Insurance company contested tribunal's decision, arguing breach of driving license terms and incorrect dependency calculation, as the deceased was unmarried. [Para 6]

Respondents/Claimants' Counter-Arguments – Claimed inadequate compensation, overlooked evidence on the deceased's income, and sought additional compensation for "pain and suffering" and "future prospects". [Para 7]

Judicial Analysis and Rulings:

License Validity Ruling – Apex Court precedent (Mukund Dewangan vs. Oriental Company Limited) upholds validity of LMV license for driving transport vehicle – Tribunal's finding on driver's valid license affirmed. [Para 8-9]

Dependency Calculation – Deceased being unmarried, dependency calculated at 1/2 as per Sarla Verma Vs. DTC precedent. [Para 10]

Income Estimation – Tribunal's estimation of deceased's annual income as Rs.15,000/- upheld due to lack of documentary evidence. [Para 11]

Compensation Calculation – Calculation includes Rs. 27412/- for medical expenses, 40% for future prospects, Multiplier of 18, and Rs.70,000/- in other heads – Total compensation enhanced to Rs.2,86,412/-. [Paras 12-13]

Decision – Award to respondents/claimants enhanced from Rs.1,96,912/- to Rs.2,86,412/- – Enhanced amount, with interest, to be paid by insurance company – Appeal allowed to this extent. [Para 14]

Court Fee Adjustment – Direction to claimants to deposit the difference in court fee, if applicable. [Para 15]

Referred Cases:

- Mukund Dewangan vs. Oriental Company Limited, (Civil Appeal No. 5826 of 2011)
- Sarla Verma Vs. Delhi Transport Corporation (DTC); (2009) 6 SCC 121
- National Insurance Company Ltd. vs. Pranay Sethi and Ors., (2017 ACJ 2700)

Representing Advocates:

Not specified in the judgment summary provided.

JUDGMENT

Sunita Yadav, J. - Present miscellaneous petition has been filed against the award dated 22.7.2009 passed by Third Additional Judge to First Additional Motor Accident Claims Tribunal, Gwalior in Claim Case No. 50/2009.

2. The facts in brief to decide the present appeal are that present respondents No. 1 and 2 / claimants filed a claim petition before the Claims Tribunal for grant of compensation on account of death of Sonu @ Shankar Pratap Singh Jadoun in a road traffic accident involving Loading Auto bearing registration No. MP09-KD-4845.

3. Respondents No. 3 and 4 - driver and owner of the offending vehicle respectively remained did not appear before the Claims Tribunal and were proceeded ex-parte.

4. Appellant - Insurance Company of the offending tractor filed its written statement and denied all the averments made in the claim petition and submitted that at the time of accident, the offending vehicle was being plied in breach of policy terms and conditions, therefore insurance company is not liable to pay the compensation.

5. Learned Claims Tribunal framed issues and after taking into consideration the facts and material available on record partly allowed the claim petition holding the respondents No. 1 and 2 / claimants entitled for an amount of compensation to the tune of Rs. 1,96,912/- along with interest at the rate of 7% per annum and directed the respondents No. 2 and 3 - Driver and Owner of the offending vehicle respectively as well as appellant - insurance company to pay the compensation amount jointly and severally.

6. Learned counsel for the appellant / insurance company argued that learned claims tribunal has wrongly fastened the liability on the insurance company despite there being a breach of driving license because at the time of accident, driver was driving good carriage vehicle while he was having license for LMV. It is further argued that learned claims tribunal has also wrongly calculated the dependency ignoring the fact that deceased was a bachelor, therefore, dependency should be 1/2.

7. On the other hand, learned counsel for the respondents / claimants opposed the arguments of learned counsel for the insurance company and by filing cross-objection vide I.A. No. 5264 of 2010 argued that learned claims tribunal has not considered the evidence of the claimants in respect to income of the deceased. At the time of accident, deceased was earning Rs. 4000/- per month. It is further argued that no amount was awarded by learned claims tribunal under the head of "pain and suffering" when the deceased died after five days of the accident. Compensation amount towards "future prospects" and in other heads were also not awarded. Hence, prayed to grant just and proper compensation to the claimants.

Heard learned counsel for the rival parties and perused the available record.

It is not disputed that at the time of accident, driver of the offending vehicle was having driving license for LMV as per Exh. D-2.

8. The Apex Court in the case of **Mukund Dewangan vs. Oriental Company Limited, [Civil Appeal No. 5826 of 2011 decided on 3/7/2017]**, held that "if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect."

9. Therefore, in the light of above principles laid down by the Apex Court, learned Claims Tribunal has rightly held that the driver of the offending vehicle was having effective and valid license at the time of accident. Therefore, aforesaid finding of learned claims tribunal is hereby affirmed.

10. So far as dependency is concerned, undisputedly, deceased was unmarried, therefore, in view of the case law of **Sarla Verma Vs. DTC; (2009) 6 SCC 121**, dependency of 1/2 would be applicable.

11. As per the arguments of learned counsel for the claimants, deceased was earning Rs.4000/- per month, however, no documentary evidence was produced to prove the income of the deceased. Therefore, learned claims tribunal has rightly held the income of the deceased as Rs.15000/- per annum.

12. Learned claims tribunal has already granted compensation to the tune of Rs.27,412/- for medical expenses occurred during the period deceased remained hospitalized, which in the considered opinion of this Court is just and proper. However, claimants are also entitled for compensation under the head of "future prospects" and in other heads as per the case law of **National Insurance Company Ltd. vs. Pranay Sethi and Ors., (2017 ACJ 2700)**.

13. In view of the case law of **Pranay Sethi** (supra) and **Sarla Verma** (supra), assessing the annual income of the deceased to be Rs.15,000/-, Rs. 27412/- towards Medical Expense, dependency 1/2, future prospect @ 40%, Multiplier of 18 and Rs.70,000/- in other heads, total compensation amount comes to Rs.2,86,412/-.

14. As such, the total amount awarded to the respondents No. 1 and 2 / claimants is enhanced from Rs.1,96,912/- to Rs.2,86,412/-. The enhanced amount comes to Rs.89,500/- (Rupees Eighty Nine Thousand and Five Hundred only), with interest at the rate as fixed by the Claims Tribunal in the award which is ordered accordingly to be payable to the claimants by the insurance company in the same apportionment as directed by the Claims Tribunal. The enhanced amount of compensation of Rs. 89,500/- shall be

payable to the appellant/claimant within 12 weeks from the date of production of a certified copy of this order.

15. If the enhanced amount of compensation is in excess to the valuation of appeal, the difference of the Court fee (if not already paid) shall be deposited by the claimants within four weeks' from today and proof thereof shall be submitted before the Registry. Thereafter, Registry shall issue the certified copy of the order passed today.

Appeal stand allowed to the aforesaid extent and disposed of.

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