

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE HIRDESH
ON THE 27TH OF JANUARY, 2025**

MISCELLANEOUS APPEAL NO. 57 OF 2022

SMT. RAJNI GUPTA (DEAD) THROUGH LEGAL REPRESENTATIVES
AND OTHERS

VS.

DHIRENDRA SINGH TOMAR AND OTHERS

AND

MISCELLANEOUS APPEAL NO. 121 OF 2022

DHIRENDRA SINGH TOMAR

VS.

SMT. RAJNI GUPTA (DEAD) THROUGH LEGAL REPRESENTATIVES
AND ANOTHER

Appearance:

Shri Akshat Jain- learned Counsel for legal representatives of appellant deceased Smt.Rajni Gupta /claimants in Misc. Appeal No.57 of 2022 and for legal representatives of respondent No.1- deceased Smt. Rajni Gupta /claimants Misc. Appeal No.121 of 2022

Smt.Meena Singhal- learned Counsel for appellant- owner in Misc. Appeal No.121 of 2022 and for respondent No.1-owner in Misc. Appeal No.57 of 2022

Shri Kamal S. Rochlani- learned Counsel for respondent No.3/ Insurance Company in Misc. Appeal No.57 of 2022 and respondent No.5/Insurance Company in Misc. Appeal No.121 of 2022.

ORDER

Misc. Appeal No.57 of 2022 has been filed by legal representatives of deceased Smt. Rajni Gupta challenging the Award dated 11-10-2021 passed by Second Additional Member, Motor Accident Claims Tribunal, Ambah, District Morena in Claim Case No.09 of 2019, seeking enhancement of compensation amount whereas, Misc.Appeal No.121 of 2022 has been filed by owner of vehicle seeking only liability on the Insurance Company to pay compensation

amount to the claimants.

(2) Since facts of both miscellaneous appeals are same, therefore, they are heard together and decided by this common order.

(3) Necessary facts for disposal of both appeals, in short, are that on the date of accident i.e 06-06-2018, Smt.Rajni Gupta (since deceased) was coming from Pinhat to Ambah along-with her son Vivek Gupta on a motorcycle bearing registration no. MP06- MM-5077. The said motorcycle was driven by Vivek Gupta in a very negligent, careless and rash manner due to which it overturned in a ditch, as a result of which Smt. Rajni Gupta fell from motorcycle on the road and she suffered serious head injuries, bone fractures and serious injuries on her face, mouth and nose and bleeding started from her nose, ears and mouth. The accident was witnessed by Rajendra, son of Siyaram Tomar, Surendra and son of deceased Sachin Gupta. On the basis of report of accident, FIR at Crime No.52 of 2018 was registered for offence under Sections 279, 337 of IPC at PS Mahua. After completion of investigation, charge-sheet was filed in the Court of JMFC, Amhah. It is alleged that Smt. Rajni Gupta was first taken to Primary Health Centre Ambah, District Morena where doctor referred deceased to Higher Centre as she was in a dying and critical condition. Thereafter, deceased was taken to Sahara Hospital, Gwalior by Ambulance where she was hospitalized from 06-06-2018 till 10-06-2018. During this period, MLC was done and CT scan, MRI test, X-ray etc. were done.

(4) Due to serious injuries sustained by the deceased, she was operated upon and kept on ventilator in ICU ward. Due to critical condition of deceased, she was taken to Pushanjali Hospital, Agra (UP) through ambulance equipped with the ventilator where she was admitted from 10-06-2019 to 29-06-2018. Thereafter, deceased succumbed to the injuries during treatment on 28-02-2019. It is stated by the claimants that they looked after the deceased by staying in a rented premises for check up day-to-day basis. At last, deceased died on 28-02-2019 during ongoing treatment. On the basis of which, merg no.15 of 2019 under Section 174 of CrPC was recorded. Offence under Sections 338 and 304-A

of IPC was enhanced and supplementary challan was filed in the competent Court against Vivek Gupta. Thus, claimants, namely, Bachhu Lal, Vikash and Sachin filed a claim petition for compensation and the Claims Tribunal awarded compensation of Rs.13,92,000/- only.

(5) Being dissatisfied with impugned Award passed by Claims Tribunal, the claimants are before this Court by way of Misc. Appeal No.57 of 2022 and owner of vehicle by way of Misc. Appeal No.121 of 2022 respectively.

(6) Smt. Meena Singhal, Counsel appearing for owner of vehicle contended that the learned Claims Tribunal has committed an error in restricting the liability of the insurance Company only to a sum of Rs.1 lac, inasmuch as such kind of Award is against the law and, is therefore liable to be quashed to the extent of exoneration of the Insurance Company from liability of total claim amount. It is further contended that Insurance Policy (Ex.D2) is a package policy and Insurance Company is liable to pay compensation in respect of deceased (Smt. Rajni Gupta) who was a pillion rider on the vehicle in question on the date of alleged accident. The Claims Tribunal has committed an error by holding that Insurance Company is liable only for compensation to the extent of Rs.1 lac and remaining amount to the claimants as jointly and severally entitled to get from Vivek Gupta and Dharendra Singh Tomar (owner) although the sole insurance company is liable to pay the entire award compensation amount. In support of contention, Smt. Singhal, has relied on the judgment of of Coordinate Bench of this Court in the case of ***Sudha Jain vs. Mehendra Kumar Jain and Others, 2006 ACJ 1401*** as well as the order dated 29-01-2019 and 14-02-2019 passed by coordinate Bench of this Court in the case of ***Ravindra Singh Sisodiya and Another vs. Hamdi Ali and Others (MA No.103 of 2012) and Smt. Shanti Devi and Another vs. National Insurance Co. Ltd and Another (MA No.166 of 2017)***.

(7) Shri Rochlani, learned Counsel appearing for Insurance Company supported the impugned Award and submitted that motorcycle in question was of ownership of Dharendra Singh Tomar, who is the not relative of either deceased

or the claimants, in such a situation, in the light of the decision of Hon'ble Apex Court, the liability of Insurance Company will be limited only to the extent of Rs.1 lac.

(8) Shri Jain, learned Counsel appearing for Claimants submits that learned Claims Tribunal has committed an error in awarding compensation amount after applying multiplier of 9, which is on the lower side and committed an error in assessing the income of deceased of Rs.26,400/ per annum. The claimants have already spent Rs.22 lac during treatment of deceased and medical documents were produced by them before the Claims Tribunal. The insurance policy of motorcycle Ex.D2 clearly shows that is a comprehensive policy and not an Act policy. Since it is a comprehensive policy and in any case deceased- pillion rider is not the relative or legal heir of her son-in-law, the owner of vehicle, therefore, the Claims Tribunal has committed an error in restricting the compensation to a sum of Rs.1 lac upon the Insurance Company. In support of his contention, he has relied on the judgment of Supreme Court in the case in the case of *National Insurance Company Ltd. Balakrishnan and Others (Civil Appeal No. 8163 of 2012 (Arising Out of SLP © No. 1232 of 2012)* decided on 20-11-2012.

(9) Heard learned Counsel for the parties and perused the impugned Award.

(10) In the case of **Balkrishnan (supra)**, the Hon'ble Apex Court in Para 26 has observed as under:-

"26. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "Comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also

reproduced the same."

(11) Further, the Coordinate Bench of this Court in the case of *Ravindra Singh Sisodiya (supra)* has held as under:-

"After hearing the arguments and going through record, it is apparent that the policy of the vehicle involved in the accident is a comprehensive policy. As per the law laid down in case of **Surendra Nath Loomba (Supra)** so also in the case of **Sudha Jain (Supra)**, it is apparent that in a comprehensive policy, Insurance Company has to accept the liability of the pillion rider on a scooter as a third party. Therefore, award passed by the Claims Tribunal is modified to the extent that liability of the Insurance Company cannot be restricted to a sum of Rs.1,00,000/- i.e. the extent of personal accident cover and Insurance Company is held jointly and severally liable alongwith the owner and driver of the motorcycle to satisfy the award in its totality. Appeal is disposed of accordingly.

(12) The Division Bench of this Court in the case of *National Insurance Company Ltd. vs. Tanuja decided on 23-05-2005 in MA No.725 of 2000* has held that except insurer and the insurance company all persons are third party. The pillion rider who is injured is also a third party to the insurance policy and, therefore, his risk is covered. The Insurance Company is liable to pay the amount of compensation for the injuries sustained by the claimant.

(13) On going through the record of Claims Tribunal, it was found that the Ex.D2 according to which, the insurance was package policy and in the light of judgment of Apex Court as well as this Court in the above-cited cases, the Insurance Company is liable to make payment of total compensation amount. Therefore, the finding arrived at by the Claims Tribunal holding that the Insurance Company is liable only for compensation to the extent of Rs.1 lac and remaining amount to the claimants as jointly and severally entitled to get from Vivek Gupta and Dharendra Singh Tomar (owner) is hereby **set aside**. The sole Insurance Company is liable to make payment of total compensation amount.

(14) So far as the quantum of compensation amount is concerned, on perusal of record of Claims Tribunal, it was found that the alleged accident took place on 06-06-2018 while she was sitting on the motorcycle as pillion rider driven by her son Vivek Gupta. Owner of motorcycle is Dharendra Singh. Deceased was taken

to Sahara Hospital, Gwalior by Ambulance where she was hospitalized from 06-06-2018 till 10-06-2018. During this period, MLC was done and CT scan, MRI test, X-ray etc. were conducted. Thereafter, she was hospitalized in Pushanjali Hospital, Agra UP from 10-06-2019 to 29-06-2018. Thereafter, deceased Smt. Rajni Gupta succumbed to injuries during ongoing treatment on 28-02-2019. At the time of accident, the deceased was 60 years of age. Present claimants, namely, Bachhulal, Vikas and Sachin are the legal representatives of deceased. The learned Claims Tribunal has assessed the income of deceased at Rs.4,000/- per month, whereas as per the provisions of Minimum Wages Act, notional income of deceased would be assessed at Rs.7,325/- per month for unskilled person and considering the other facts and circumstances of the case, the claimants are also entitled for compensation under other conventional heads in the light of decisions of Apex Court in the cases of *Sarla Verma vs. Delhi Transport Corporation and Another, AIR 2009 SC 3104* and *National Insurance Company Ltd. Vs. Pranay Sethi AIR 2017 SC 5157*.

(15) In view of aforesaid, the compensation awarded by learned Claims Tribunal is modified to the extent indicated under:-

Heads	Compensation Awarded
Income	Rs.7,325/- per month
Future Prospects (10%)	Rs.8,057/-
Dependency ½	Rs. 4028.50/-
Annual income	Rs.4028.50 x12m = Rs. 48,342/-
Multiplier	9
Loss of consortium	Rs.40,000x3 = Rs. 1,20,000/-
Loss of estate	Rs. 15,000/-
Funeral Expenses	Rs.15,000/-
Medical Expenses	Rs.9,22,000/-
Attender charges	Rs.30,000/-
Ambulance charges	Rs. 27,000/-

Special diet	Rs. 25,000/-
Total	Rs. 15,89,738/-

(16) The learned Claims Tribunal has awarded compensation of Rs.13,92,260/-. Thus, the claimants are held entitled to receive enhanced amount of Rs.1,97,478/- in addition to the amount of compensation already awarded by the Claims Tribunal, making total compensation amount of Rs.15,89,738/- payable by Insurance Company to the extent indicated above.

(17) The enhanced amount shall carry interest as fixed by learned Claims Tribunal from the date of filing of claim petition till its realization. The said compensation amount be paid by the Insurance Company within a period of **three months** from the date of receipt of certified copy of this order. Rest of conditions as imposed by learned Claims Tribunal, shall remain intact.

(18) If the enhanced amount of compensation is in excess to valuation of appeal, the difference of Court fee (it not already paid) shall be deposited by the claimants within a period of **one month** and proof thereof, shall be submitted before the Registry. Thereafter, the Registry shall issue the certified copy of the order passed today.

(19) In view of aforesaid discussion as well as forgoing discussion, **MA No. 121 of 2022** filed by the owner stands **allowed**. **MA No.57 of 2022** filed by claimants is **partly allowed**.

(20) A copy of this order be sent to learned Claims Tribunal and also a copy of this order be placed in connected MA No.121 of 2022.

CC as per rules.

**(HIRDESH)
JUDGE**