

**Bhimsen and ors. Vs. Vimladevi and ors.**

**Bhimsen and ors. Vs. Vimladevi and ors.**

**SooperKanoon Citation : [sooperkanoon.com/508683](http://sooperkanoon.com/508683)**

**Court : Madhya Pradesh**

**Decided On : Jun-29-1989**

**Reported in : II(1989)ACC469**

**Judge : V.D. Gyani and ;A.G. Qureshi, JJ.**

**Appellant : Bhimsen and ors.**

**Respondent : Vimladevi and ors.**

**Judgement :**

**V.D. Gyani, J.**

1. This Miscellaneous appeal under Section 110-D of the Motor Vehicles Act (for short, the Act) by the owners and driver of the vehicle, is directed against the award 21-3-1986, passed by the Member, Motor Accident claims Tribunal, Ujjain, in claim Case No. 25 of 1983, thereby awarding Rs. 62,596.35 as compensation.

2. There are cross-objections filed by both, the Insurance Company as well as the claimants. Claimants have prayed for enhancement of rate of interest from 6% to 12% on the amount as awarded by the Tribunal.

3. Shri Singh, learned Counsel appearing for the appellants has raised only one point for consideration in this appeal, which relates to employment of the driver. It was contended that the driver at the time of the accident was not in the

employment of the bus-owners and as such, the owners could not be held liable. The same plea is raised in the cross-objection filed by the Insurance Company. Their contention was that the person who was driving the vehicle was not in the employment of the Insured nor was he having their permission or consent. As such, the Insurance Company was not liable. This plea was also raised before the Tribunal and in fact an issue was framed on this point. The Tribunal has come to the conclusion that it was not correct to say that the vehicle was being driven by an unauthorized person.

4. The Tribunal has noted that it was never the case of the non-applicants, the present appellants, that the bus in question, at the time of the accident, was being driven by one Aziz, Zafarbai, witness No. 2 for the non-applicants tried to suggest that while the bus was taken to a garage for repairs of its seats, it was driven by Aziz. He has stated that at that time he was driving the bus of one Om Babu and was never in service of Krishnadas, the appellant; whereas Krishnadas in his evidence has stated that Zafarbai was in his employment for the last 3/4 years (prior to the accident), and it was Zafarbai, who had taken the bus to the garage. This witness Zafarbai was confronted with a direct question whether on the day he had taken the bus for carrying the workers of Shri Synthetics, for which the bus was engaged and was being plied by the appellants, doing many trips during the course of the day. The witness Zafarbai has admitted that he had taken the labourers during the day but he also added that there was another driver for the night trips. The proprietor of the garage Bashir in his evidence stated that it was Zafarbai, who had brought the the vehicle for repairs to his garage, although he could not say with precision the date or day on which it was so brought. In his cross-examination he admitted the position that the bus was being driven by Zafarkhan.

5. Considering all this evidence the Tribunal has come to the conclusion that the person who was driving the bus at the time of the accident was in employment of the bus owners-appellants. This finding is well supported by evidence on record and we are not persuaded to take a different view. A host of authorities cited by the learned Counsel, in view of the categorical finding recorded by the Tribunal, do not come to their rescue.

6. In the result, this appeal fails and is accordingly dismissed. Consequently the cross-objection filed by the Insurance Company also fails and is dismissed accordingly.

7. The Tribunal has awarded interest only at the rate of 6% per annum. There are series of decisions; wherein rate of interest awarded by the Tribunal is 12% per annum. We need not cite all those decisions on this point. The rate of interest is accordingly enhanced from 6% per annum to 12% per annum on the amount awarded. The cross-objection filed by the respondent-claimants to that extent stands allowed.

8. In view of the foregoing discussion, the appeal fails and is accordingly dismissed. However, there shall be no order as to costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**