

**Satyawati Devi and ors. Vs. Haji Mohammad Shareef and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/509313](http://sooperkanoon.com/509313)

**Court :** Madhya Pradesh

**Decided On :** Aug-30-2005

**Reported in :** 2006ACJ621

**Judge :** A.M. Sapre and Ashok Kumar Tiwari, JJ.

**Acts :** Motor Vehicles Act - Sections 173

**Appeal No. :** M.A. No. 427 of 2002

**Appellant :** Satyawati Devi and ors.

**Respondent :** Haji Mohammad Shareef and ors.

**Advocate for Def. :** A.S. Kutumble, M.A. Bohra and H.G. Shukla, Advs.

**Advocate for Pet/Ap. :** H.S. Rajpal, Adv.

**Judgement :**

**A.M. Sapre and Ashok Kumar Tiwari, JJ.**

1. The decision rendered in this appeal shall govern disposal of other connected appeal being M.A. No. 428 of 2002, as both these appeals arise out of common award rendered by the Tribunal (M.A.C.T.).

2. This is an appeal filed by claimants under section 173 of Motor Vehicles Act against an award dated 8.12.2001, passed by learned 1st Additional Member,

Motor Accidents Claims Tribunal, Mhow, District Indore, in Claim Case No. 146 of 1999 whereas, other connected appeal is filed by the insured, i.e., owner of the offending vehicle under section 173 of the Act against the same aforementioned award. By impugned award, the Tribunal awarded a total sum of Rs. 4,95,000 along with interest payable at the rate of 9 per cent per annum to the claimants for the death of one Devendra Singh.

3. In these two appeals, two questions arise for consideration. Firstly, whether any case for further enhancement in the compensation awarded by the Tribunal is made out? And secondly, whether Claims Tribunal was justified in exonerating the insurance company from the liability?

4. Devendra Singh, aged around 40 years was working as Manager in company known as Gujarat Ambuja Export Ltd. on a monthly salary of Rs. 7,425, Exh. P8. On 20.1.1999, he was travelling in a bus, bearing No. GJ 8-U 1110 when around 5.30 a.m. the bus met with an accident. It is in this accident; Devendra Singh sustained grievous injuries, resulting in his death. This gave rise to filing of claim petition by his wife and children out of which these appeals arise, claiming compensation for the death of Devendra Singh. The defence of insurance company with whom it was alleged by claimant that vehicle in question was insured was that the owner of the vehicle got the insurance of vehicle (bus in question) done on 20.1.1999 subsequent to the accident, i.e., during office hours of 20.1.1999 and without informing the insurer that the vehicle had met with an accident in early hours of 20.1.1999 (5.30 a.m.). It is essentially on this ground, the company contended that no liability arising out of such policy, Exh. D1, issued subsequent to the accident can be fastened upon insurance company. Parties then adduced evidence. By impugned award, the Tribunal partly allowed the claim petition. It was held, inter alia, that claimants are entitled to claim a total sum of Rs. 4,95,000, It was further held that no liability can be fastened upon the insurance company. It is against this award, two appeals are filed. So far as M.A. No. 427 of 2002 is concerned, the same is filed by claimants whereas M.A. No. 428 of 2002 is filed by the owner of the vehicle. So in an appeal filed by the claimants, i.e., M.A. No. 427 of 2002, two questions posed supra arise whereas in M.A. No. 428 of 2002, only one question out of the two (mentioned supra), i.e.,

liability of insurer arises.

5. Heard Mr. H.S. Rajpal, learned counsel for the appellants, Mr. A.S. Kutumble, the learned senior counsel with Mr. M.A. Bohra, learned counsel for respondent No. 1 and Mr. H.G. Shukla, learned counsel for respondent No. 3. None for respondent No. 2.

6. Having heard learned counsel for the parties and having perused record of the case, we are inclined to allow the appeal in part so far as it relates to the appeal filed by claimants, i.e., M.A. No. 427 of 2002 and so far as appeal filed by the owner is concerned, i.e., M.A. No. 428 of 2002, the same is liable to be dismissed.

7. Coming to the question of liability of insurer, i.e., insurance company, it has come in evidence that accident in question occurred at 5.30 a.m. on 20.1.1999. It has also come in evidence that policy in question, i.e., Exh. DI, was issued on 20.1.1999 and obviously after the time of accident, i.e., some time during office hours. However, since the policy is brought in force from midnight of 19.1.1999 and hence, so far as third party rights are concerned, the same are covered with the said policy. In other words, in our opinion, in such case, claimants being third party can recover the awarded sum from the insurance company but the insurance company has every right to recover the money in turn from the insured, i.e., owner of the vehicle in question. We are of the view that it was the duty of the insured to have disclosed to the insurer at the time of obtaining policy on 20.1.1999 that the vehicle in question had met with an accident in the early morning hours of 20th. To us, it clearly appears that the owner of the vehicle suppressed this material fact from the insurer and got the insurance cover issued so as to include the risk from the midnight of 19th, i.e., from 12 o'clock night thereby covering the risk of accident that occurred on 20th morning at 5.30 a.m. There is no evidence on record to show that policy in question, Exh. DI, was issued on 19th. Had it been so then it would have come in force from midnight of 18th and not midnight of 19th. We are not prepared to accept the evidence of insured that cash amount towards premium was paid on 18th or even on 19th, i.e., prior to accident. It is an afterthought. In our view, the payment was made on 20th and that too during the day, i.e., after opening of the office. In fact, no one can conceive that payment was

made before 5.30 a.m.

8. It is for all these reasons though we are inclined to hold that the insurance company is liable to satisfy the awarded sum so far as claimants are concerned, we are granting a right in favour of insurance company to proceed to recover the entire awarded sum from the insured in these proceedings for having committed breach of policy by not informing and/or bringing to the notice/knowledge of the insurance company about the occurrence of accident. This course which we have adopted would not in any way jeopardize the rights of any of the parties. Rather, it is safeguarded.

9. Coming to the question of quantum, as held supra, the Tribunal awarded a total sum of Rs. 4,95,000 after taking into account the monthly salary of deceased at Rs. 6,500 in place of Rs. 7,425 and then working out the dependency at Rs. 4,000. In this case, we wish to take Rs. 5,000 as dependency figure by taking into account the monthly income of Rs. 7,425 and not Rs. 6,500 as was taken by the Tribunal. In other words, in our opinion, there does not appear to be any plausible basis to take Rs. 6,500 as his monthly salary when salary certificate, Exh. P8, says Rs. 7,425 to be his salary. It is on this basis, we work out a sum of Rs. 5,000 as his dependency and thus applying a multiplier of 16 looking to deceased age (40 years), we get a figure of Rs. 9,60,000, i.e.,  $\text{Rs. } 5,000 \times 12 = \text{Rs. } 60,000 \times 16 = \text{Rs. } 9,60,000$ . It is this amount which we feel is adequate, reasonable and proper on the basis of evidence adduced by the parties. The enhanced sum shall carry interest at the rate of 6 per cent per annum from the date of application till realization.

10. Accordingly and in view of aforesaid discussion, the appeal (M.A. No. 427 of 2002) filed by the claimants succeeds and is allowed in part. The impugned award is modified to the extent indicated infra. The other appeal filed by the insured (M.A. No. 428 of 2002) fails and is hereby dismissed. It is, however, made clear that insurance company shall first deposit the entire awarded sum in Tribunal within 3 months from the date of this order and then shall initiate action for recovery of the awarded sum from the owner of vehicle, i.e., insured.

Counsel's fees Rs. 1,500, if certified.

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