

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**FAO (MVA) No.247 of 2000.**

**Judgment reserved on:27.04.2007.**

**Decided on: April 30, 2007**

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**M/s.AKM Construction & Engineering Co. ....Appellant.**

***VERSUS***

**Master Naveen Kumar & Ors. ....Respondent.**

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***Coram***

**The Hon'ble Mr.Justice Kuldip Singh, Judge.**

***Whether approved for reporting?<sup>1</sup> No***

**For the Appellant: Mr.Chandranarayana Singh,  
Advocate.**

**For respondent 1 & 2: Mr.K.R.Thakur, Advocate with  
Mr.Virender Thakur, Advocate.**

**For respondent No.3: Mr.K.D.Sood, Advocate.**

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**Kuldip Singh, Judge.**

The owner of the vehicle is in appeal against the award dated 1.3.2000 passed by the learned M.A.C.T. Shimla in M.A.C.C. No.11-S/2 of 1997 awarding Rs.55,000/- compensation to the claimants along with interest at the rate of 12% per annum from the date of filing the petition till payment which is to be paid by owner of the vehicle and the compensation amount is to be shared equally by both the claimants.

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<sup>1</sup> ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

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**2.** The brief facts, as pleaded by the claimants in the petition, are that their brother Master Manoj, aged 10 years, died in the accident of truck No.HR 03A-0495 which took place on 15.10.1996 at a place called *Sonu Bungalow* near Taradevi. The claimants were aged 8 years and 12 years at the time of filing the petition.

**3.** It has been alleged in the petition that truck is owned by M/s.A.K.M. Construction and Engineering Company and it was insured with New India Assurance Company Ltd. The driver of the truck was late Shri Sant Ram, father of the claimants. The deceased being the son of the driver had been given lift. It is alleged that accident had taken place due to the rash and negligent driving of the truck driver. A sum of Rs.2 lacs has been claimed by the claimants as compensation on account of death of Master Manoj.

**4.** The owner of the truck filed reply and denied that the claimants were dependant upon the deceased and hence entitled to compensation. The accident is not denied but it has been denied that accident has taken place due to rash and negligent driving of the truck driver. It has been pleaded that the driver was not authorized to give lift to any person in the vehicle.

**5.** The insurer submitted that deceased was unauthorized passenger and the driver did not possess a valid and effective driving licence nor were there valid documents like route permit and

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registration certificate etc. of the vehicle at the time when the accident took place, have denied the liability to pay any compensation.

**6.** The learned Tribunal held that accident has taken place due to the rash and negligent driving of the driver. It has been held that Master Manoj Kumar died in the accident and claimants being his brother and sister are entitled to compensation amounting to Rs.55,000/-. It has been held while deciding Issue No.3 that deceased was a gratuitous passenger in the truck. The objection of the insurer that the driver was not having valid driving licence at the time of accident has been answered in the negative.

**7.** I have heard the learned counsel for the parties and have also gone through the record.

**8.** The learned counsel for the owner of the truck has submitted that the learned Tribunal has wrongly held that accident has taken place due to rash and negligent driving of the driver at the time of accident. He has submitted that the claimants were not dependant on the deceased, therefore, they are not entitled to any compensation. The compensation awarded is excessive and in any case since the truck was insured with the Insurance Company, therefore, Insurance Company is liable to pay the compensation.

**9.** The F.I.R. Ext.P-1 has come on record. A perusal of F.I.R. establishes that the accident took place because the vehicle was being driven very fast and in negligent as well as careless

manner. Thus, the learned Tribunal has rightly come to the conclusion that the accident has taken place due to rash and negligent driving of the truck driver. It has come on record that deceased Manoj Kumar was the brother of claimants. They are entitled to suitable compensation for the loss of the estate. However, there is no evidence as to what is the extent of loss to estate on account of untimely death of Manoj Kumar. The claimants are only brother and sister of the deceased and they had a chance of inheriting the estate of the deceased in the event of his living full normal life. The learned Tribunal has awarded Rs.50,000/- an amount equivalent to amount under no fault liability clause. In addition, another sum of Rs.5000/- on account of conventional damages has been awarded to the claimants. In my opinion, the amount of Rs.55,000/- awarded to the claimants is just and reasonable in the facts and circumstances of the case.

**10.** It has come on record that the deceased was in the truck at the time of accident with the permission of the driver who was having implied authority of the owner to drive truck. The owner cannot escape the liability even if it is assumed that driver was not authorized to give lift to any person in the truck. The truck was being driven by the driver in the course of his employment. The driver of a vehicle in the course of his employment even if acts in an unauthorized manner or in violation of specific instruction of his master and an accident

takes place, the master is still liable under the principle of vicarious liability. This principle is well known.

**11.** The vehicle involved in the accident was meant for carriage of goods only. Ext.R-4 is the copy of registration certificate, Ext.R-1 is Insurance Policy which does not cover the use of vehicles for carrying passengers in the vehicle except employees (other than the driver) not exceeding six in number coming under the purview of Workmen's Compensation Act, 1923. The deceased was not an employee. He was a gratuitous passenger. Therefore, insurer is not liable. In my view, the learned Tribunal has rightly excluded the insurer from the liability.

**12.** The learned counsel for the owner of the truck, in the facts and circumstances of the case, has failed to make out a case for interference in the impugned award. The compensation awarded to the claimants is just and reasonable. No interference is called for.

**13.** No other point was urged.

**14.** In view of above discussion, the appeal is dismissed and the impugned award is affirmed. The parties are left to bear their own costs.

**April 30, 2007**  
(soni)

**( Kuldip Singh )**  
**Judge.**