

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT  
JODHPUR.

**J U D G M E N T**

(1) Smt.Pushpa & others Vs. Ram Chandra & others.

S.B. CIVIL MISC. APPEAL NO. 141 OF 2007

(2) Jetha Ram Vs. Smt.Pushpa & others.

S.B. CIVIL MISC. APPEAL NO. 874 OF 2007

against the judgment and Award dated  
25.4.2006 passed by the learned Judge,  
MACT, Nagaur in MACT Case No. 100 of  
2004.

DATE OF JUDGMENT : 31<sup>st</sup> JANUARY, 2008

**PRESENT**

**HON'BLE MR.JUSTICE MANAK MOHTA**

Mr. J.R.Beniwal, for the appellants in CMA No.141/2007.  
Mr. G.R.Punia, for the appellant n CMA No.874/2007.  
Mr. P.R.Choudhary, for the non-claimant-respondent No.5.  
Mr. Jagdish Vyas, for respondent-Insurance Company.

**BY THE COURT :**

These appeals are directed by the claimants as well as by the owner of the vehicle against the Judgment and Award dated 25.4.2006 passed by the learned Judge, Motor Accident Claims Tribunal, Nagaur in MACT Case No. 100 of 2004 whereby the learned Tribunal has allowed the claim petition and awarded Rs.5,78,300/- plus interest @

7% p.a. as compensation in favour of the claimants and against non-claimant No.1-Jetharam owner and non-claimant No.2-Ramchandra driver of the vehicle.

Brief facts of this case, are that on 21.4.2004, deceased Hariram and his companions were going in Jeep bearing No. RJ 19-D/1257 from Village Mundwa to Saliyana Via Thirod to attend a marriage. It was alleged that when they were returning, the jeep driver Ramchandra drove the jeep in rash and negligent manner at high speed and resultantly, it turtled. Hariram sustained injuries who was taken to Mundwa Hospital wherefrom he was referred to Nagaur and then to MDM Hospital Jodhpur where he succumbed to his injuries during the course of treatment on 26.4.2004. It was also alleged that Jetharam (appellant) was registered owner of the said Jeep at the time of accident and the said jeep was insured with United Assurance Company, Nagaur. It was further stated that the deceased Hari Ram was a Government Servant, who untimely expired in accident. His age was 35 years and was drawing monthly salary of Rs.4410/- per month. Due to untimely death of Hari Ram, the family suffered a heavy loss of money and other benefits. The claimants were fully dependent upon the income of the deceased. The claimants

filed a claim petition for compensation to the tune of Rs. 28,24,558/- on various heads, in the court of M.A.C.T, Nagaur.

After service of notices, non-claimant No.2-Jetha Ram (appellant) filed reply to the claim petition stating therein that he sold out the vehicle in question to Ram Chandra (non-claimant No.1) on 27.2.2004 much before accident occurred. After transferring the ownership, requisite Forms No.29 and 30 were signed and the same were handed-over to him along with jeep on 27.2.2004, therefore, Ramchandra was owner of the said vehicle at the time of accident i.e. 21.4.2004. After accident, the jeep was seized and remained in police custody. Thereafter, Ramchandra got the vehicle released from the custody, therefore, the appellant was not responsible for the payment of compensation. It was also stated that the vehicle was insured with non-claimant No.3. Thus, if any situation arises for compensation then Insurance Company would be responsible. Thus, it was stated that respondents Ramchandra and Insurance Company were fully responsible for the payment of compensation to the claimants.

The reply of non-claimant No.1-Ramchandra (Driver of Jeep No.RJ-19C/1257) denied the factum of accident. He further stated that out of humanity, he took the injured Hariram to hospital for treatment. Thus, he was not responsible for causing accident. The stand of Insurance Company was that as the vehicle in question was insured as Private Vehicle under the M.V.Act and the said vehicle was carrying the passengers for hire, therefore, that was a breach of policy terms. Thus, the Insurance Company was not under an obligation to pay compensation to the claimants.

During trial, on the basis of the pleadings of the parties, the following necessary issues were framed :-

"1- श्री हरिराम की मृत्यु जीप सं. आर.जे.19 सी -1257 के चालक अप्रार्थी सं. 1 के लापरवाहीपूर्ण चालन के परिणामस्वरूप दि. 21.4.2004 को हुई दुर्घटना में हुई ?

2- अप्रार्थी सं. 1 अप्रार्थी सं. 2 के नियोजन में होते हुए उसके नियंत्रण व लाभार्थ वाहन आर जे 19 सी 1257 चला रहा था ?

3- अनुतोष।

2 (ए)- बरवक्त दुर्घटना वाहन आर जे 19 सी- 1257 निजी वाहन के रूप में प्रयुक्त न होकर सवारियां ढोने

वाले वाहन के रूप में प्रयुक्त हो रहा था, इस कारण से अप्रार्थी सं. 3 बीमा कम्पनी क्षतिपूर्ति के दायित्वाधीन नहीं है ?”

From claimants' side, AW 1 Smt. Pushpa and AW 2 Bheruram were examined and number of documents were exhibited. From the side of non-claimant No.1, NAW 1 Ramchandra was examined and no other evidence was produced. After hearing both the sides, the learned Tribunal found that the accident occurred due to rash and negligent driving of the said jeep by Ramchandra. Out of that, Hariram lost his life. The learned Tribunal determined the age and income of the deceased and awarded the amount of compensation. The learned Tribunal also found that Jethram was registered owner of the jeep at that time and jeep was used for carrying passengers being insured as private vehicle, therefore, discharged the Insurance Company from its liability and held non-claimants No.1 and 2 are jointly and severally responsible for the payment of compensation of Rs.5,87,300/- to the claimants after deducting the amount of Rs.50,000/- paid under No Fault Liability along with interest @ 7% p.a. from the date of filing of the application.

The claimants, being dis-satisfied with the amount of compensation awarded by the learned Tribunal vide judgment and Award dated 25.4.2006, filed appeal No. 141/2007 for enhancement of the amount of compensation.

The appellant (registered owner of the jeep), being aggrieved by the said judgment and Award preferred the present appeal No.874/2007 before this Court. Notices of the appeals were issued to the respective respondents. Both the appeals are arising out of the same judgment, thus, both the appeals were heard together and are disposed of by this common judgment.

Heard learned counsel for the parties and perused the judgment and Award passed by the learned Tribunal and carefully gone through the material available on record.

During the course of arguments, with regard to Appeal No.874/2007 filed by the owner of the jeep, it was submitted by the learned counsel for the appellant that the learned Tribunal has not properly considered and appreciated the material available on record, gave erroneous finding and passed judgment against record,

therefore, it was urged that it is not sustainable. It was contended that the appellant had sold the said jeep much earlier to the non-claimant No.1 Ramchandra on 27.2.2004 and legal requirements of filing Forms No.29 and 30 were completed and signed by the appellant and handed over to the non-claimant Ramchandra for purpose of submitting for fresh registration before the RTO. Thereafter he did not remain owner of the vehicle. It was also urged that the accident took place on 21.4.2004. On the day of accident, Ramchandra was the only owner of the vehicle and in that case, he could only be made responsible for the payment of compensation but the learned Tribunal has not given due weightage to this aspect. During pendency of the appeal, an application under O.41 r. 27, CPC was filed by the appellant to take on record the true and correct copies of Forms No.29 and 30 in support of his contentions. Learned counsel for the appellant also cited the decisions of the Apex Court rendered in the case of National Insurance Co.Ltd. v. Deepa Devi and others (AIR 2007 SCW 7882) and it was urged that in the same type of situation where possession of the vehicle was handed over then owner could not have any control over the vehicle. In that case, the owner could not be made responsible for compensation. The learned counsel for the appellant also urged that in alternative, if it is found

that the appellant is responsible for the payment of compensation. Even then, the vehicle was admittedly insured with the Insurance Company and in that case, it became the responsibility of paying the compensation to the claimants of the Insurance Company. It was also submitted that the deceased was stated to be an occupant in that vehicle, therefore, he remains as third party and his risk was covered by the Insurance Policy and the Insurance Company is responsible for the payment of compensation. In support of his contention, the learned counsel for the appellant placed reliance on the following decisions :- (1) National Insurance Company Ltd. v. Mahendra Singh and another (2006(2) MACD (Raj.) 1202), (2) Oriental Insurance Company v. Sriram and others (2006 MACD (Raj) 1304), and Gulab Singh and another v. Shiv Prasad and others (2006(1) RRD (Raj) 414 ). On the basis of the aforesaid submissions, it was urged that the judgment and award passed by the learned Tribunal may be quashed, the appellant may be exonerated from all liabilities and the appeal may be allowed.

The learned counsel for the respondents refuted the contentions and supported the judgment to this extent and submitted that admittedly, the appellant was a

registered owner of the vehicle on the date of accident and being a registered owner, he could not escape from his liability. It was also submitted by the learned counsel for the respondents that the appellant has not appeared in the witness-box before the learned Tribunal and has not able to prove that the said vehicle had been transferred as per law. More-so, the driver of the vehicle Ramchandra has not admitted the facts in his written statement regarding purchase of the said vehicle and in his statement, he has denied the suggestion that he purchased the vehicle in question. It was stated that no such material was placed before the learned Tribunal to believe that the vehicle was sold to Ramchandra. It was further stated that mere filing of the requisite Forms No.29 and 30 would not make the vehicle transferred without following the proper procedure. It was also contended that Ramchandra was driving the vehicle under the instruction of the appellant and he was having power of Attorney of the owner of the vehicle in his favour, therefore, Ramchandra was not the owner of the vehicle at that time. Merely releasing the vehicle from custody, would not make any difference in title of the vehicle. It was submitted that the authorities cited by the learned counsel for the appellant would not help his contentions. As in that case, it was found proved that the

vehicle was compulsorily requisitioned by the Statutory Authority, that is not the position in the present case. In this case, he was admittedly registered owner of the vehicle and he was responsible for paying compensation. The learned Tribunal has rightly held so. In support of his contention, the learned counsel for the respondents also relied upon the decision rendered in the case of (1) Dr. T.V.Jost v. Chacko P.M. and others (2002 RAR (SC) 2). In that case, it was held that registered owner will continue to remain liable to 3<sup>rd</sup> party until his name is continued in the record of the R.T.O. It was also contended by the learned counsel for the Insurance Company that in the present case, admittedly, the deceased was being an occupant of the vehicle, therefore, he could not be termed as third party. Thus, looking to the nature of the Policy, the owner of the vehicle has rightly been held liable for payment of compensation.

Learned counsel for the Insurance Company submitted that the vehicle in question was insured as private vehicle and at the time of accident, the passengers were carrying . The Insurance Company has not taken over any premium for the risk of gratuitous passengers, therefore, the learned Tribunal has rightly discharged the Insurance

Company from their liabilities, that judgment should be maintained. The authorities cited by the learned counsel for the appellant do not help their contentions in the light of the latest decision of the Hon'ble Supreme Court. Learned counsel for the Insurance Company has cited the judgment rendered in the case of Oriental Insurance Co.Ltd. v. Brij Mohan and others (2007 (7) SCC 56).

During the course of arguments with regard to Appeal No. 141/2007, it was submitted by the learned counsel for the claimant-appellants that the learned Tribunal has not properly assessed the income of the deceased. It was contended that at the time of accident, the appellant was in Government Service and looking to his age, there were bright chances of his promotion etc. but the learned Tribunal has not properly calculated. It was urged that the learned Tribunal while assessing the net income has wrongfully deducted the amount and thus, the net monthly income has not been properly assessed. It was also contended that looking to his age, the learned Tribunal has not applied correct multiplier. In this way, the compensation awarded by the learned Tribunal requires enhancement by way of modification. It was also urged that that the claimants are poor persons. There will be a great difficulty in

recovering the awarded amount of compensation, therefore, in the interest of justice, the Insurance Company may be directed to deposit the awarded money for payment to the claimants. Learned counsel, in support of his contention, placed reliance on the decision rendered in the case of Oriental Insurance Co.Ltd. v. Brij Mohan and others (2007 (7) SCC 56). On these submissions, it was prayed that the compensation awarded by the learned Tribunal may be enhanced and the appeal may be allowed.

On the contrary, the learned counsel for the respondents refuted the contentions and stated that there are no scope for enhancing the compensation. The learned Tribunal has already awarded compensation on higher side. It was submitted that a just and reasonable compensation was to be determined and the learned Tribunal has rightly assessed, therefore, the appeal may be dismissed.

I have considered the rival submissions placed by the learned counsel for the parties with regard to both the appeals and perused the findings given by the learned Tribunal and conclusion drawn thereon.

With regard to Appeal No.874/2007, the points remain for consideration in that appeal is whether the appellant was wrongly made responsible for the payment of compensation and the Insurance Company was wrongly exonerated. With regard to Appeal No.141/2007, the question for determination arises whether the awarded compensation is inadequate and requires any modification.

With regard to first point, it is admitted position that Jetharam was the owner of the said vehicle and his name stands in the Registration Certification. His case is that on a particular day i.e. on 27.2.2004, he sold the vehicle to Ramchandra much before the day of accident i.e. on 21.4.2004 and he has further stated that he has signed and handed-over the requisite Forms No.29 and 30 to Ramchandra for submitting in the RTO for fresh registration but admittedly, these Forms were not reported to be submitted in the RTO. For transferring the vehicle from person to another, there is a prescribed procedure under the Rules by submitting these forms before the RTO and after passing suitable order, the vehicle is transferred. It has not been proved on the part of the appellant that what efforts has been made after signing and handing-over the requisite Forms. In my opinion, it is bounden duty of the registered

owner to follow the procedure and to discharge from the legal obligation and liabilities. In the present case, Jetharam has not appeared before the learned Tribunal in support of his contentions. Ram Chandra, in his statement, has denied the purchase of the said jeep. Contrary, Ramchandra (NAW 1) stated in his statement that Jetharam was the owner of the jeep and he was of his driver. He has further stated in his cross-examination that the owner of the Jeep Jetharam has given him Power of Attorney and on that basis, he got released the jeep from custody. He has denied that he purchased the jeep from Jetharam and he has further denied that Forms No.29 and 30 were signed and handed over to him. He has also stated in his cross-examination that Jetharam has given him Power of Attorney. The relevant portion of his statement is quoted as under :-

"मैं आज से दो साल पूर्व अप्रार्थी सं. 2 जेठाराम की जीप चलाता था जिसके नं. आर जे 19 सी 1257 थे। जिस पर मैं ड्राइवर रहा हुआ था व चलाता था।"

" यह सही है कि मैंने न्यायालय से गाड़ी छुड़ाई थी जो पावर ऑफ अटार्नी के जरिये छुड़ाई थी। मेरे को पावर ऑफ अटार्नी जेठाराम ने लिखकर दी थी।"

Thus, from the statement of Ramchandra, it is crystal clear that he was driving the vehicle on behalf of Jetharam. On the one hand, the appellant has failed to prove that the vehicle in question was transferred and he did not hold responsible for the payment of compensation. During the course of argument, the learned counsel for the appellant has referred the judgment of the Apex Court rendered in the case of National Insurance Co.Ltd. v. Deepa Devi and others (supra) but this judgment does not support his contention. In that case, it was admitted fact that the vehicle in question was requisitioned by the statutory authority and during that period, the vehicle was not under the control of the registered owner. In that position, the State was held liable for the payment of compensation. But that was not the position in the present case. The owner of the vehicle was not under compulsion to transfer the vehicle to Ramchandra nor it has been found transferred as per law. Rather as per the statement of Ramchandra, he was driving the vehicle on behalf of the appellant and was having Power of Attorney given to Ramchandra. Thus, mere taking delivery of the vehicle from the custody by Ramchandra, would not make any difference, therefore, the application filed by under O.41 r. 27 CPC with prayer to take on record the requisite Forms that would not serve any purpose,

thus, the application is hereby rejected.

On the contrary, the learned counsel for the claimants has cited the judgment given in the case of Dr.T.V.Jost v. Chacko PM and others (supra). In that case, it was specifically held that registered owner continued to be remained liable qua the third party until his name is on record of the RTO. The relevant portion of para 10 is reproduced as under :-

“There can be transfer of title by payment of consideration and delivery of the car. The evidence on record shows that ownership of the car had been transferred. However, the appellant still continued to remain liable to third parties as his name continued in the records of RTO as owner.”

Thus, on the basis of the aforesaid discussion, first contention of the learned counsel for the appellant is not having any legal force. Neither transfer of the vehicle is proved nor he can escape from his liability being a registered owner. The second contention raised by the learned counsel for the appellant Jetha Ram (owner of the Jeep) that the vehicle was insured. In that case, the Insurance Company was responsible for the payment of compensation but the appellant has nowhere stated that the

deceased was not occupant in the vehicle as gratuitous passenger, therefore, looking to the nature of the policy, that was for private vehicle. In that position, the deceased was travelling as gratuitous passenger. He cannot be treated as third party. In case of any accident, arising out of the use of vehicle, the liability for payment of compensation was not taken over by the Insurance Company, therefore, the learned Tribunal has rightly exonerated the Insurance Company from its liability and made the appellant responsible for the payment of compensation. Learned counsel for the appellant also cited the judgment given in the case of National Insurance Co.Ltd. v. Mahendra Singh and another (supra). In the light of recent decision of the Apex Court given in the case of United India Insurance Co. Ltd. v. Tilak Singh (2006 (4) SCC 404), in which, it was held that the gratuitous passengers are not included in third parties, therefore, this authority does not support his contention. The relevant portion of para 21 is reproduced as under :-

“Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the Insurance Policy was a statutory policy and, hence, it did not cover the risk of death of or bodily injury to a gratuitous passenger.”

Likewise, the other authorities are not help his contentions.

On the basis of the aforesaid discussion, the contentions raised by the learned counsel for the appellant with regard to Appeal No. 874/2007 are not sustainable,. The issue with regard to accident has not been disputed rather that has been proved by the material placed on record, therefore, the findings arrived at by the learned Tribunal in this respect are not suffering from any infirmity or illegality and deserve to be maintained. Thus, the appeal filed by the appellant Jetharam (owner of the Jeep) deserves to be disallowed.

Now, I have considered the rival contentions raised in Appeal No.141/2007 filed by the claimants' side with regard to enhancement of compensation amount. Learned Tribunal has considered the age of the deceased as well as net amount, which if he would alive could have spare for family needs. The learned Tribunal was expected to determine just and reasonable compensation and from this point of view, the learned Tribunal has, after a detailed discussion, determined Rs. 5,78,300/- under different heads. The contentions of the learned counsel for the claimants are that some amount has been deducted

unnecessarily and multiplier 15 has been applied in place of 17, thus, has not been used properly but the learned Tribunal was assessing the quantum under Sec.166 of the MV Act and in that process, the multiplier given in the Schedule was of only helping basis. On the basis of the material available on record, the learned Tribunal has determined the compensation i.e. not found inadequate. Thus, the contentions raised by the learned counsel for the claimants are not tenable and no interference is required. During course of argument, it was submitted that looking to the hardship in recovering the compensation amount, the Insurance Company may be directed that at the first instance to make payment with direction to recover the same from the owner of the vehicle and support of his contention. Learned counsel for the claimants also placed reliance on the decision of the Apex Court rendered in the case of Oriental Insurance Co. Ltd. v. Brij Mohan and others (supra) but in the present case, there was a fundamental breach of the terms of the policy. The vehicle in question was insured as private car and that was carrying passengers for that no premium was found to be taken by the Insurance Company was disowned from its liability. In that position and cause assigned that there will be hardship in recovering the awarded amount. I do not consider it a fit

case to give such direction should be given to the Insurance Company to deposit the awarded compensation amount. In the afore-mention case, while exercising powers under Art.142 of the Constitution of India to do complete justice such direction was given. That is not the position here.

In the result, both the appeals filed by the claimants' side as well as owner of the vehicle deserve to be dismissed, they are hereby dismissed. The judgment and Award passed by the learned Tribunal is maintained. No order as to costs.

(MANAK MOHTA),J.