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**HIGH COURT OF MADHYA PRADESH : JABALPUR**

**Misc. Appeal No. 3630/2005**

Mohanlal S/o Nannuram and another  
Vs.  
Mohanlal S/o Phadlu Gond and others

**As Per : G.S. Solanki, J.**

Shri P.C.Paliwal, Advocate for appellant.

Shri Anoop Nair, Advocate for

**Date of hearing: 17.3.2011**

**Date of Order : 23.3.2011**

**O R D E R**

1. The appellants have preferred this appeal under section 173 of the Motor Vehicles Act being aggrieved by award dated 31.8.2005 passed in Claim Case No. 81/2000 by MACT, Hoshangabad by which the claim petition filed by the claimants was dismissed.
2. The facts of the case in short are that on 16.6.2000, at about 1:30 PM when deceased Deepak S/o Mohan Lal aged about 15 years was going to his house from the agricultural field, a tractor driven by respondent No. 1, owned by respondent No. 2 and insured with respondent No. 3, dashed him, due to which he sustained injuries and succumbed to them. FIR was lodged at P.S. Nasrullahganj. Crime No. 87/2000 was registered against respondent No. 1 under section 304-A of IPC.
3. After usual investigation respondent No. 1 was prosecuted before JMFC. It is alleged that Deepak was

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healthy, aged about 15 years and used to earn a sum of Rs. 2 Lakhs per annum by cultivating the agricultural land. It is further alleged that Deepak was also doing the milk business and was earning a sum of Rs. 1 lakh from the same. Compensation of Rs. 68,55,000/- was claimed by the claimants.

4. Respondents No. 1 and 2 remained absent before Tribunal, therefore, Tribunal proceeded ex-parte against them.

5. Respondent No. 3 Insurance Company denied the averments of the claim petition and pleaded that Deepak died due to the injuries caused to him by falling from tree. This fact finds place in the intimation sent by the Doctor on 16.6.2000 to P.S. Nasrullahganj. It is further pleaded that appellants filed claim petition in collusion with respondents No. 1 and 2. It is also pleaded that the tractor was being driven in violation of the conditions of insurance policy for hire or reward, hence prayer has been made for dismissal of the claim petition.

6. Learned Tribunal has framed as many as 8 issues and after appraisal of evidence on record, dismissed the claim petition, hence this appeal.

7. Learned counsel for the appellant has submitted that learned Tribunal has erred in not appreciating the evidence on record in its proper perspective. He has further submitted that on the basis of information sent by

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the Medical Officer to the Police Station, learned Tribunal ignored the other ocular and documentary evidence on record, therefore impugned award be set aside and suitable compensation be awarded to the claimants.

**8.** Learned counsel for respondent No. 3 has justified the finding recorded and supported the impugned award passed by the Tribunal.

**9.** I have perused the impugned award, evidence and other material on record. Mohan Singh (PW-1) deposed that deceased Deepak S/o Mohan Lal was going towards his house, which is situated nearby the field. He further deposed that tractor of yellow colour MP37-273 was driven negligently by respondent No. 1 and dashed to Deepak. He further deposed that he himself along with Kachrulal and Narayan Dada took him to village Chakaldi and thereafter rushed to hospital at Nasrullahganj but despite treatment Deepak died. According to him Deepak was aged about 16-17 years. This witness remained intact despite extensive cross examination in regard to factum of incident, which took place before him. Shakun Bai (PW-2) mother of deceased Deepak Kumar deposed on the basis of information given by other persons. Statement of Mohan Singh (PW-1) is duly corroborated by the documents prepared during investigation and filed in Criminal Regular Trial No. 225/2000.

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**10.** Learned counsel for respondent No. 3/Insurer was not able to brought out any such fact on the basis of which, statement of Mohan Singh could be disbelieved.

**11.** Learned counsel for respondent drew my attention to the statement of Dr. Mutim Ahmad (DW-1) who deposed that injured Deepak was brought to the Hospital on 16.6.2000 and on the basis of information given to him, he sent an information as to the fact that Deepak got injured by falling from the tree. On the basis of this statement, learned counsel for respondent argued that the Tribunal was right in dismissing the claim petition, but I am not convinced by the contention raised by the learned counsel for the respondents because Dr. Mutim Ahmad (DW-1) admitted in his cross examination that he cannot say who gave him information regarding falling of Deepak from tree. Moreover, Dr. Mutim Ahmad is not an eye witness, he is only an expert who can opine regarding injuries and considering the fact brought out in his cross examination that he himself was not certain as to the fact that who informed him about falling of Deepak from tree. This fact ought to have been disbelieved by the Tribunal in comparison to the evidence of appellants, which is corroborated by the documentary evidence.

**12.** Learned counsel for the respondents has submitted that Deepak sustained only a head injury, on the vital part of head and brain which can be caused only by falling. But

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in the post mortem report, other injuries No. 1 to 5 were also found on the body of deceased Deepak, which corroborates the statement of Mohan Singh that Deepak was dragged by the cultivator, in these circumstances, it is apparent that Deepak got injured and died in the accident in question.

**13.** Thus, in my opinion, the Tribunal has committed illegality in not appreciating the evidence on record in its proper perspective. The finding of the Tribunal cannot be substantiated and is liable to be set aside, therefore, same is hereby set aside. It is held that Deepak got injured and died due to rash and negligent driving of respondent No. 1 in the accident in question.

**14.** Insurer/respondent No. 3 did not adduce any evidence regarding violation of insurance policy, thus it cannot be said that vehicle was being plied in violation of conditions of insurance policy.

**15.** Coming to the question of quantum of compensation to be awarded to the claimants on account of death of Deepak. Mohan Singh (PW-1) deposed that Deepak was aged about 16-17 years. Shakun Bai (PW-2), mother of Deepak deposed that Deepak was 15 years of age at the time of accident. She further deposed that Deepak was the student of 5<sup>th</sup> class as well as he used to cultivate the land and used to earn a sum of Rs. 1-2 lakh per annum.

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It is a matter of common experience that how student of 5<sup>th</sup> class aged about 15-16 years can cultivate the land earn a sum of Rs. 1-2 lakh per annum. From the High School Certificate of Deepak, which is placed on record, it is apparent that date of birth of Deepak was 9.10.1986 and accident took place on 16.6.2000, thus at the time of accident Deepak was aged about 14 years (less than 15 years).

In these circumstances, in my opinion, it would be appropriate to award lumpsum total compensation assuming as a non-earning boy of Rs. 1,60,000/- to the claimants on account of death of Deepak. Thus total compensation comes to Rs. 1,60,000/- (Rs. One Lakh Sixty Thousand only). The compensation awarded by this Court to carry the interest @ 6% per annum from the date of filing of the claim petition till realization.

**16.** Resultantly, the appeal is allowed in part to the aforesaid extent. Advocates' fee Rs. 500/- or certificate (whichever is less). No costs.

**(G.S.Solanki)**  
**Judge**

PB