



IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 25<sup>th</sup> OF MARCH, 2026

MISC. APPEAL No. 265 of 2006

*STATE OF M.P. THRU COLLECTOR AND OTHERS*

*Versus*

*SMT.PREMWATI JATA V*

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Appearance:

Shri Dileep Awasthi -Government Advocate for appellants-State.

None for respondents.  
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ORDER

This miscellaneous appeal has been filed by the appellants under Section 173 of the Motor Vehicles Act, 1988, being aggrieved by the Award dated 24/10/2005 passed by the Seventh Additional Member, Motor Accident Claims Tribunal, District- Gwalior (M.P.) (hereinafter referred to as "the Claims Tribunal") in Claim Case No.05/2005, whereby Claims Tribunal awarded compensation of Rs. 37,000/- to the claimant alongwith interest from the date of filing of claim petition.

2. Brief facts of the case are that in the night at 11.00 pm, claimant was going in marriage procession putting light Gamla on her head. As soon as procession reached in Naya Bazar, white police vehicle bearing registration No. MPO3/3066 came driving rash and negligently and dashed on left leg of claimant and she received injuries. FIR was registered against driver of offending vehicle.

3. Thereafter, claimant filed petition for seeking compensation against



appellants. Appellants filed written statement and Claims Tribunal framed issues and after appreciating the evidence awarded compensation in favour of respondent/claimant.

4. Being aggrieved by the impugned award, the appellants have preferred this appeal on the ground that the learned Claims Tribunal committed error awarding compensation in favour of respondent/claimant. It is submitted that respondent/claimant filed claim petition before the Claims Tribunal without impleading driver of offending vehicle. Therefore, claim petition was not maintainable. Hence, it is prayed that impugned award be set-aside.

5. No one appeared on behalf of respondent/claimant.

6. Heard learned counsel for the appellants. and perused the record of the Claims Tribunal.

7. The moot question for consideration is as to whether the Driver of the offending vehicle is a necessary party or not ? In a claim petition, the claimant has to prove that because of negligence on the part of driver of offending vehicle, accident took place. In case if it is found that the claimant himself was negligent, then he will not be entitled for compensation amount. Therefore, in order to award compensation amount to the injured or the legal representatives of the deceased, the claimant must prove that the accident took place on account of rash and negligent act of the Driver. Under these circumstances, in the considered opinion of this Court, the Driver of the offending vehicle is a necessary party. The Supreme Court in the case of Oriental Insurance Company Ltd. Vs **Meena Variyal**



and Ors. reported in (2207) 5 SCC 428 has held as under:-

"24. It was argued by learned counsel for the appellant that since on the finding that the deceased was himself driving the vehicle at the time of the accident, the accident arose due to the negligence of the deceased himself and hence the insurer is not liable for the compensation. Even if the case of the claimant that the car was driven by Mahmood Hasan was true, then also, the claimant had to establish the negligence of the driver before the insured (*sic* insurer) could be asked to indemnify the insured. The decision in *Minu B. Mehta v. Balkrishna Ramchandra Nayan* of a three-Judge Bench of this Court was relied on in support.

25. In that decision, this Court considered the question whether in a claim for compensation under the Motor Vehicles Act, 1939, proof of negligence was essential to support a claim for compensation. On the facts in that case, their Lordships found that the appeal was liable to be dismissed subject to certain directions issued therein. But their Lordships, in the light of the fact that the High Court had discussed the law on the question and it was of some importance, felt that it was necessary to state the position in law. Noticing that the liability of the owner of the car to compensate the victim in a car accident due to negligent driving of his servant is based on the law of tort, the Court discussed the scheme of the Act of 1939 and the law on the question. Regarding the view of the High Court that it was not necessary to prove negligence, the Court held: (*Minu B. Mehta case*, SCC pp. 455-56, para 33)

"33. The reasoning of the two learned Judges is unacceptable as it is opposed to basic principles of the owner's liability for negligence of his servant and is based on a complete misreading of the provisions of Chapter VIII of the Act. The High Court's zeal for what it considered to be protection of public good has misled it into adopting a course which is nothing short of legislation."

Their Lordships also noticed that proof of negligence remained the lynchpin to recover compensation. Their Lordships concluded by saying: (*Minu B. Mehta case*, SCC pp. 456-57, para 37)

"37. We conclude by stating that the view of the learned Judges of the High Court has no support in law and hold that proof of negligence is necessary before the owner or the insurance company could be held to be liable for the payment of compensation in a motor accident claim case."

26. Learned counsel for the respondent contended that there was no obligation on the claimant to prove negligence on the part of the driver. Learned counsel



relied on *Gujarat SRTC v. Ramanbhai Prabhatbhai* in support. In that decision, this Court clarified that the observations in *Minu B. Mehta case* [(1977) 2 SCC 441 : (1977) 2 SCR 886] are in the nature of obiter dicta. But, this Court only proceeded to notice that departures had been made from the law of strict liability and the Fatal Accidents Act by introduction of Chapter VII-A of the 1939 Act and the introduction of Section 92-A providing for compensation and the expansion of the provision as to who could make a claim, noticing that the application under Section 110-A of the Act had to be made on behalf of or for the benefit of all the legal representatives of the deceased. This Court has not stated that on a claim based on negligence there is no obligation to establish negligence. This Court was dealing with no-fault liability and the departure made from the Fatal Accidents Act and the theory of strict liability in the scheme of the Act of 1939 as amended. This Court did not have the occasion to construe a provision like Section 163-A of the Act of 1988 providing for compensation without proof of negligence in contradistinction to Section 166 of the Act. We may notice that *Minu B. Mehta case* [(1977) 2 SCC 441 : (1977) 2 SCR 886] was decided by three learned Judges and the *Gujarat SRTC case* was decided only by two learned Judges. An obiter dictum of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court. But as far as this Court is concerned, though not binding, it does have clear persuasive authority. On a careful understanding of the decision in *Gujarat SRTC* we cannot understand it as having held that in all claims under the Act proof of negligence as the basis of a claim is jettisoned by the scheme of the Act. In the context of Sections 166 and 163-A of the Act of 1988, we are persuaded to think that the so-called obiter observations in *Minu B. Mehta case* govern a claim under Section 166 of the Act and they are inapplicable only when a claim is made under Section 163-A of the Act. Obviously, it is for the claimant to choose under which provision he should approach the Tribunal and if he chooses to approach the Tribunal under Section 166 of the Act, we cannot see why the principle stated in *Minu B. Mehta case* [(1977) 2 SCC 441 : (1977) 2 SCR 886] should not apply to him. We are, therefore, not in a position to accept the argument of learned counsel for the respondents that the observations in *Minu B. Mehta case* deserve to be ignored."

8. So far as judgement passed by coordinate Bench in the case of  
**ICICI Lombard General Insurance Company Ltd. Vs Smt. Mahadevi and**



**Ors. reported in 2023 (1) TAC 671 (M.P.)** is concerned, it is merely based on the proforma of form of application seeking compensation as provided in Motor Vehicles Rules 1994. The coordinate Bench of this Court has not considered the judgment passed by the Supreme Court in the case of **Meena Variyal (Supra)**. The coordinate Bench of this Court has not considered that without adjudicating the question of negligence of the Driver, whether the claim petition filed by the claimant can be allowed or not. The coordinate Bench of this Court has not considered that owner of the vehicle is made vicariously liable for the negligent act of the Driver. In absence of finding with regard to the negligence of the Driver neither the owner can be made responsible nor the Insurance Company who had insured the vehicle and thereby has indemnified the owner can be made responsible. Thus, in the considered opinion of this Court, the judgement passed by the coordinate Bench of this Court in the case of **Mahadevi (Supra)** is per incuriam because it has not considered any aspect and has held that impleadment of Driver is not necessary merely because of omission in the form of application seeking compensation. It is well established principle of law that the rules will not override the provision of statute. In the present case, the applicant had specifically taken a stand in ground 'A' of special plea that Driver has not been impleaded as a party and in absence of Driver, the negligence cannot be adjudicated. In spite of that the claim petitioner/respondent No. 1 decided to proceed further with the claim petition. The Supreme Court in the case of **Church of Christ Charitable Trust & Educational Charitable Society v. Ponnamman Educational Trust** reported in (2012) 8 SCC 706 has held as



under:-

26. On the other hand, when the plaintiff itself persists in not impleading a necessary party in spite of objection, the consequences of non-joinder may follow. However, the said objection should be taken in the trial court itself so that the plaintiff may have an opportunity to rectify the defect. The said plea cannot be raised in this Court for the first time. This position has been reiterated in *State of U.P. v. Ram Swarup Saroj*. We hold that a plea as to the non-joinder of the party cannot be raised for the first time before this Court if the same was not raised before the trial court and has not resulted in failure of justice. In the case of non-joinder, if the objection is raised for the first time before this Court, the Court can always implead the party on the application wherever necessary. However, in the case on hand, for the disposal of application filed for rejection of the plaint under Order 7 Rule 11, the second defendant is not a necessary party, hence he need not be impleaded. Accordingly, we reject the said objection of the respondent herein.

9. Thus, it is clear that an objection was raised by the appellants at the earliest and in spite of that the claim petitioner had decided to go ahead with the claim petition, then he is responsible to face the consequences of non-impleadment of necessary party. In view of the aforesaid discussion, it is held that the Driver of the offending vehicle is a necessary party because the entire allegation of negligence is against the Driver and without giving any opportunity of hearing to the Driver, the finding of negligence cannot be fastened on him. The Claims Tribunal has referred to the judgement passed by a coordinate Bench of this Court in the case of *ICICI Lombard General Insurance Company vs. Smt. Mahadevi and Ors.* passed in M.A. No. 803/2011 and held that the Driver of the offending vehicle was not the necessary party. The reliance by the Claims Tribunal on the aforesaid judgment is misconceived. In the case of *Mahadevi (supra)* the driver and the owner of the vehicle were made party, but they remained ex-party. Any pronouncement of law has to be considered in the light of facts and



circumstances of the said case.

10. Since the driver of the offending vehicle is a necessary party, therefore, it is held that once respondent No. 1/claimant had decided to proceed further in spite of the specific objection regarding non-impleadment of driver then claimant/ respondent has to face the consequences of non-impleadment of the necessary party. Under these circumstances, this Court is of the considered opinion that claim petition filed by respondent No. 1 suffers from non-impleadment of necessary party.

11. In view of the aforesaid discussion, this Court is of the considered opinion that the driver of the offending vehicle is a necessary party in a claim petition under Section 166 of the Motor Vehicles Act. Non-impleadment of the driver renders the claim petition defective and not maintainable.

12. Consequently, the impugned award passed by the Claims Tribunal cannot be sustained in the eyes of law.

13. Accordingly, the appeal is **allowed**. The Award dated 24/10/2005 passed by the Claims Tribunal in Claim Case No.05/2005 is hereby **set aside and it** is held that the respondent/claimant is not entitled to compensation under Section 166 of the Motor Vehicles Act in the present proceedings due to non-impleadment of a necessary party.

**(HIRDESH)  
JUDGE**