IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE HIMANSHU JOSHI

ON THE 24th OF SEPTEMBER, 2025

MISC. APPEAL No. 448 of 2008

SHIVRAM CHOUDHARY
Versus
VEERENDRA KUMAR MISHRA AND OTHERS

Appearance:

Shri Pratap Narayan Mishra - Advocate for the appellant.

Shri Arubendra Singh - Advocate for respondents No.1 and 2.

Shri Dinesh Kaushal - Advocate for respondent No.3/ Insurance Company.

WITH

MISC. APPEAL No. 4747 of 2007

THE NEW INDIA INSURANCE COMP.LTD.
Versus
SHIV RAM CHOUDHARI AND OTHERS

Appearance:

Shri Dinesh Kaushal - Advocate for the appellant/ Insurance Company.

Shri Pratap Narayan Mishra - Advocate for respondent No.1.

Shri Arubendra Singh - Advocate for respondents No.2 and 3.

WITH

MISC. APPEAL No. 4873 of 2007

THE NEW INDIA INSURANCE COMP.LTD.
Versus
SUKH LAL CHOUDHRI AND OTHERS

Appearance:

Shri Dinesh Kaushal - Advocate for the appellant/ Insurance Company.

Shri Arubendra Singh - Advocate for respondents No.2 and 3.

ORDER

All these three miscellaneous appeals are being decided with this common order as have been filed against the common award dated 20.08.2007 passed by 3rd Additional Motor Accidents Tribunal, Satna, in Claim Cases No.42/2005 and 43/2005. Both the claim cases arose from the same accident; M.A. No.448 of 2008 has been filed by the claimant-Shivram Choudhary seeking enhancement in the compensation amount whereas other two appeals i.e. M.A. No.4747 of 2007 and M.A. No.4873 of 2007 have been filed by the insurance company challenging the award.

2. Facts of the case in brief are that on 29.05.2004 in the night at about 09:00 P.M. while the claimants- Shivram Choudhary and Shukhlal Choudhary were walking towards village Lohroura from Satna, on the way, driver (Virendra Singh) of tractor bearing registration number MP-19-A-6092, dashed them in reckless and negligent manner resulting into several injuries on various bodyparts causing fracture of hand to claimant- Shivram and fracture of collarbone and other injuries to claimant- Sukhlal.

3. The owner and driver of the offending vehicle have contested the case via filing separate written statements denying the accident as well as involvement of vehicle. The insurance company had also filed its written statement contending that the claimants were travelling in the tractor which is not permissible and further, the driver of alleged offending vehicle did not have valid license on that day. Moreover, as per the information given to police, in fact, another vehicle belonging to one Ramsharan Dwivedi was

involved in the accident.

4. After examining all the evidence produced, the learned Tribunal came to the conclusion that the claimant- Shivram is entitled to get the compensation of Rs.30,000/- whereas the claimant- Shukhlal is entitled for Rs.10,000/-, along with interest.

5. Learned counsel for the claimant- Shivram has submitted that the compensation awarded by the Tribunal is on lower side and totally unmatched with the losses suffered by the claimant in the accident. The learned Tribunal has failed to consider the aspect that the claimant is 50 years old and on account of accident, his entire family is suffering adversely. The learned Tribunal has also erred in not assessing the loss of income of claimant on account of the accident.

6. Learned counsel for the Insurance Company has argued that the learned Tribunal erred in directing the insurance company to pay the amount of compensation to the claimants, however, with liberty to recover the same from the owner of offending vehicle whereas the insurance company is not liable to pay any amount of compensation. The offending vehicle was insured for agricultural purpose but on the date of accident, the same was being used for carrying *Barat* in which the claimants were travelling as *Baratis*, which is completely in violation of terms and conditions of insurance policy. The claimant- Shivram Choudhary himself lodged the FIR mentioning therein that the offending vehicle was carrying *Baratis*. In support of his contentions, he has placed reliance upon the judgment of Supreme Court reported in **(2007) 13 SCC 476** parties being **Oriental**

Insurance Co. Ltd. Vs. Premlata Shukla & Others and the order passed by this High Court in **M.A. No.2762 of 2007** parties being **United India Insurance Co.Ltd., Dhar Vs. Poonamchand & 6 Others**.

7. Learned counsel for the owner and driver has submitted that they are not responsible for causing the said accident. Only on the basis of FIR, liability cannot be fastened upon them. The vehicle has falsely been implanted in the case. Apart from the above, the vehicle was insured with the insurance company and at any eventuality, insurance company is liable to pay the compensation.

8. Heard the submissions advanced by learned counsel for the parties and perused the record.

9. On perusal of impugned award, it reveals that the learned Tribunal itself has found that on the date of accident, the tractor was carrying *Baratis* and the claimants were members thereof. The tractor got turtuled wherein the claimants sustained injuries. The FIR to that effect has been lodged by claimant- Shivram himself. It is also found by the learned Tribunal that that offending vehicle was taken by one Ramsharan Dwivedi from Urmila Singh, on rent, however, there is no documentary evidence produced to that effect. On examining the material available on record, the abovesaid findings given by the learned Tribunal appear to be in consonance with the evidence produced before the Tribunal. This Court finds the facts that the accident was caused by the offending vehicle being driven by Virendra, resulted into injuries to the claimants, undisputed. It is also not in dispute that the vehicle was insured with the New India Insurance Company.

10. After hearing the arguments advanced by learned counsel for the insurance company, the first and foremost question which arises before this Court is as to whether if an accident occurs while the vehicle is being used for a purpose other than that of, for which it is insured, is the insurance company liable to pay compensation ? If not, consequently, order of 'pay and recover' can be passed against the insurer.

11. As argued by learned counsel for the insurance company, when there is gross violation of terms and conditions of insurance policy, the insurance company cannot be held liable to pay any amount of compensation, moreso, no order of pay and recover can be passed.

12. In the case of **Balu Krishna Chavan Vs. Reliance General Insurance Company,** reported in **2022 LiveLaw (SC) 932**, the Hon'ble Supreme Court has held as under :-

> "However, considering the fact that the appellant was a gratuitous passenger in the said vehicle, the Respondent-Insurance Company was not liable to reimburse the compensation. Though, the Motor Accidents Claims Tribunal (for short 'MACT') had not taken this aspect of the appellant being a gratuitous passenger into consideration, the High Court while considering the appeal filed by the respondent-Insurance Company, had arrived at the conclusion that the Insurance Company is not liable to pay the compensation. It is in that view, the appellant had filed a review petition, which was also dismissed.
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> 8. Hence, the only aspect for our consideration herein, is as to whether in the facts and circumstances of the present case, an order to direct the Insurance Company to "pay and recover", is required to be made. **On this aspect, the law is well settled that if the liability of the Insurance Company is decided and they are held not to be liable, ordinarily, there shall be no direction to "pay and recover". However, in the facts and circumstances arising in each case, appropriate orders are required to be made by this Court to meet the ends of justice.**"

13. On going through the above quoted enunciation of law, this Court finds that every motor insurance policy defines specific uses for the insured vehicle and if the vehicle is used in breach of those terms, it is called violation of policy conditions and the Courts have consistently held

that under such circumstances, the insurer is not liable to compensate for accidents that occur when the vehicle is used in violation of policy terms, however, in certain cases, Courts may still direct the insurer to pay the third-party victim and recover the amount from the insured (owner). However, this is generally done to protect the third-party victim when the breach is not willful or is a technical violation. This Court consciously holds that the doctrine of 'pay and recover' would not be applicable if the vehicle was used clearly for different purpose carrying unauthorized passengers in vehicle insured for different purpose as the same can be termed as fundamental breach of policy conditions.

14. A vehicle is more than a machine. It is a responsibility that moves with it users. Along with the convenience and power, it imposes certain duties; a duty to use it wisely, lawfully, and within the bounds for which it is insured. When one insures his/her vehicle, he/she enters into a solemn contract, not just with the insurer, but with the law and society. The policy issued is not merely a document of protection, but a promise that the vehicle shall be used only for the purpose it was insured, be it agriculture purpose, personal travel, goods transport, or public conveyance. To stray from this purpose is to break that promise. If the vehicle is used in a manner inconsistent with its insurance coverage, this is not just a technical breach, but a fundamental violation. In such cases, the insurance company stands absolved of its liability. The shield of protection falls away, and the burden of responsibility falls squarely on the owner. It is a sobering truth that in moments of misjudgment, great loss may follow. An accident, though

unintended, may bring injuries, damages, or even death and if the vehicle was used beyond its insured purpose, the owner and driver may bear the weight of compensation. This is not just a simple violation, indeed, it is like playing with peoples lives. The vehicle should be used in accordance with the purpose for which it is insured, only then can the journey remain safe not just on the road, but in law and conscience.

"Let the law be your compass, and prudence your guide; for only those, who follow the rules arrive with peace at every ride."

15. The main cause of road accidents in India is non-compliance of traffic and road safety rules. People must understand their responsibility to follow the rules in the interest of saving the life of general public, and as long as the insurance company is held responsible for paying compensation in motor accident claims, even when the driver and owner are at fault, this situation would be difficult to improve. The wrongdoer only has to bear the cost for his fault.

16. In the case at hand, undisputably the vehicle was being used in gross violation of policy conditions by carrying the passengers (*Baratis*) in a tractor which got turtuled and became a reason for causing injuries to the claimants. The fact that a tractor insured for the purpose of agriculture can ever be used in any circumstances for carrying the *Baratis,* can never be justified by the owner and driver. Therefore, in view of the above discussion, the insurance company is completely exonerated from liability to pay the amount of compensation as adjudged and awarded by the learned Tribunal. The condition imposed by the tribunal regarding 'pay and recover' is also

hereby set aside.

17. Now, this Court shall deal with the ground raised in the appeal filed by the claimant- Shivram Choudhary seeking enhancement in the amount of compensation.

18. On perusal of impugned award, it shows that the claimant- Shivram was hospitalized for a period of 10 days and had to spent Rs.3,109/- for treatment. He sustained fracture in his hand and underwent surgery.

19. After hearing the rival submissions advanced by learned counsel for the parties and going through the record, taking into account the nature of injuries, duration and intensity of pain, hospitalization period and the long-term effects on the claimant's lifestyle, this Court finds that the Tribunal has awarded the amount of compensation on lower side and the claimant- Shivram is entitled to get the enhanced compensation to the tune of Rs.50,000/- in lump sum instead of Rs. 30,000/-.

20. The enhanced amount shall carry interest as has been awarded by the learned Tribunal.

21. Accordingly, all three appeals are **disposed of** with following directions:-

"i. The claimant- Shivram Choudhary is entitled to get the enhanced compensation amount to the tune of Rs.50,000/- in place of Rs.30,000/-. The interest amount shall also be payable as directed above.

ii. The owner and driver of the offending vehicle are directed to deposit the compensation amount, jointly and severally, within a period of 30 days from the date of this order, failing which, execution can be initiated against them. The Insurance Company is hereby completely exonerated from the liability to pay the compensation amount including the condition of 'pay and recover'.

iii. The claimant- Shivram is directed to pay the requisite Court Fee, if required in the present case. Office is also directed to verify whether any Court Fees is payable for the enhanced compensation amount.

iv. On such deposit, the claimant- Shivram is permitted to withdraw the amount with accrued interest, by filing a proper application before the Tribunal.

v. The amount, if any deposited by the Insurance Company, shall be returned. In case the claimant- Shivram has withdrawn any amount of compensation so deposited by the Insurance Company, the Insurance Company shall be at liberty to recover the same from the driver and owner of offending vehicle.

vi. The impugned award passed by the learned Tribunal stands modified to the above extent with the directions as above.

vii. The record be sent back to learned Tribunal within four weeks from this day."

(HIMANSHU JOSHI)
JUDGE

Prachi