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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL**

ON THE 26th OF APRIL, 2024

MISC. APPEAL No. 301 of 2019

BETWEEN:-

1. **SANTOSH RAJAK S/O R.S.RAJAK, AGED ABOUT 33 YEARS, OCCUPATION: DRIVER R/O WARD NO. 6 NEW COLONY NAUGAUN TEH. NAUGAUN DISTT. CHHATARPUR M.P. (MADHYA PRADESH)**
2. **KISHORILAL S/O L.D.AHIRWAR, AGED ABOUT 54 YEARS, R/O OPPOSITE HAWAI ADDA, WARD NO.15, KHAJURAHU (MADHYA PRADESH)**

....PETITIONER

(SHRI MANEESH KUMAR SONI, ADVOCATE)

AND

1. **SMT. RANI RAI W/O RAJKUMAR, AGED ABOUT 27 YEARS, R/O PANNA ROAD BAMITHA P.S. BAMITHA DISTT. CHHATARPUR M.P. (MADHYA PRADESH)**
2. **KU. MAMTA RAI D/O RAJKUMAR, AGED ABOUT 5 YEARS, OCCUPATION: MINOR THR. NATURAL GUARDIAN SMT. RANI RAI W/O LATE RAJKUMAR RAI R/O PANNA ROAD, BAMITHA P.S.BAMITHA, (MADHYA PRADESH)**
3. **KU. PRASI RAI D/O RAJKUMAR, AGED ABOUT 3 YEARS, OCCUPATION: MINOR THR. NATURAL GUARDIAN SMT. RANI RAI W/O LATE RAJKUMAR RAI R/O PANNA ROAD, BAMITHA P.S.BAMITHA, (MADHYA PRADESH)**
4. **KU. ARSI RAI D/O RAJKUMAR, AGED ABOUT 4 YEARS, OCCUPATION: MINOR THR. NATURAL GUARDIAN SMT. RANI RAI W/O LATE RAJKUMAR RAI R/O PANNA ROAD, BAMITHA P.S.BAMITHA, (MADHYA PRADESH)**

5. SMT. RAJKUMARI W/O BRANDAWAN RAI, AGED ABOUT 65 YEARS, R/O PANNA ROAD, BAMITHA P.S.BAMITHA, (MADHYA PRADESH)
6. BRANDAWAN RAI S/O GORELAL, AGED ABOUT 70 YEARS, R/O PANNA ROAD, BAMITHA P.S.BAMITHA, (MADHYA PRADESH)
7. SHRIRAM GENERAL INSURANCE COMPANY LIMITED OFFICE OF E8, EPIP RRIICO INDUSTRIAL AREA, SITAPUR JAIPUR (RAJASTHAN)

....RESPONDENTS

*(SHRI ANOOP KUMAR SAXENA, ADVOCATE
MR. RAKESH KUMAR JAIN, ADVOCATE).*

MISC. APPEAL No. 299 of 2019

BETWEEN:-

1. SANTOSH RAJAK S/O R.S. RAJAK, AGED ABOUT 33 YEARS, OCCUPATION: DRIVER R/O WARD NO. 6 NEW COLONY NAUGAUN TEH. NAUGAUN DISTT. CHHATARPUR M.P. (MADHYA PRADESH)
2. KISHORILAL S/O LD AHIRWAR, AGED ABOUT 54 YEARS, OCCUPATION: OWNER OF THE VEHICLE RESIDENT OF OPPOSITE GAWAI ADDA WARD NO 15 KHAFURAHO DISTRICT CHHARARPUR (MADHYA PRADESH)

....PETITIONER

*(SHRI MANEESH KUMAR SONI, LEARNED COUNSEL FOR THE
PETITIONER [P-1].*

AND

1. SMT. PREETI KHATIK W/O LATE PRAMOD KHATIK, AGED ABOUT 25 YEARS, R/O IN FRONT OF HARIJAN HOSTEL KHAJURAHOO ROAD BAMITHA P.S. BAMITHA TEH. RAJNAGAR DISTT. CHHATARPUR M.P. (MADHYA PRADESH)
2. VEHAN KHATIK S/O LATE PRMOD KHATIK, AGED ABOUT 3 YEARS, OCCUPATION: MINOR THROUGH NATURAL GAURDIAN SMT PREETI KHATIK W/O LATE PRAMOD KHATIK MINOR THROUGH NATURAL GAURDIAN SMT PREETI

KHATIK W/O LATE PRAMOD KHATIK (MADHYA PRADESH)

3. **KU DARPANA D/O LATE PRAMOD KHATIK, AGED ABOUT 2 YEARS, OCCUPATION: MINOR THROUGH NATURAL GAURDIAN SMT PREETI KHATIK W/O LATE PRAMOD KHATIK RESIDENT IN FRONT OF HARIJAN HOSTEL KHAJURAHOO ROAD BAMITHA PS BAMITHA PS BAMITHA TEHSIL RAJNAGAR DITRICT CHHATARPUR MP (MADHYA PRADESH)**
4. **SANSKAR KHATIK S/O LATE PRAMOD KHATIK, AGED ABOUT 5 YEARS, OCCUPATION: MINOR THROUGH NATURAL GAURDIAN SMT PREETI KHATIK W/O LATE PRAMOD KHATIK RESIDENT IN FRONT OF HARIJAN HOSTEL KHAJURAHOO ROAD BAMITHA PS BAMITHA TEHSIL RAJNAGAR DISTRICT CHHATARPUR MP (MADHYA PRADESH)**
5. **SMT SAVITRI KHATIK W/O LATE SHRI HEERALAL KHATIK, AGED ABOUT 55 YEARS, OCCUPATION: MINOR THROUGH NATURAL GAURDIAN SMT PREETI KHATIK W/O LATE PRAMOD KHATIK RESIDENT IN FRONT OF HARIJAN HOSTEL KHAJURAHOO ROAD BAMITHA PS BAMITHA TEHSIL RAJNAGAR DISTRICT CHHATARPUR MP (MADHYA PRADESH)**
6. **KU SHALU D/O LATE SHRI GEERALAL KHATIK, AGED ABOUT 18 YEARS, RESIDENT IN FRONT OF HARIJAN HOSTEL KHAJURAHOO ROAD BAMITHA PS BAMITHA TEHSIL RAJNAGAR DISTRICT CHHATARPUR MP (MADHYA PRADESH)**
7. **KU LAXMI KHATIK D/O LATE SHRI HEERA KHATIK, AGED ABOUT 15 YEARS, OCCUPATION: ITS MINOR THROUGH NATURAL GUARDIAN SMT SAVITRI KHATIK W/O LATE HEERALAL KHATIK RESIDENT IN FRONT OF HARIJAN HOSTEL KHAJURAHOO ROAD BAMITHA PS BAMITHA TEHSIL RAJNAGAR DISTRICT CHHATARPUR MP (MADHYA PRADESH)**
8. **SHRIRAM GENERAL COMPANY LIMITED SHRIRAM GENERAL INSURANCE COMPANY LIMITED JAIPUR RAJASTHAN (RAJASTHAN)**

.....RESPONDENTS

(SHRI RAKESH KUMAR JAIN, LEARNED COUNSEL FOR THE RESPONDENT [R-8].

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These appeals coming on for orders this day, the court passed the following:

ORDER

This order shall govern the disposal of MA No.301 /2019 (Santosh Rajak Vs. Smt. Rani and others) and MA No.299/2019 (Santosh Rajak Vs. Smt. Preeti and others) arising out of award dated 1.12.2018 passed in MACC No.53/2016 and 83/2016.

2. Both the appeals have been filed by the owner and driver of offending vehicle seeking setting aside impugned award and exoneration from liability to pay compensation.

3. Learned counsel for the appellants after referring to impugned award submits that on the date of accident, deceased was not having effective and valid driving licence and three persons were travelling on the motor cycle at the time of accident. From above, it is apparent that deceased also contributed to the happening of the accident. Further, there is nothing on record to establish that claimants are legal heirs of deceased. Further, after referring to issue no. 1 and 2 submits that there is contradiction inas to whether offending vehicle was insured with respondent No.7 or not. Further, learned counsel for the appellants after referring to relevant paras of impugned award i.e. para 23 and referring to depositions of non applicant witness Vanshkar submits that during cross-examination of above non applicant witness, it is evident that Ex.D/8's cover note has been issued by insurance company. Therefore, on the date of accident, offending vehicle was duly insured with respondent insurance company. On above grounds, it is urged that appeals filed by the appellants be allowed and they be exonerated from liability to pay compensation.

4. Learned counsel for the respondent insurance company after referring

to para 28 of the impugned award submits that learned Tribunal has rightly held that it is not proved that Ex.D/8 cover note has been issued by insurance company of by his authorized agent. Therefore, owner and driver of offending vehicle was duly insured with the insurance company on the date of accident. Learned counsel for the respondent/insurance company submits that from evidence on record, it is not proved/established that deceased contributed to the happening of the accident and it is evident that driver of offending vehicle has caused accident after driving the vehicle rashly and negligently. Therefore, appeals filed by the appellants be dismissed.

5. So far as contributory negligency on the part of deceased etc. is concerned, admittedly, driving licence of the deceased has not been filed in the instant case and it is also admitted that three persons were sitting on the motorcycle at the time of accident. From evidence adduced by the claimants, both oral as well as documentary, it does not transpire that deceased was not competent to driver the motorcycle or he was driving the motorcycle rashly and negligently. Further, just because three persons were sitting on the motorcycle without their being any other evidence, to the contrary on record, it cannot be assumed that deceased was riding the motorcycle rashly and negligently.

6. Further, perusal of deposition of driver of offending vehicle Santosh, especially, examination in chief reveals that therein he has deposed that no accident has occurred from his vehicle and he has denied the accident completely. He has not deposed that rider of the motorcycle was driving it rashly and negligently or three person were sitting on the motorcycle and thereafter, rider of the motorcycle got unbalanced/could not control the vehicle and on account of same, accident occurred.

7. Therefore, it cannot be said that on account of non-production of DL

as well as three persons were sitting on the motorcycle, it cannot be said that deceased was contributed to the happening of accident.

8. So far as issue regarding insurance of offending vehicle with respondent insurance company is concerned, it is correct that issue nos. 1 and 2, there is slight contradiction with respect to insurance of vehicle, it appears to beand does not affect the merits of the case. Admittedly from depositions of non applicant witnesses, Bhawani Shankar and Ex.D/2 and Ex.D/8, it is evident that Ex.D/8's cover note number is 1236623 and it has been issued on 11.04.2016 for the period from 12.4.2016 to 11.4.2017. Perusal of depositions of Bhawani Shanker reveals that insurance company has lodged the report with respect to loss/missing of bunch of cover note and cover note number of Ex.D/8 is also mentioned in Ex.D/2. Thus, insurance company has lodged the report with respect to missing/loss of cover note on 29.10.2014 and Ex.P/8 has been issued on 11.4.2016. Therefore, in this Court's opinion, Tribunal has rightly held that cover note Ex.D/8 has been issued by insurance company whereas agent has issued it. Therefore, it has not been proved that offending vehicle was issued with respondent no.3 on the date of accident. Hence, findings recorded by the Tribunal are just and proper and no interference is required in same.

9. So far as with respect to claimants being Lrs of deceased is concerned, perusal of non-applicant witness reveals that no such suggestion has been given to non applicant on behalf of appellants that they are Lrs of deceased. Therefore, it cannot be said that claimants are legal heirs of deceased.

10. Hence, in view of above, no ground is made out for interfering with the findings recorded by the Tribunal. Hence, both the appeals filed by the

appellants are **dismissed**.

(ACHAL KUMAR PALIWAL)
JUDGE

Hashmi

