

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH**

ON THE 22nd OF APRIL, 2024

MISC. APPEAL No. 763 of 2022

BETWEEN:-

**THE ORIENTAL INSURANCE CO.LTD. THROUGH
BRANCH MANAGER, BRANCH OFFICE, CITY TRADE
CENTRE, CHAURASIYA COMPLEX, REWA ROAD SATNA
(MADHYA PRADESH) (INSURANCE COMPANY)**

.....APPELLANT

(BY SHRI DINESH KAUSHAL - ADVOCATE)

AND

- 1. RAJKUMARI W/O LATE SHRI ANOOP KUMAR
AHIRWAR, AGED ABOUT 31 YEARS, R/O VILLAGE
BHADARIYA, THANA SINGHPUR DISTRICT SATNA
(MADHYA PRADESH)**
- 2. AASHIQ AHIRWAR S/O LATE SHRI ANOOP
KUMAR AHIRWAR, AGED ABOUT 11 YEARS,
OCCUPATION: MINOR THROUGH NATURAL
GUARDIAN-MOTHER SMT.RAJKUMARI R/O
VILLAGE BHADARIYA, THANA- SINGHPUR,
DISTRICT SATNA (MADHYA PRADESH)**
- 3. RAMADHAR AHIRWAR S/O SHRI PALTU
AHIRWAR, AGED ABOUT 55 YEARS, OCCUPATION:
NIL, R/O VILLAGE BHADARIYA, THANA-
SINGHPUR, DISTRICT SATNA (MADHYA
PRADESH)**
- 4. SMT. BHULNA W/O RAMADHAR AHIRWAR, AGED
ABOUT 51 YEARS, OCCUPATION: NIL, R/O
VILLAGE BHADARIYA, THANA- SINGHPUR,
DISTRICT SATNA (MADHYA PRADESH)**
- 5. BETUL OIL LTD., SATNA NEAR KAIMA RAILWAY
STATION, VILLAGE KAIMA, DISTRICT SATNA
(MADHYA PRADESH)
[OWNER OF MOTORCYCLE]**

6. PREM PRAKASH TRIPATHI S/O SHRI H.S. TRIPATHI, OCCUPATION:OWNER OF BUS, R/O GALI NO.2, KRISHN NAGAR, SATNA, DISTRICT SATNA (MADHYA PRADESH)
[OWNER OF BUS]

.....RESPONDENTS

(RESPONDENT NO.6 BY SHRI K.C.GHILDIYAL - SENIOR ADVOCATE WITH SHRI H.C.SINGH - ADVOCATE)

MISC. APPEAL No. 2485 of 2022

BETWEEN:-

PREM PRAKASH TRIPATHI S/O SHRI H.S. TRIPATHI, AGED ABOUT 59 YEARS, R/O GALI NO. 2, KRISHNA NAGAR SATNA, DISTRICT- SATNA,(MADHYA PRADESH)

.....APPELLANT

(BY SHRI K.C.GHILDIYAL - SENIOR COUNSEL WITH SHRI H.C.SINGH-ADVOCATE)

AND

1. RAJKUMARI W/O LATE SHRI ANOOP KUMAR AHIRWAR, AGED ABOUT 31 YEARS, R/O VILLAGE BHADARIYA, THANA SINGHPUR, DISTRICT SATNA (MADHYA PRADESH)
2. AASHIQ AHIRWAR S/O LATE SHRI ANOOP KUMAR AHIRWAR, AGED ABOUT 11 YEARS, OCCUPATION: MINOR THROUGH NATURAL GUARDIAN-MOTHER SMT.RAJKUMARI R/O VILLAGE BHADARIYA, THANA SINGHPUR, DISTRICT SATNA, (MADHYA PRADESH)
3. RAMADHAR AHIRWAR S/O SHRI PALTU AHIRWAR, AGED ABOUT 55 YEARS, R/O VILLAGE BHADARIYA, THANA SINGHPUR, DISTRICT SATNA, (MADHYA PRADESH)
4. SMT.BHULNA W/O SHRI RAMADHAR AHIRWAR, AGED ABOUT 51 YEARS, R/O VILLAGE BHADARIYA, THANA SINGHPUR, DISTRICT SATNA (MADHYA PRADESH)
5. BETUL OIL LTD., SATNA NEAR KAIMA RAILWAY STATION, R/O VILLAGE KAIMA, DISTRICT SATNA (MADHYA PRADESH)
[OWNER OF MOTORCYCLE]

6. **THE ORIENTAL INSURANCE CO. LTD.THROUGH BRANCH MANAGER, BRANCH OFFICE, CITY TRADE CENTRE, CHAURASIYA COMPLEX, REWA ROAD, SATNA, (MADHYA PRADESH) (INSURANCE COMPANY)**

....RESPONDENTS

(RESPONDENT NO.6 BY SHRI DINESH KAUSHAL - ADVOCATE)

Reserved on : 02.2.2024

Pronounced on: 22.4.2024

*These appeals having been heard and reserved for orders, coming on for pronouncement this day, **JUSTICE AVANINDRA KUMAR SINGH** passed the following:*

ORDER

Both these above appeals under section 173(1) of the Motor Vehicles Act, 1988 arise out of same award dated 16.11.2021 passed by learned Eighth Additional Motor Accidents Claims Tribunal, Satna [for short the "Tribunal"] in MACC No.600911/2012 [Rajkumar w/o Late Anup Kumar Ahirwar and others Vs. Betul Oil Limited and others] whereby the Tribunal has awarded compensation of Rs.8,77,000/- to the claimants on account of death of deceased-Anup Kumar in a motor accident dated 10.6.2012.

2. M.A.No.763/2022 [The Oriental Insurance Co.Ltd. Vs. Rajkumari and others] has been filed by Oriental Insurance Company Limited (hereinafter referred to the "Insurance Company") for setting aside the finding of the Tribunal fixing 50% of liability of payment of amount of compensation on the Insurance Company.

3. M.A.No.2485/2022 [Prem Prakash Tripathi Vs. Rajkumari and others] has been filed by Prem Prakash Tripathi who is owner of the Bus in

question for setting aside the finding of the Tribunal fixing his liability to pay amount of compensation to the extent of 50%. In this appeal the appellant (Prem Prakash Tripathi) has filed I.A.No.16248/2023 to implead Reliance General Insurance Company Limited as respondents No.7 & 8 as the Bus was insured with it on the date of accident i.e. 10.6.2012. He also filed an application under Order 41 Rule 27 CPC to take the insurance policy of Vehicle (MP-19/P-0393) for the scheduled period on record.

4. In spite of service of notice no one appeared on behalf of claimants and Betul Oil Limited.

5. On perusal of the impugned award, documents and grounds urged in appeal as also having heard both the learned counsel for the parties, this Court is of considered view that matter needs to be remanded to the learned Tribunal for impleading necessary parties and after hearing the parties and affording them opportunity of hearing to all the parties to file reply/objection and produce evidence, pass fresh award as per law. The reasons for order of remand are multifarious.

6. On perusal of the impugned award it is seen that regarding accident in question the Police has filed 'Khatma' report which in the facts and circumstances seems to be strange to this Court for the simple reason that Police was neither able to trace the driver of motorcycle bearing registration No.MP-19/MF-5991 nor the driver of Bus bearing registration No.MP-19/P-0393. When the case of claimants was that when deceased alongwith his friend was going on motorcycle and driver of the Bus came rashly and hit him due to which Anup Kumar expired. The names of Bus driver and motorcycle were required in the claim petition.

7. Similarly, no effort has been made any one to implead the

Insurance Company of the Bus in the claim petition and since the liability has been imposed on non-applicants No.2 & 3 before the Tribunal who are appellants in present above appeals to the extent of 50%-50% each. In fact, in the considered opinion of this Court the learned Tribunal ought to have made an enquiry to bring the truth on record by impleading and summoning the proper party. This Court is constrained to state that besides Police which came against a wall or dead end and could not trace the drivers of both the vehicles and when registration number of Bus, motorcycle and their owners were named in the claim petition. The Tribunal also did not act in a manner to elicit truth of the matter by appropriate legal method. Even the claimants did not give hint as to who was the driver of the motorcycle on which deceased was riding. It seems to this Court that everyone was trying to hide something and did not come with clean hands before the Tribunal but claim compensation for death has to be awarded as per law only after short enquiry when necessary parties are present.

8. Therefore, the only option with this Court is to remand the case for fresh trial. Accordingly, award dated 16.11.2021 is set aside. The Tribunal is directed to rehear the case and decide the same afresh. The parties are directed appear before the concerned Tribunal on **13.5.2024**.

9. It is made clear that that since this case is being remanded, therefore, interlocutory applications filed in M.A.No.2485/2022 for taking additional evidence on record and for impleading Insurance Company of Bus as necessary party in claim petition shall be decided as per law by the Tribunal after making proper inquiry.

10. In the result, with the above observation and direction these appeals are **disposed of accordingly**.

11. Let a copy of this order alongwith record of the Tribunal be sent to the concerned Court.

(AVANINDRA KUMAR SINGH)
JUDGE

RM

