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**(2003) 04 MP CK 0055**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Appeal No. 855/99**

Smt. Shakun Shivhare and Others

APPELLANT

Vs

Dharamraj and Others

RESPONDENT

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**Date of Decision :** 17-04-2003

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 168, 171, 173

**Citation :** (2003) 3 MPHT 246

**Hon'ble Judges :** Bhawani Singh, C.J.; S.S. Kemkar, J

**Bench :** Division Bench

**Advocate :** Dinesh Kaushal, for the Appellant; Shailendra Samaiya, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Bhawani Singh, C.J.—This appeal is directed against the award of the Motor Accidents Claims Tribunal, Seoni, in M.GC. No. 49/97, dated 27-1-1999.

2. The accident took place on 26-4-1997 at 12.30 (noon) on National Highway 7 at Dhuma crossing, when the vehicle No. MP 09/K-5771, driven rashly and negligently by Dharamraj, owned by Manraj Singh, insured with the Oriental Insurance Company Ltd., hit the cycle of Radhelal from behind resulting in his death. The deceased was Grain-Merchant earning Rs. 4,000/- per month. He was looking after his land earning Rs. 60,000/- per year. Claim for Rs. 13,46,000/- is made for the death of the deceased by the claimants,

3. The owner and driver have been proceeded ex parte, while the Insurance Company has disputed the claim stating that the allegation of the claimants is not correct. The driver did not possess valid driving licence, therefore, the Insurance Company is not liable to pay compensation.

4. Accordingly, issues are framed, evidence is led by the claimants. However, the claim has been rejected by the impugned award, therefore, this appeal by the claimants for determination of compensation after setting aside the findings

recorded by the Claims Tribunal.

5. After perusal of evidence of Smt. Shakun Shivhare, Rajesh Parasher and Rajkumar Agrawal, it is clear that the accident took place as alleged meaning thereby the deceased was moving on the cycle and he was hit by the offending vehicle from behind. Contention that the accident took place at speed breaker, therefore, the offending vehicle could not be said to be driven rashly and negligently, cannot be accepted because of evidence that he did not slow speed, despite speed breaker being there. The truck swerved to the right at the speed breaker and accident was caused. Smt. Shakun may not be eye-witness to the occurrence but immediately after the accident, the occurrence has been narrated by Gudda Agrawal. Rajesh Parasher and Rajkumar Agrawal are eye-witnesses to the occurrence. There is no reason why their statements should not be believed. Simply because Rajkumar Agrawal is not in a position to understand left side and right side, it cannot be said that he did not see the occurrence. The fact remains that the accident took place and deceased died in this accident because he was hit by the offending truck. Moreover, the matter was reported to the Police and investigated. The owner and driver did not contest the claim nor they appeared as witnesses to explain the matter. Therefore, there is no difficulty in arriving at the conclusion that the accident took place as alleged and finding to the contrary recorded by the Claims Tribunal is not sustainable, therefore, set aside.

6. With regard to income of the deceased, Smt. Shakun Shivhare states that the deceased was earning Rs. 4,000/- per month from business and Rs. 60,000/- from agriculture. Out of it, the deceased used to give Rs. 3,000/- to the claimants after spending Rs. 1,000/- on himself. There is no reference to Rs. 60,000/- income from agriculture. It is stated that servants have been engaged to look after the agricultural activities and Rs. 15,000/- per year used to be paid to them. But, looking to the nature of evidence, it is not possible to come to definite conclusion as to the income of the deceased, therefore, it is desirable to assess the dependency on notional income of Rs. 15,000/- per annum. After making deductions of 1/3rd on personal expenses, annual dependency comes to Rs. 10,000/- multiplied by 15, the compensation comes to (Rs. 10,000 x 15) Rs. 1,50,000/- plus Rs. 16,500/- (Rs. 7,000/- for loss of expectancy of life, Rs. 5,000/- for consortium to wife, Rs. 2,500/- loss to the estate and Rs. 2,000/- for funeral expenses).

7. Accordingly, the appeal is allowed, award is set aside. The claimants are held entitled to compensation to Rs. 1,66,500/- (Rs. One lac sixty six thousand five hundred), owner and driver are jointly and severally liable for compensation, payable by the Oriental Insurance Company Ltd., with which the offending vehicle was insured, with interest at the rate of 12% per annum from the date of application till payment, within three months. Costs on parties.