

**(1992) 01 MP CK 0002**

**Madhya Pradesh High Court**

**Case No:** M.A. No. 234 of 1991

United India Insurance Co. Ltd.

APPELLANT

Vs

Jhamku Bai and Others

RESPONDENT

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**Date of Decision:** Jan. 22, 1992

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 140

**Citation:** (1992) 2 ACC 40 : (1993) ACJ 324

**Hon'ble Judges:** R.K. Verma, J

**Bench:** Single Bench

**Advocate:** V.V. Dandvate, for the Appellant; K.C. Gangadre, for the Respondent

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### **Judgement**

R.K. Verma, J.

This is an appeal filed by the appellant insurance company against the interim award dated 15.3.1991 made by Jhabua, in Claim Case No. 85 of 1990 whereby an interim compensation of Rs. 25,000/- has been awarded under the Motor Vehicles Act, 1988, on the principle of no fault liability"to the claimant, Jhamku Bai, mother of the deceased minor Ravindra Kumar who died as a result of motor accident in which the offending tractor, which stood insured for third party risk with the appellant insurance company, is involved.

2. The interim award under appeal has been challenged by the appellant insurance company on two grounds. The first ground of challenge is that since the motor accident in question resulting in the death of deceased took place on 15.3.1989 when the new Motor Vehicles Act of 1988 had not come into force and the provisions of the old the Motor Accidents Claims Tribunal, Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") were applicable to the claim in question, the learned Tribunal committed a legal error in awarding Rs. 25,000/- as interim compensation u/s 140 of the new Act. The interim compensation should have been awarded properly u/s 92-A of the Act which was applicable to the instant claim

relating to the accident which occurred on 15.3.1989. As such, the submission of the learned Counsel for the appellant insurance company is that the learned Tribunal should have awarded Rs. 15,000/- on the principle of no fault liability u/s 92-A of the Act and not Rs. 25,000/- as provided u/s 140 of the Motor Vehicles Act of 1988 which was not operative on the date of the accident.

3. The above submission of the learned Counsel is valid and must be accepted. Section 140 of the Act of 1988 which came into force on 1.7.1989 cannot be made retrospectively applicable to the instant case of accident which took place on 15.3.1989. The claimant should be allowed interim compensation of Rs. 15,000/- only as provided in Section 92-A of the Act. Accordingly, the amount of interim award deserves to be modified inasmuch as the claimant should be held entitled to interim compensation of Rs. 15,000/- instead of Rs. 25,000/- as awarded by the learned Tribunal.

4. The second ground of challenge made on behalf of the appellant insurance company is that since in the instant case the deceased minor Ravindra Kumar was crushed under the wheels of the tractor belonging to his father Mohansingh, respondent No. 1, the claimant Jhamku Bai, w/o Mohansingh and mother of the deceased minor Ravindra Kumar, was not entitled to prefer the instant claim for compensation under the Act. In short, the contention is that the claim by the mother of the deceased Ravindra Kumar who died as a result of motor accident in which his father's tractor was involved, is not maintainable and as such, no interim compensation could have been awarded to the mother of the deceased.

5. It has been submitted on behalf of the respondent-claimant on the basis of observations made in the case of Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, that the expression "legal representative" has not been defined in the Act. However, a legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. The proviso to Sub-section (1) of Section 110-A of the Motor Vehicles Act provides that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased. Section 110-B of the Act authorises the Claims Tribunal to make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation should be paid. The right given to the legal representatives under the Motor Vehicles Act to file an application for compensation for death due to a motor vehicle accident is new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act, 1855. New situations and new dangers require new strategies and new remedies.

6. It has been submitted that in the situation obtaining in the instant case the claimant mother of the deceased is entitled to the whole of compensation in respect of the death of her deceased son for which the father of the deceased, as owner of

the offending vehicle, is liable jointly and severally along with the appellant insurance company.

7. Learned counsel for the appellant insurance company has submitted that the claimant in the instant case is the mother of the deceased and the owner of the offending vehicle is the father of the deceased and that both the parents of the deceased are legal representatives of the deceased. The father Mohansingh, respondent No. 1, being the owner of the offending vehicle has become liable for compensation in respect of the death of his son Ravindra Kumar and he cannot himself be entitled to compensation as legal representative of his deceased son. If compensation is awarded to the mother of the deceased she would be representing the body of legal representatives of the deceased, viz., both the parents one of whom is liable to pay compensation. But the father, owner of the vehicle, is insured with the appellant insurance company in respect of any liability to a third party arising out of the use of the vehicle. In the circumstances, if compensation is awarded the liability of the deceased's father, owner of the offending vehicle, not only gets transferred to the insurer appellant but he by reason of being father legal representative of the deceased gets a share in the compensation for which he was primarily himself liable. Such a situation cannot be sustained in law and, therefore, claim for compensation is not entititable in the peculiar circumstances of this case.

8. The above submission of the learned Counsel for insurance company is, in my opinion, fallacious as would be presently seen. As per Section 110-A of the Act an application for compensation arising out of death by accident can be made by all or any of the legal representatives of the deceased. In the instant case the deceased is survived by father and mother who are the legal representatives of the deceased but out of the two the father of the deceased being the owner of the offending vehicle is liable primarily for the accident and as such, he cannot be entitled to make an application for compensation and in fact, he has not done so. But as regards the mother of the deceased there appears no legal bar to her making an application for compensation u/s 110-A of the Act before the Tribunal. The application for compensation is maintainable on behalf of such of the legal representatives only who can be held entitled to compensation and not others.

9. The learned Counsel for the appellant has next submitted that the deceased's father, owner of the offending vehicle, being a legal representative along with the deceased's mother, the latter can be held entitled only to half the amount of compensation payable in respect of the death of the deceased. This argument of the learned Counsel is in two parts. The first part of the argument is that the compensation awarded is shared by the father to the extent of 50 per cent and the second part is that the said 50 per cent must be lost on account of the disentitlement of the deceased's father, owner of the offending vehicle, because he is primarily liable for compensation. The argument of the learned Counsel is

apparently without merit since as already held above the only legal representative of the deceased who can maintain an application for compensation in the peculiar circumstances of this case is the mother who is legally entitled to receive compensation. As such, it is not appropriate to envisage that the deceased's father, owner of the offending vehicle, can be legal representative entitled to make an application for compensation.

10. The appellant insurance company cannot be absolved of its liability to indemnify the insured owner of the vehicle when the accident involving the vehicle in question takes place during the period of insurance, as is the case here.

11. The contention that the claim petition preferred by the mother of the deceased Ravindra Kumar is not maintainable has no substance and must be rejected.

12. In the result this appeal is partly allowed and the interim award under appeal shall stand modified inasmuch as the amount of interim compensation payable shall be Rs. 15,000/- and not Rs. 25,000/- as has been allowed by the learned Tribunal.

There shall, however, be no order as to costs.