

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1124 of 2012

- 1. Ram Singh @ Bharatlal S/o Khageshwar, Aged About 56 years, r/o village Pacheda, Post- Tarapur, P.S. Kotra Road, Raigarh, Tah. & Distt. Raigarh (C.G) PIN Code - 496001.
- 2. Smt. Toran Bai W/o Ram Singh @ Bharatlal Aged About 50 Years, r/o village Pacheda, Post- Tarapur, P.S. Kotra Road, Raigarh, Tah. & Distt. Raigarh (C.G) PIN Code - 496001.
- 3. Smt. Leesa Patel, Widow LateShri Laxminarayan Aged About 27 Years, r/o village Pacheda, Post- Tarapur, P.S. Kotra Road, Raigarh, Tah. & Distt. Raigarh (C.G) PIN Code - 496001.
- 4. Minor Ku. Nupur D/o Late Laxminarayan Aged About 2 Years being represented through Mother- Smt. Leesa Patel, widow of late Shri Laxminarayan, R/o Pacheda, Post- Tarapur, P.S. Kotra Road, Raigarh, Tah. & Distt. Raigarh C.G.

---- **Petitioner**

Versus

- 1. Santosh Singh S/o Shri Ram Ratan, Aged About 38 Years, Driver by profession, Village & Post- Kodatarai, P.S. Pusaur, Tah. and Distt. Raigarh C.G. **Driver**
- 2. Shashibhushan Singh S/o Ram Nath Singh Aged About 40 Years, owner of the vehicle, r/o Village & Post- Kodatarai, P.S. Pusaur, Tah. & Distt. Raigarh C.G..... **Owner**
- 3. The Chola Mandalam General Insurance Co.Ltd. Devendranagar, Raipur, Post & P.S. Ganj Thana, Raipur C.G. PIN 492 001... **Insurer**

For Appellants	Mr. Roop Naik, Advocate
For Respondents 1 & 2 :	Mr. Abhishek Saraf, Advocate.
For Respondent No.3 :	Mr. Sachin Singh Rajput, Advocate

MAC No. 43 of 2013

Shashibhushan Singh S/o Ramnath Singh Aged About 45 years Kodatarai, Tah. And Distt. Raigarh C.G. *Owner*

---- **Appellant**

Versus

- 1. Ram Singh @ Bharal Lal & Ors. S/o Khageshawar aged About 56 Years Village And Post- Pacheda, P.S. Kotra Road, Tah. and Distt.

Raigarh (C.G.)

2. Smt. Toran Bai, W/o Ram Singh @ Bharat Lal, aged About 50 Years, Caste Agharia, Occupation House wife, Village And Post- Pacheda, P.S. Kotra Road, Tah. And Distt. Raigarh (C.G.)
3. Smt. Lisa Patel, W/o Late Laxminarayan aged About 27 Years, Caste Agharia, Occupation House wife, Village and Post- Pacheda, P.S. Kotra Road, Tah. And Distt. Raigarh (C.G.)
4. Minor Kumari Nupur D/o Late Laxminarayan, aged About 2 Years Thru- Mother Smt. Lisa Patel, wife of late Laxminarayan, R/o Village and Post- Pacheda, P.S. Kotra Road, Tah. and Distt. Raigarh (C.G.)
5. Santosh Singh S/o Ram Ratan, aged about 38 Years Village- Kodatarai, Tah. and Distt. Raigarh C.G.
Driver
6. Chola Mandalam General Insu. Co. Ltd. Devendra Nagar, Raipur, Distt. Raipur C.G.
Insurer

Respondents

For Appellant	Mr. Abhishek Saraf, Advocate
For Respondents 1 to 4 :	Mr. Roop Naik, Advocate.
For Respondent No.6 :	Mr. Sachin Singh Rajput, Advocate

HON'BLE SHRI JUSTICE GOUTAM BHADURI

JUDGMENT ON BOARD

16/07/2015

1. These two appeals are decided together by common judgment as they are arising out of the same claim case No.67/2012 filed before the Claims Tribunal, Raigarh.
2. The claimants have preferred M.A(C). No.1124/2012 for enhancement of the award whereas the owner has filed M.A(C). No.43/2013 for the reason that the Insurance Company has been exonerated thereby the liability has been fastened over him.
3. Brief facts of the case as pleaded by the claimants are that deceased Laxmi Naryan Patel, aged about 34 years, went along with his colleagues to Kusmura Electricity Office to bring Transformer. Since no officer has reached the office of electricity, he had been to the

Hotel alongwith friends to have breakfast. When he was returning from the Hotel after having breakfast towards the electricity office, a bus bearing registration No. 13-D/ 3061 driven by non-applicant No. 1 Santosh Singh in rash and negligent manner dashed Laxmi Narayan whereby his head was completely crushed and he died on spot. The claimants have filed claim petition seeking a total compensation of Rs.69,34,000/- on various heads.

4. Appellant/Non-applicants 1 & 2 denied the averments of the claim petition and it was stated that the deceased died due to his own negligence. It was stated that at the relevant time the bus was driven in a slow and moderate speed but due to negligent act of the deceased, he met with accident. It was further stated that at the time of accident the bus was insured with non-applicant no.3 and therefore, the Insurance Company is liable to make good the payment of compensation. Non-applicant no.3 denied all the averments and stated that at the time of accident, the driver of the offending vehicle namely Santosh Singh was not having valid licence to drive the vehicle and the vehicle was plied without permit which resulted into breach of terms of policy.
5. The learned Tribunal after evaluating the evidence passed an award of Rs.2,93,000/- in favor of the claimants and exonerated the Insurance Company by holding that there has been a breach of conditions of policy, consequently the appeals are filed by the claimants and the owner of the vehicle.
6. Learned counsel for the claimants in M.A.(C). No.1124/2012 would submit that the learned Tribunal has not awarded just compensation as the future prospects have not been added while assessing the income of the deceased, thereby has awarded meagre amount of compensation which was legally due to the claimants. It is therefore submitted that the award should be suitably enhanced.

7. Shri Abhishek Sharaf, learned counsel appearing in M.A.(C) No.43/2013 filed by the owner of the offending vehicle namely Shashi Bhushan Singh would submit that the Insurance Company has been wrongly exonerated in this case. He placed reliance in a case law reported in **1997 (2) TAC 728 (M.P.) Radhe Shyam & another Vs. Gayatri Devi & others** and submits that the defence with respect to calling upon permit is not available under Sections 149(2) & 72 to the Insurance Company to disown the liability. He further submits that in absence of any evidence it cannot be presumed that there has been a breach of conditions of policy and the Insurance Company cannot be exonerated. Along with memo of appeal, the document Annexure-A1 has been placed on record. On the basis of such document it is stated that at the relevant time a valid permit was existing. He referred to Annexure A1 and would submit that initially the permit was granted for the period from 03.09.2010 to 30.09.2010 and thereafter it was granted from 02.10.2010 to 31.10.2010 and the amount of tax for the permit was deposited on 01.10.2010 i.e. the date of accident. Therefore, it will be deemed that on the date of accident a permit was existing. He, therefore, prays that the award of Tribunal whereby the Insurance Company is exonerated be set aside.
8. Shri S.S.Rajput learned counsel appearing on behalf of the Insurance Company vehemently opposed the arguments and submits that as per the case of the owner of the vehicle, on the date of accident i.e. 01.10.2010, the vehicle was not having a valid permit. Therefore, it amounts to infraction which led to breach of terms of policy. He relied on a case law reported in **(2004) 8 SCC 517-National Insurance Company Ltd. Vs. Challa Bharathamma & Others** and would submit that in similar circumstances the Supreme Court had occasion to consider the fact that in absence of any permit plying of vehicle would lead to breach of insurance policy or not. On the basis of such documents placed by the owner, it is stated that if the vehicle was

admittedly without any permit on the date of accident it would amount to breach of policy and consequently the exoneration of the Insurance Company ordered by the by the learned Tribunal is well merited.

9. I have heard learned counsel for the parties at length and have also perused the documents.
10. Initially the issue is dealt as to whether in absence of permit it will amount to breach of terms of policy. The owner of the vehicle has placed on record temporary permit vide Annexure A-1. According to Annexure A-1, the permit was issued on 02.09.2010 for the period from 03.09.2010 to 30.09.2010 and thereafter the permit was renewed on 01.10.2010 whereby the validity period was further granted from 02.10.2010 to 31.10.2010. The temporary permits are issued under Section 87. A perusal of both the permits would show that it was temporary in nature. Section 80 of the Motor Vehicles Act deals with duration of renewal of permit. In the instant case, according to the owner itself, the temporary permit was further issued from 02.10.2010 till 31.10.2010, as per the document enclosed. Therefore, there cannot be presumption that the said vehicle was having permit on the date of accident i.e. 01.10.2010. Section 66 of the Motor Vehicles Act provides for necessity of permits. It mandates that no owner of a Motor Vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him the use of the vehicle in that place in the manner in which the vehicle is being used.
11. Admittedly, in this case the offending vehicle i.e., Bus was carrying passengers and was being used as a transport vehicle. Therefore, in absence of permit on 01.10.2010 there has been certainly breach of

conditions of the Motor Vehicles Act. There is no evidence on behalf of the Insurance Company to prove the conditions of the permit, but since the permit itself has been placed on record for consideration by the owner itself, then in such case, the fact itself is established by the owner that on the date of accident on 01.10.2010, no permit was existing in respect of the vehicle. Now coming to the case law cited by the owner in respect of **1997 (2) T.A.C. 728 (M.P) (supra)**, it deals with Section 149 (2) & Section 72 of the Motor Vehicles Act. Section 149(2) primarily deals with liability of the insurer to satisfy the award against the third party risk.

12. In this case, the deceased was necessarily a third party qua the owner and the insurer. Therefore with respect to liability of a third party, the Insurance Company cannot disown its liability as such the defence is not available to them under Section 149(2) of the MVA. Similar proposition was laid down by Their Lordships in case of **(2013) 7 SCC 62 – S. Iyyappan vs. United India Insurance Company Limited** wherein while interpreting Sections 149(2)(a)(ii), 146, 147, 3 & 10 of the Motor Vehicles Act, Hon'ble Supreme Court has held that when there is defence by the Insurer with regard to breach of conditions of policy on the ground that there was no endorsement in the licence, it cannot be made a ground for the insurer to disown its liability to pay compensation to the third party as the statutory right is available to the third party to recover compensation from the insurer and thereafter it is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy. Para 16 & 17 are relevant here and quoted below:

“16. The heading “Insurance of Motor Vehicles against Third Party Risks” given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of the 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising

out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles *or using the road* from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.

17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under section 149 of the Motor Vehicles Act, the insurer can defend the action *inter alia* on the grounds, namely,

- (i) the vehicle was not driven by a named person,
- (ii) it was being driven by a person who was not having duly granted licence, and
- (iii) person driving the vehicle was disqualified to hold and obtain a driving licence."

Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy."

13. In the light of the said judgment and the law laid down in case of *National Insurance Company Ltd. Vs. Challa Bharathamma (supra)* though, on the date of accident the vehicle was being driven without permit but such defence would not be available to the insurer *qua* the third party under Section 149(2) of the MVA to satisfy the award.

Consequently it is directed that the Insurance Company shall first satisfy the award and thereafter it shall be open for the Insurance Company to proceed against the insured for recovery of the amount in respect of breach of conditions of Policy.

14. Now coming to the quantum, the Tribunal has assessed the income of the deceased as Rs.3000/- per month. The deceased was aged about 34 years. Therefore, even it was considered that he was a labour, taking into account this fact the income of Rs.3000/- as has been held by the learned Tribunal appears to be just and it does not appear to be inflated or exorbitant. In order to come to a finding of notional income, the reference is made to Section 163-A of the Motor vehicles Act. For the sake of brevity, Section 163-A is reproduced hereinbelow:

“163-A. Special provisions as to payment of compensation on structured formula basis. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

xxx xxx xxx

(2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the official gazette, from time to time, amend the Second Schedule.”

A perusal of Sub-section (3) of Section 163-A of the Act would show that the Courts/Tribunals can take judicial notice of increase in prices of essential commodities and the cost of living during the period between the introduction of the Second Schedule in the year 1994 and the date of accident in the given case. Therefore, the income taken by the learned Tribunal Rs.3000/- per month or Rs.36,000/- per annum do not call for interference by this Court.

15. As per the evidence on record, the deceased was said to be a labour and was self employed. At the time of accident, he was shown to be below 40 years of age as per the postmortem report. Perusal of the award would show that the Court has not considered the future prospects. Therefore, following the law laid down in ***Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54*** that the deceased was self employed and considering the evidence about the age which has come on record, it would be proper to take the addition of 50% over the income of the deceased for computing the future prospects. Thus the annual income is worked out to Rs.54,000/- (Rs.36000 plus 18000).
16. Now coming to the deduction, the claim petition was filed by father, mother, wife and minor daughter of the deceased. Since the number of dependents are 4, as per the principles laid down in case of ***Sarla Verma Vs. DTC (2009) 6 SCC 121*** 1/4th will be deducted towards personal and living expenses. After deducting 1/4th, the annual loss of dependency comes to Rs.40,500/- (Rs.54,000 minus 13,500/-). As per postmortem report, the deceased was shown to be aged about 34 years at the time of death. In view of the multiplier table given in *Sarla Verma's case* (supra), multiplier of 16 would be applicable. Thus the total loss of dependency comes to Rs.6,48,000/-. Further the Tribunal has granted Rs.2000/- for funeral expenses and Rs.2000/- for loss of consortium to the wife which appear to be scanty. Since the amounts

granted under conventional heads are very meagre and considering the age of the deceased, I deem it proper to grant Rs.1,00,000/- for loss of consortium to the wife; Rs. 25,000/- for loss of love and affection to minor daughter and Rs.50,000/- for loss of love and affection to the parents of the deceased Rs. 15,000/- for funeral expenses. Thus, applying the principles laid down in *Sarla Verma (supra)*, the compensation to be reassessed as follows:

S.No.	Heads	Calculation
(i)	Notional income	Rs.36,000/-
(ii)	50% of (I) above to be added as future prospects	(Rs.36,000 + 18,000/- = Rs.54,000/-
(iii)	1/4 th of (ii) deducted as personal expenses of the deceased	Rs.54,000 – 13,500/-= Rs. 40,500/-
(iv)	Compensation after multiplier 16 is applied	Rs. 40,500 x 16 = Rs.6,48,000/-
(v)	Loss of consortium	Rs.1,00,000/-
(vi)	Loss of love and affection towards minor daughter, care and guidance etc	Rs. 25,000/-
(vii)	Loss of love and affection towards mother and father of deceased.	Rs. 50,000/-
(vii)	Loss of estate	Rs. 25,000/=
(vii)	Funeral expenses	15,000/-
	Total	Rs.8,63,000/-

17. Thus the total compensation will be Rs.8,63,000/-. After deducting Rs.2,92,000/- awarded by the Tribunal, the enhancement would be Rs. 5,71,000/-.
18. In the result, the appeal filed by the claimants is partly allowed. The claimants will be entitled to the said sum of Rs. 5,71,000/- in addition to what is already awarded with interest @ 6% per annum from the date of filing of claim petition till the date of realisation. Out of the total compensation enhanced, Rs. 3 lakhs shall be disbursed to the mother and father of deceased; Rs. 3 lakhs shall be kept in a fixed deposit in the name of minor daughter in any nationalized Bank and the remaining amount shall be disbursed to the wife.
19. As has been held in foregoing paragraphs, the primary liability is of

insurance Company to pay the amount of compensation and thereafter it will be open for the Insurance Company to proceed against the insured for recovery of the amount.

- 20.** The registry is further directed to communicate the claimants in writing the “amount of award enhanced in this appeal” as against the award made by the Tribunal concerned. The said communication be made in Hindi Deonagari language.

Sd/-

GOUTAM BHADURI
JUDGE