NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 948 of 2014

Branch Manager, The New India Assurance Company Ltd. Transport Nagar, Korba C.G.

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Versus

1. Smt. Gidhiya Minj, W/o. Late Ramsagar Minj, Aged About 32 Years, R/o. Village Navadih, Post- Kothli, P.S. Kusmi, Tah. Shankergarh, Distt. Balrampur C.G.
2. Ku. Poonam Minj, D/o. Late Ram Sagar Minj, Aged About 14 Years, Minor Through- Mother Smt. Gidhiya Minj, R/o. Village Navadih, Post- Kothli, P.S. Kusmi, Tah. Shankergarh, Distt. Balrampur C.G.
3. Preetam Minj, S/o. Late Ramsagar Minj, Aged About 11 Years, Minor Through- Mother Smt. Gidhiya Minj, R/o. Village Navadih, Post- Kothli, P.S. Kusmi, Tah. Shankergarh, Distt. Balrampur C.G.
4. Sachin Minj, S/o. Late Ramsagar Minj, Aged About 8 Years, Minor Through- Mother Smt. Gidhiya Minj, R/o. Village Navadih, Post- Kothli, P.S. Kusmi, Tah. Shankergarh, Distt. Balrampur C.G.
5. Ku. Shashi Minj, D/o. Late Ramsagar Minj, Aged About 5 Years, Minor Through- Mother Smt. Gidhiya Minj, R/o. Village Navadih, Post- Kothli, P.S. Kusmi, Tah. Shankergarh, Distt. Balrampur C.G.
6. Suraj Minj, S/o. Late Ramsagar Minj, Aged About 2 Years, Minor Through- Mother Smt. Gidhiya Minj, R/o. Village Navadih, Post- Kothli, P.S. Kusmi, Tah. Shankergarh, Distt. Balrampur C.G.
7. Smt. Chuniya, W/o. Late Banshilal, Aged About 60 Years, R/o. Village Navadih, Post- Kothli, P.S. Kusmi, Tah. Shankergarh, Distt. Balrampur C.G.
8. Chotu Manikpuri, S/o. Lachhan Manikpuri, Aged About 30 Years, R/o. Village Rajpuri, P.S. Ambikapur Kotwali, Tah. Ambikapur, Distt. Surguja C.G.
9. Satish Goyal, Proprietor Basant Roadways, P.D. Nagar, Bilaspur, Distt. Bilaspur C.G., Present Address- Basant Roadways, Seth Basantlal Marg, Ambikapur, Distt. Surguja C.G.
10. Arvind Kumar Agrawal, S/o. Late Radheshyam Agrawal, Aged About 46 Years, Proprietor Basant Roadways, R/o Seth Basant Lal Marg, Ambikapur, Post, P.S. & Tah. Ambikapur, Distt. Surguja C.G.

---- Respondents

For Appellants	:	Mr. Raj Awasthi, Advocate
For Respondents No.1 to 7	:	Mr. A.N.Pandey, Advocate
For Respondent No.10	:	Mr. C.Jayant K. Rao, Advocate

And

MAC No. 1295 of 2014

1. Smt. Gidiya Minj, W/o. Late Ramsagar Minj, Aged About 32 Years, R/o. Village Nawadih, Post Kothali, P.S. Kushami, Tah. Shankergarh, Distt. Balrampur-Ramanujganj, C.G.
2. Ku. Punam Minj, D/o. Late Ramsagar Minj, Aged About 14 Years, Minor Through the Natural Guardian Mother, Appellant No.1 Smt. Gidiya Minj, R/o. Village Nawadih, Post Kothali, P.S. Kushami, Teh. Shankergarh, Distt. Balrampur-Ramanujgaj, C.G.
3. Pritam Minj, S/o. Late Ramsagar Minj, Aged About 11 Years, Minor Through the Natural Guardian Mother, Appellant No.1 Smt. Gidiya Minj, R/o. Village Nawadih, Post Kothali, P.S. Kushami, Teh. Shankergarh, Distt. Balrampur-Ramanujgaj, C.G.
4. Sachin Minj, S/o. Late Ramsagar Minj, Aged About 8 Years, Minor Through the Natural Guardian Mother, Appellant No.1 Smt. Gidiya Minj, R/o. Village Nawadih, Post Kothali, P.S. Kushami, Teh. Shankergarh, Dist. Balrampur-Ramanujgaj, C.G.
5. Ku. Shashi Minj, D/o. Late Ramsagar Minj, Aged About 5 Years, Minor Through the Natural Guardian Mother, Appellant No.1 Smt. Gidiya Minj, R/o. Village Nawadih, Post Kothali, P.S. Kushami, Teh. Shankergarh, Dist. Balrampur-Ramanujgaj, C.G.
6. Suraj Minj, S/o. Late Ramsagar Minj, Aged About 2 Years, Minor Through the Natural Guardian Mother, Appellant No.1 Smt. Gidiya Minj, R/o. Village Nawadih, Post Kothali, P.S. Kushami, Teh. Shankergarh, Dist. Balrampur-Ramanujgaj, C.G.
7. Smt. Chuniya, W/o. Late Bansilal, Aged About 60 Years, R/o. Village Nawadih, Post Kothali, P.S. Kushami, Teh. Shankergarh, Dist. Balrampur-Ramanujgaj, C.G.

---- Appellants

Versus

1. Chhotu Manikpuri, S/o. Lachhan Manikpuri, Aged About 30 Years, R/o. Village Rajpuri, P.S. Ambikapur Kotwali, Teh. Ambikapur, Distt. Surguja, C.G.

2. Satish Goyal, Proprietor Basant Roadways P.D. Nagar Bilaspur, Distt. Bilaspur, Present Address- Basant Roadways Seth Basantlal Marg, Ambikapur, Distt. Surguja, C.G.
3. Branch Manager, The New India Insurance Co. Ltd., Transport Nagar, Korba, C.G.
4. Arvind Kumar Agrawal, S/o. Late Radheshyam Agrawal, Proprietor Basant Roadways, R/o. Seth Basantlal Marg Ambikapur, P.S. & Teh. Ambikapur, Dist. Surguja C.G.

---- Respondents

For Appellants	:	Mr. A.N.Pandey, Advocate
For Respondent No.3	:	Mr. Raj Awasthi, Advocate
For Respondent No.4	:	Mr. C.Jayant K. Rao, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

19/08/2015

1. Both the appeals are being heard and decided together by this common order as they are arising out of the same accident and award dated 27.06.2014 passed in Claim Case No.193/2012 by the learned Third Additional Motor Accident Claims Tribunal, Ambikapur, District Surguja (C.G.).

2. The brief facts are that a claim petition was preferred by the widow, five children and mother of the deceased namely Ramsagar Minj on the ground that on 26.04.2012, the deceased was traveling on his motorcycle bearing No.C.G.12B 1426, at that time, the Bus bearing No.C.G.10G 0497 driven by the original Non-applicant No.1, Chhotu Manikpuri, in rash and negligent manner dashed the deceased whereby he fell down and sustained injuries and died on the spot. It was stated that all the claimants were dependents on the deceased and the deceased was working in the Education Department in Government Higher Secondary School, Deepadihkala as a Peon. It is stated that he was earning

Rs.12,469/- per month, therefore, on the different heads, an amount of Rs.50,26,300/- was claimed.

3. The Non-applicant No.2 & 4 namely Satish Goyal & Arvind Kumar Agrawal who were owner and in control of the vehicle contended that at the time of accident, the deceased had consumed Alcohol and was not able to control himself and thereby he himself dashed the Bus and consequently he was himself liable for the accident. It was further stated that at the time of accident, the vehicle was insured with the Non-applicant No.3, the New India Insurance Company Ltd. and therefore the insurance company is liable to make good the payment of compensation.

4. The Non-applicant No.3, Insurance Company, stated that at the time of accident, the deceased was not having a valid driving licence and no accident has actually happened. It was further contended that the offending vehicle had a limited liability and since the ownership of the vehicle was in question, as such, the Insurance Company cannot be held liable to pay the compensation.

5. The learned Claims Tribunal after evaluating the facts and evidence has passed an award of Rs.21,27,816/- in favour of the claimants. The Tribunal has further come to a finding that at the relevant time the offending vehicle was being driven in rash and negligent manner, therefore, the accident had happened. The said finding of rash and negligent driving of the offending vehicle is not under challenge by either of the parties, therefore, in absence of challenge to the same, the said finding is affirmed.

6. Two appeals are filed, one is by the New India Assurance Company Ltd. bearing M.A.(C) No.948 of 2014 on the ground that the direction given by the learned Claims Tribunal to pay and recover the compensation amount is bad in law. It is contended that there was a clear breach of policy as on the date of accident, the driver of the offending vehicle was not holding a valid

licence. The another appeal i.e. M.A.(C) No.1295 of 2014 is filed by the claimants for enhancement of the award of compensation.

7. At the first instance, the appeal filed by the claimants for enhancement of compensation is being considered.

8. The learned counsel appearing for the claimants would submit that the just compensation has not been awarded by the learned Claims Tribunal and on the conventional heads, meager amount has been awarded which also needs reassessment considering the age of the deceased. He therefore submits that in view of the fact that the deceased was permanent employee of the State Government in Education Department, the compensation should have been suitably enhanced taking into account the number of dependency on the deceased.

9. Per contra, learned counsel appearing on behalf of the respondents supported the award of compensation and would submit that the award passed by the learned Claims Tribunal is well merited with respect to the quantum and the compensation do not require any reassessment.

10. I have heard the learned counsel appearing for the parties, perused the pleadings, documents & evidence on record.

11. In order to assess the quantum, the relevant evidence is perused. The wife of the deceased was examined as AW-1. She has stated that her husband was working at Government Higher Secondary School, Deepadihkala in a post of Peon. It is also stated that the job of the deceased was permanent in nature and the salary has been stated to be Rs.12,469/-. The another witness Stifan Bakhla, who was the Principal in the School wherein the deceased was working has proved the salary certificate of the deceased. According to such salary certificate Ex.P-1, the salary of the deceased was Rs.13,559/- without statutory deduction. It appears that the deceased was shown to be of 31 years age as would be evidence from post mortem Ex.P-7. Considering the fact that the deceased was aged about 31 years at the

time of accident, there would be further addition of 50% as future prospects, as per the law laid down in case of ***Rajesh & Others v. Rajbir Singh & Others*** reported in ***(2013) 9 SCC 54*** and in case of ***Munna Lal Jain & Another v. Vipin Kumar Sharma & Others*** reported in ***(2015) 6 SCC 347***. Therefore, the monthly income comes to Rs.13,559 + 6779 = 20338/- and the annual income would be calculated as Rs. 20338 x 12 = 2,44,056/-.

12. The salary slip do not show any deduction towards the income tax. The incident in this case happened in the year 2012, therefore, as per the income tax slab applicable for the Assessment Year 2013-14, first Rs.2,00,000/- was exempted, therefore, the taxable income would be Rs.44,056/- on which 10% tax was leviable, which comes to Rs.4405/-. Thereafter, the education cess of 2% on income tax i.e. Rs. 88/- and 1% secondary and higher education cess i.e. Rs.44/- has to be added, thereby, the total income tax comes to Rs. 4537/- (4405+88+44). Therefore, after deducting the said tax of Rs.4537/- from the annual income i.e. Rs. 2,44,056/-, the net annul income works out to Rs. 2,39,519/- (2,44,056 - 4537).

13. Now coming to the deduction towards personal expenses, the claim petition was preferred by seven persons i.e. widow, five children and mother of the deceased, therefore, as per the law laid down in case of ***Sarla Verma Vs. Delhi Transport Corporation*** reported in ***(2009) 6 SCC 121***, the deduction towards personal expenses should be 1/5th. So after deducting 1/5th from the annual income i.e. Rs.47,903/-, the annual dependency works out to Rs.1,91,616/-. Further, the age of the deceased was stated to be 31 years as per the post mortem report, therefore, multiplier of 16 would be applicable, therefore, the total amount of dependency works out to Rs.30,65,856/-.

14. Under the conventional heads, the Tribunal has awarded Rs.10,000/- for loss of consortium, Rs.10,000/- for loss of love and affection to the five childrens, Rs.5,000/- to the mother for loss of love and affection, Rs.10,000/- for loss of estate and Rs.10,000/- for funeral expenses. In the opinion of this Court, the amount under the conventional heads also need to be reassessed in view of the law laid down in case of ***Asha Verman v. Maharaj Singh & Others***, reported in ***2015 AIR SCW 3577***. Therefore, I am inclined to award Rs.1,00,000/- to the wife for loss of consortium, Rs.1,00,000/- to the five children for loss of love & affection, Rs.25,000/- to the mother for loss of love & affection, Rs.50,000/- for loss of estate and Rs.25,000/- for funeral expenses. Therefore, the compensation is recomputed as under :-

Sl. No.	**Heads**	**Calculation**
(i)	Loss of dependency.	Rs. 30,65,856/-
(ii)	For loss of consortium to the wife.	Rs. 1,00,000/-
(iii)	For loss of love & affection to the children.	Rs. 1,00,000/-
(iv)	For loss of love & affection to the mother.	Rs. 25,000/-
(iii)	For loss of estate.	Rs. 50,000/-
(iv)	For funeral expenses.	Rs. 25,000/-
	Grand Total	**Rs. 33,65,856/-**

15. Thus, the total compensation is recomputed as Rs.33,65,856/-. After deducting Rs.21,27,816/- as awarded by the Tribunal, the enhancement would be Rs.12,38,040/-.

16. In the result, the appeal i.e. M.A.(C) No.1295 of 2014 is allowed. The appellants will be entitled to the said sum of Rs.12,38,040/- in addition to what is already awarded by the Claims Tribunal with interest at the rate of 9% per annum from date of filing of petition till the date of its realization.

17. The Registry is further directed to communicate the claimants in writing the “amount enhanced in this appeal” as against the award made by the Tribunal below. The said communication be made in Hindi Devanagari language.

18. The another appeal which is filed by the Insurance Company bears M.A. (C) No.948 of 2014. By the award, it is directed that the amount of compensation has to be firstly paid by the Insurance Company and in turn would be recoverable from the owner of the vehicle. In such appeal, a cross objection has also been preferred by the owner under Order 41 Rule 22 of CPC.

19. The cross objection is considered. The same is delayed by two days.

Heard on application for condonation of delay in filing the cross appeal.

On due consideration, the application is allowed and the delay is condoned.

The cross objection, therefore, is considered alongwith the appeal filed by the Insurance Company.

20. The insurance company has predominantly challenged the finding wherein it is directed that the insurance company to first satisfy the award and thereafter will be at liberty to recover the same. It is the submission of the insurance company that at the time of accident, the driver of the offending vehicle was not having any licence. As against this, if the documents which are on record before the Court below is perused, one document is on record which is a particular of the licence of the driver, marked as Ex.D-3. Perusal of the said document would show that it was issued from the RTO which shows the licence of the driver Chhaturam was for Light Motor Vehicle, Heavy Goods Vehicle and Passenger Service Vehicle. The said document is proved by NA-1. Perusal of the statement would show that the witness has stated that the said document

Ex.D-4 which is a particular of the licence was obtained by the person in charge of the records.

21. Before this Court, in the cross objection, particulars of the licence is placed on record by an application under Order 41 Rule 27 of CPC. In such application, the photocopy of the particulars of licence of the driver of the offending vehicle is placed. In this case, the accident happened on 26.04.2012. The document which is sought to be filed before this Court shows the licence was renewed on 20.03.2012 and was initially issued on 12.02.2001. Therefore, if the document which is sought to be produced in this case i.e. copy of the licence are compared, it shows that the copy of licence and the Ex.D-4 are same. In the particulars the date of issuance of licence too appears to be same. Ex.D-4 also shows that the licence was renewed up till 26.11.2013 w.e.f. 27.11.2010. The trial Court has observed the licence was not in existence. So after careful examination of documents, it appears to be incorrect. The document of licence which sought to be filed before this Court is also a licence. So if the licence was in force on the date of accident certainly it will have a material bearing on the entire finding. So the examination of Ex.D-4 along with the copy of licence, which are one and same, in order to come to clear finding of fact about existence of those document would be necessary. Therefore, in my opinion, I deem it proper to remit the case back to the trial Court to examine and give a finding on the limited aspect with respect to the validity of the licence of the driver of the offending vehicle whether the same was valid on the date of accident or not.

22. In view of the aforesaid observation, the direction of the Tribunal to pay the amount of compensation by the insurance company and thereafter to recover the same from the owner is set aside. The application filed before this Court under Order 41 Rule 27 of CPC where the licence is sought to

be filed is allowed and case is remitted back to the Tribunal for evidence on this issue. The Tribunal shall be obliged to decide the validity of the licence and thereafter shall adjudicate the liability of the owner of the vehicle qua the insurer. It is made clear in such case the amount of compensation enhanced on the appeal filed by the claimants would be recoverable from the concerned non-applicant according to the finding arrived at by the learned Tribunal.

23. With such observation, the appeal is remitted back only on the limited question to decide the apportionment of the liability between the insurer or the owner after examining and finding of licence. The parties shall be at liberty to adduce evidence to prove the authenticity of the licence before the Court below.

24. The parties shall appear before the Tribunal on 22^{nd} September, 2015. The Tribunal shall be obliged to decide the case within a further period of three months.

25. It is further observed that the amount of Rs.15,00,000/- deposited by the appellant/ insurance company, pursuant to the interim order dated 20.02.2015 passed by this Court, shall be paid to the claimants after furnishing the security.

26. The Registry is directed to send back the records of the Tribunal forthwith.

27. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge

Ashok