

AFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1064 of 2014**

1. Kumbh Lal Patel S/o Late Dularwa Patel, Aged About 54 Years R/o Pasoud, P.S. Chowki, Sanjari, Tah. Dondi Lohara, Distt. Balod (CG).
2. Fulchand Dewangan S/o Beduram Dewangan R/o Pasoud, P.S. Devri, Tah. Dondi Lohara, Distt. Balod (CG).

---- Appellants**Versus**

1. Jaggu Ram S/o Ramdas Halba Aged About 55 Years R/o Pasoud, P.S. Devri, Tah. Dondi Lohara, Distt. Balod (CG).
2. Smt. Sohagin W/o Jaggu Ram Halba Aged About 50 Years R/o Pasoud, P.S. Devri, Tah. Dondi Lohara, Distt. Balod (CG).
3. National Insurance Co. Ltd. Through- Branch Manager, Branch Kamthi Line, Rajnandgaon, Distt. Rajnandgaon (CG).
4. Chola Mandlam M.S. General Insurance Co. Ltd. Through- Branch Office, Raipur, Distt. Raipur (CG).

---- Respondents**MAC No. 1065 of 2014**

1. Kumbh Lal Patel S/o Late Dularwa Patel, Aged About 54 Years R/o Pasoud, P.S. Chowki, Sanjari, Tah. Dondi Lohara, Distt. Balod (CG).
2. Fulchand Dewangan S/o Beduram Dewangan R/o Pasoud, P.S. Devri, Tah. Dondi Lohara, Distt. Balod (CG).

---- Appellants**Versus**

1. Pradeep Kumar Sahu S/o Sewaram Sahu Aged About 38 Years
2. Smt. Umeshwari W/o Pradeep Sahu Aged About 35 Years
3. Ku. Nisha Sahu D/o Pradeep Sahu Aged About 15 Years
4. Ku. Manshi Sahu D/o Pradeep Sahu Aged About 11 Years
No. 3 & 4 are Minor, Through- Natural Guardian Father- Pradeep Kumar Sahu,
All R/o Parsuli, Badepara, P.S. Devri, Tah. Dondi Lohara, Distt. Balod (CG).
5. National Insurance Co. Ltd. Through- Branch Manager, Branch Kamthi Line, Rajnandgaon, Distt. Rajnandgaon (CG).
6. Chola Mandlam M.S. General Insurance Co. Ltd. Through- Branch Office, Raipur, Distt. Raipur (CG).

---- Respondents

For Appellants-Owner :	Shri BP Singh, Advocate.
For Claimants :	Shri Dashrath Kushwaha, Advocate (in MAC No. 1064 of 2014) and Shri SS Baghel, Advocate in MAC No.1065 of 2014.
For insurance Company :	Shri Ghanshyam Patel, Advocate for Cholamandlam MS.General Insurance Co. Ltd. and Shri Qamrul Aziz for National Insurance Co. Ltd.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****06.11.2017**

1. By this common judgment both the appeals are being disposed of as common facts & issues involved in these appeals arise out of the same accident.
2. Both the appeals under Section 173 of the Motor Vehicles Act have been filed by the owner and driver against the award dated 29.09.2014 passed by the IInd Additional Motor Accident Claims Tribunal Balod, in Claim Case Nos.26/2013 and 31/2013. MAC No.1064 of 2014 is arising out of claim case No.26 of 2013 and MAC No.1065 of 2014 is arising out of claim case No.31 of 2013. Vide the said impugned award, the Tribunal in the two death cases have awarded a compensation of Rs.3,44,000/- in each case to the claimants along with interest @ 6 percent per annum from the date of application. While passing the award, the Tribunal has exonerated the insurance company of its liability and have fastened the liability of payment of compensation upon the appellants-owner and driver of the Tractor and Trolley involved in the accident.
3. In MAC No. 1064 of 2014, there is a cross appeal filed by the claimant seeking for enhancement of compensation along with an application for condonation of delay.
4. For the reasons assigned in the said application, the delay in filing cross appeal is condoned and the application is allowed. With the consent of the parties, the matter is heard finally.

5. The undisputed fact is the date of accident i.e. 20.04.2013 wherein the two persons travelling in the Tractor bearing registration No.CG-07-N- 2803 and Trolley bearing registration No.CG-04-ZQ-2914 died. The tractor was insured with the National Insurance Co. Ltd. and trolley was insured with Chola Mandalam MS General Insurance Co. Ltd. The policy which was issued was a package policy for agriculture purpose. In the instant case, the undisputed facts as is reflected from the evidence is that the accident occurred in the course of tractor being used for marriage purpose in the village as is also evident from the evidence of the insurance company, so also from the FIR which was lodged pertaining to the said accident.
6. The solitary ground for exonerating the insurance companies was that since the tractor and the trolley was being used for a marriage purpose and as such there was a clear breach of policy conditions.
7. Counsel for the appellants-owner & driver submits that in the present case the MP Motor Vehicle Rules, 1994 (in short, the Rules, 1994) which is also adopted by the State of Chhattisgarh is applicable. In Rule 97 of Rules, 1994, it has been provided that tractor and trolley can be used for carrying persons at the time of Mela, Markets, Religious Functions, Marriages and at other ceremonial occasions provided the number of persons so carried shall not exceed 20 at a time. He further relied upon the decision of MP High Court in National Insurance Co.Ltd. Mahila Bhoga and Others, 1996(2) Vidhi Bhasvar-48 as well as recent decision passed by this court in case of Bajaj Allianz General Insurance Co.Ltd. Vs. Balkeshwari & Ors.(MAC

No.1122 of 2011, decided on 06.07.2017). He submits that when the rule itself provides for the tractor to be used for marriage purpose and there being an evidence on record that the accident occurred when the tractor was returning from the marriage function, the insurance company cannot be absolved of their liabilities and thus the impugned award deserves to be modified suitably and the liability be fastened upon both the insurance companies.

8. Learned counsel appearing for the respondent-insurance companies opposing the appeals submit that in the instant case there is a clear breach of policy conditions inasmuch as the vehicle was being used for other than agriculture purpose for which it was insured and registered. They further submits that even if it was used for marriage purpose, it was without proper authority intimation, permission or sanction of the concerned RTO as is required under sub-rule 3 of Rule 97 of Rules, 1994. It is also case of the insurance company that both the deceased appeared to be working as Labourers for the present appellant-owner and therefore they cannot be considered to be persons who were travelling in a trolley for marriage purpose and therefore, the Tribunal has rightly exonerated the two insurance companies and both the appeals deserve to be rejected. It was also the contention of the insurance companies that in all there were three claim cases against the present appellant-owner, however, the appeals have been preferred only in these two cases and in third case (Claim Case No.30 of 2013) the appellant has satisfied the award and therefore, applying the principle of promissory estoppel it

would not be permissible under the law to challenge the award in two cases and to satisfy the award in one case.

9. Having heard the rival contentions put forth on either side and on perusal of records, the undisputed facts as is reflected from the evidence of the owner, the insurance company as well as the FIR which was lodged is that the accident occurred on 20.04.2013 while the tractor and trolley were returning from a marriage function. The tractor and trolley indisputably were insured with the National Insurance Co.Ltd. as well as by the Chola Mandalam M.S. General Insurance Co. Ltd. respectively. The policy issued was a package policy for agriculture purpose. For ready reference Sub-rule 7 of Rule 97 of the Rules, 1994 provides as under :

“7. Notwithstanding anything contained in sub-rules (1) and (2) but subject to the provisions of sub-rule(5) such tractor-trailer other than those registered in the name of industrial organization, Municipal Institutions, water supply institution and non-agricultural co-operative societies and the unladen weight of which does not exceed 7300 kg may be used for the following purpose:-

- (i) xxx xxx xxx
- (ii) for carrying persons at the time of Mela, Markets, Religious Functions, Marriages and at other ceremonial occasions provided the number of persons so carried shall not exceed 20 at a time.”

10. The above rule specifically envisages the fact that Tractor insured for agricultural purpose can also be used for carrying persons to Mela, Markets, Religious functions, Marriages and at other ceremonial occasions. Thus, since the Rule itself provides permitting the Tractor to be used in marriage functions, the said ground raised by the insurance company is not sustainable and the same stands negated.
11. So far as the contention that the tractor owner was required to obtain

a specific permission and sanction from the RTO is concerned, the same is not reflected or is required under the provisions of Sub-rule 7 of Rules, 1994 as the said sub-rule starts from “notwithstanding anything contained in sub-rules (1) and (2) and there is no mention of the requirement under sub-rule 3. Therefore, the contention raised by the insurance company would not be applicable in the instant case.

12. So far as the ground of third claim case not being challenged by the owner is concerned, on query being put, it was informed that the amount of compensation awarded in the said case was only Rs.6000/- as it was an injury case and since the amount was too meagre for which even an appeal was not maintainable under Section 173 of the MV Act. Thus, this ground raised by the insurance company also would not be acceptable and the same stands negated.
13. As regards the fact that the vehicle was being used for non agriculture purpose is concerned, since the undisputed facts from the records and the evidence is that the accident occurred while the said tractor and trolley was returning from marriage function by itself establishes the fact that the accident occurred in the course of it being used for marriage purpose.
14. The Division Bench of MP High Court in case of National Insurance Co. Ltd. Vs. Sarvanlal & Ors. 2004(4)MPHT 404 (DB) dealing with the similar issue had dismissed the appeal of the insurance company. The view of the Division Bench was based on an earlier Division Bench decision of MP High Court in case of Pushpa Devi & Ors. Vs.

Kamal Singh & Ors. 2001(3) MPLJ 548 wherein also it was held that once when it is found that the deceased were travelling as members of the marriage party in the tractor trolley which was being used otherwise than for agriculture purpose for which it was insured, the insurer is liable to pay compensation to the claimants on account of clause 7 of Rule 97 of the Rules, 1994. Similar view has also been taken by this court in case of Bisun Singh & Anr. Vs. Ratni Devi & Anr. (MAC No.657 of 2012 and another connected matter, decided on 01.08.2017).

15. For the aforesaid reasons, this court is of the opinion that the impugned award inasmuch as exonerating the insurance companies was not proper, legal or justified. The same deserves to be and is accordingly modified holding that the amount of compensation shall be jointly and severally payable by the owner, driver and the two insurance companies which had insured the tractor as well as trolley. The two insurance companies which had insured the tractor and trolley shall equally share the liability of payment of compensation to the claimants.
16. So far as cross objection filed by the claimant in MAC No.1064 of 2014 is concerned, the Tribunal has assessed the income of the deceased at Rs.3000/- per month. Considering the date of accident i.e. April, 2013, indisputably even an unskilled labour would have been earning more than Rs.150-200/- per day which would bring monthly income at Rs.4500-6000/-. Thus, considering the period of accident this court assesses the monthly income of the deceased at

Rs.4500/- accepting the minimum wages to be Rs.150/- per day.

17. Keeping in view the decision of larger Bench of Supreme Court in case of National Insurance Co. Ltd. Vs. Pranay Sethi, decided on 31.10.2017 in SLP(C)No.25590 of 2014, the claimants shall be entitled for 40 percent of the income towards future prospects.
18. Accordingly, accepting the monthly income of the deceased at Rs.4500/- if 40 percent of it is added towards future prospects, the amount would reach to Rs.6300/- i.e. Rs.75,600/- yearly, of which if 50 percent is deducted towards personal expenses considering the fact that deceased was a bachelor, the income would come to Rs.37,800/-, which if multiplied applying the multiplier of 18, the compensation would reach to Rs.6,80,400/-. Thus, it is ordered that the claimants shall be entitled for Rs.6,80,400/- for loss of dependency.
19. Further, this court is of the opinion that the claimants shall also be entitled for a lump sum compensation of Rs.70,000/- under conventional heads keeping in view the ratio laid down in Pranay Sethi's case. Thus, the total compensation payable to the claimants would become Rs. 7,50,400/-which for calculation purpose is rounded off at Rs.7,50,000/-. It is ordered accordingly that the claimants shall be entitled for a total compensation of Rs.7,50,000/- instead of Rs.3,44,000/-.
20. The enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.
21. Accordingly, both the appeals as well as cross appeal filed by the

claimants in MAC No.1064 of 2014 are allowed. The liability of payment of compensation stands shifted and apportioned upon both the insurance companies equally.

Sd/-
(P. Sam Koshy)
Judge

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