

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on: 04/08/2017

Order passed on: 16/08/2017

MAC No. 566 of 2013

1. The Oriental Insurance Co. Ltd. ---- **Appellant**
Through its Divisional Manager,
Divisional Office, 1st Floor, Rama Trade
Centre, Near Bus Stand, Bilaspur, CG
PIN - 495001

Versus

1. Bhagwati Sahu Wd/o late Rameshar
Sahu, aged about 36 years,
2. Parmeshwar S/o late Rameshar Sahu,
3. Damini Sahu D/o late Rameshar Sahu,
aged about 10 years

Note Both the respondents No. 2 and 3
above are minor and represented
through their mother and natural
guardian respondent No.1 Smt.
Bhagwati Sahu.

4. Heerabai Sahu Wd/o late Govind Sahu,
aged about 71 years

Note All the respondents No. 1 to 4 above **Respondents/
Claimants**
are R/o village & PO Aamdi, PS, Tahsil
and District Dhamtari, CG.

5. Kiran Kumar Sahu, S/o Jageshwar **Respondent/
Driver**
Sahu, aged about 26 years, at present
village Aamdi, PO Aamdi, PS, Tahsil and
District Dhamtari, CG.

6. Vishnuram Sahu, S/o Sagunlal, aged **Respondent/**

about 53 years, resident of village **Owner**
Aamdi, PO Aamdi, PS, Tahsil and
District Dhamtari, CG.

MAC No. 599 of 2013

1. Bhagwati Sahu wife of late Rameshar Sahu, aged about 35 years,
2. Parmeshwar aged about 12 years S/o late Rameshar Sahu,
3. Damini Sahu aged about 9 years, D/o late Rameshar Sahu,
4. Heera Bai Sahu w/o late Govind Sahu, aged about 70 years,

Appellants No. 2 and 3 above are **Appellants/
Claimants**
minor and represented through their
mother and natural guardian Smt.
Bhagwati Sahu.

All are resident of village and PO
Aamdi, PS, Tahsil Dhamtari, Civil and
Revenue District Dhamtari, CG.

Versus

1. Kiran Kumar Sahu, S/o Jageshwar Sahu, **Respondent/
Driver**
aged about 26 years, at present village
Aamdi, PO Aamdi, PS, Tahsil and Civil
and Revenue District Dhamtari, CG.
2. Vishnuram Sahu, S/o Sagunlal Sahu, **Respondent/
Owner**
aged about 53 years, resident of
village Aamdi, PO Aamdi, PS, Tahsil and
Civil and Revenue District Dhamtari,
CG

3. The Oriental Insurance Co. Ltd. **Respondent/
Insurer**
Through its Branch Manager, Branch
Office, Dhamtari, Police Station
Dhamtari, Civil and Revenue
District Dhamtari, CG

MAC No. 558 of 2013

1. The Oriental Insurance Co. Ltd. **Appellant/
Insurer**
Through its Divisional Manager,
Divisional Office, 1st Floor, Rama Trade
Centre, Near Bus Stand, Bilaspur, CG
PIN - 495001

Verus

1. Heerabai Dhruv Wd/o late Sahdev @
Guhled Ram Dhruv, caste Gond, aged
about 41 years.
2. Maina Bai Wd/o late Phirturam, Caste
Gond, aged about 66 years

Both respondents No. 1 & 2 R/o village **Respondents/
Claimants**
& PO Aamdi, PS, Tahsil and District
Dhamtari, CG

3. Kiran Kumar Sahu, S/o Jageshwar Sahu, **Respondent/
Driver**
aged about 26 years, at present village
Aamdi, PO Aamdi, PS, Tahsil and
District Dhamtari, CG.
4. Vishnuram Sahu, S/o Sagunlal, aged **Respondent/
Owner**
about 53 years, resident of village
Aamdi, PO Aamdi, PS, Tahsil and
District Dhamtari, CG.

MAC No. 598 of 2013

1. Heera Bai Dhruw wife of Sah Dev @
Guhaled Ram Dhruw, Caste Gond,

aged about 40 years,

2. Maina Bai Wd/o late Phirturam, Caste Gond, aged about 65 years, **Appellants/
Claimants**

Both are resident of Village and Post Aamdi, PS, Tahsil and District Dhamtari, CG.

Versus

1. Kiran Kumar Sahu, S/o Jageshwar Sahu, **Respondent/
Driver**
aged about 25 years, at present village Aamdi, PO Aamdi, PS, Tahsil and Civil and Revenue District Dhamtari, CG.
2. Vishnuram Sahu, S/o Sagunlal, aged **Respondent/
Owner**
about 52 years, resident of village Aamdi, PO Aamdi, PS, Tahsil and Civil and Revenue District Dhamtari, CG.
3. The Oriental Insurance Co. Ltd. Through **Respondent/
Insurer**
its Branch Manager, Branch Office, Dhamtari, Police Station Dhamtari, Civil and Revenue District Dhamtari, CG

Shri Ashish Gupta counsel for the claimants.

Shri Ratan Pusty counsel for the Insurance Company.

**Hon'ble Shri Justice Pritinker Diwaker and Hon'ble Justice
R.P. Sharma**

CAV Order

Per P. Diwaker, J

Since all the aforementioned four appeals arise out of the same accident which took place on 2.3.2012 causing death of two

persons namely Rameshar alias Rameshwar and Toshanalal, they are disposed of by this common order:

2. **MAC Nos. 566/2013 and 599/2013:** In these two appeals, one preferred by the Insurance Company and another by the claimants, the award passed by the Claims Tribunal in Claim Case No. 42/2012 is under challenge. Insurance Company has assailed its liability whereas the claimants have sought enhancement of the compensation awarded by the Claims Tribunal. These two appeals are for the death of Rameshar alias Rameshwar aged about 38 years at the relevant time. As per the pleadings taken in the claim case, when the deceased was going for labour work as usual in the offending vehicle i.e. tractor trolley bearing registration No. CG-05-8742, 8743, its front wheel got separated and the offending vehicle fell into a pit ultimately resulting in the death of Rameshar alias Rameshwar.

3. Claim case was filed by the claimants who happen to be the wife, son, daughter and mother of the deceased claiming a compensation of Rs. 11,59,490/- *inter alia* pleading that the deceased was working as a labourer and earning Rs. 4000/- per month and that during the Rojgar Guarantee period the income rose to Rs. 5,000/-. It is also pleaded in the claim petition that after the death of Rameshar alias Rameshwar the claimants have turned orphans and are deprived of the supporting hand, and therefore, they are entitled to get adequate compensation.

4. **MAC Nos. 558/2013 and 598/2013:** In these two appeals, one preferred by the Insurance Company and another by the claimants, the award passed by the Claims Tribunal in Claim Case

No. 41/2012 is under challenge. Insurance Company has assailed its liability whereas the claimants have sought enhancement of the compensation awarded by the Claims Tribunal. These two appeals are for the death of Toshanalal aged about 21 years at the relevant time. As per the pleadings taken in the claim case, when the deceased was going for labour work as usual in the offending vehicle i.e. tractor trolley bearing registration No. CG-05-8742, 8743, its front wheel got separated and the offending vehicle fell into a pit and ultimately resulting in the death of Toshanalal.

5. Claim case was filed by the claimants who happen to be the mother and grand-mother of the deceased claiming a compensation of Rs. 13,94,691/- *inter alia* pleading that the deceased was working as a labourer and earning Rs. 4000/- per month and that during the Rojgar Guarantee period the income rose to Rs. 5,000/-. It is also pleaded in the claim petition that after the death of Toshanalal the claimants have turned orphans and are deprived of the supporting hand, and therefore, they are entitled to get adequate compensation.

6. Both the claims were contested by the Insurance Company on the ground that in the tractor in question four persons were travelling at the relevant time whereas the risk of only one person i.e. driver/employee was covered and therefore, the liability to pay compensation cannot be fastened on the Insurance company. Further stand of the Insurance company is that the offending vehicle was insured for agriculture and forestry purposes but at the relevant time it was being used for transporting the bricks which does not come under either of these categories and for this reason

also the Insurance company is not liable to satisfy the claim. Yet another ground raised by the Insurance company is that though the driver of the offending vehicle was having the licence to drive Light Motor Vehicle (LMV) yet as he was driving the tractor for which he was not competent and therefore, also the liability cannot be fastened on it.

7. After considering the evidence adduced by the parties, the Tribunal has awarded a compensation of Rs. 3,90,000/- in favour of the claimants in Claim Case No. 42/2012 and that of Rs. 2,00,000/- in Claim Case No. 41/2012 holding that it is the Insurance company which has to satisfy the entire award. It is these awards which have been challenged by the claimants and also by the Insurance company.

8. Counsel for the claimants submits as under:

- (i) That the monthly income of the deceased persons has wrongly been calculated by the Tribunal.
- (ii) That in Claim Case No. 42/2012 the Tribunal has committed an error in deducting 1/3 of the income towards the personal expenses of the deceased whereas looking to the number of dependents it should have been 1/4.
- (iii) That nothing has been awarded towards the future prospects and likewise the amount awarded under conventional heads is also quite inadequate.
- (iv) Though as per the insurance company the risk of only person is covered in the insurance policy but at the same time the policy also says that the risk of 1 + 1 is covered in it, meaning thereby in case driver of the vehicle dies the risk of driver is covered and in

case some third person sitting by the driver side dies, his risk is also covered. It is especially in view of the fact that the sitting capacity of the tractor is shown as 1 + 1 and therefore, the death of one of the employees other than the paid driver is covered in the insurance policy.

(v) That the Insurance Company has accepted the premium of Rs. 100/- for covering the risk of owner and driver and that of Rs. 25/- under the head of IMT 29 i.e. the legal liability of two employees other than the paid driver and/or conductor and/or the cleaner who may be travelling. Thus according to the counsel for the claimants, having accepted the premium separately under two heads for covering the risk of two persons, the Insurance Company cannot take a defence that the risk of only the paid driver was covered whereas the risk of employee/labourer was not covered.

(vi) That though in the present case two labourers travelling in the tractor have expired, considering the fact that additional premium was accepted by the Insurance Company for one person at least the risk of one person is duly covered under the Insurance Policy and being so the Insurance Company cannot take a defence denying the risk of even one person.

(vi) That as per the Central Motor Vehicle Rules the tractor has been defined as LMV and under any circumstance it can not be treated as a transport vehicle.

(vii) That a person having the licence to drive LMV is legally entitled to drive the tractor also.

(viii) That transportation of bricks in a tractor cannot be termed to be for commercial purposes because bricks can also be used for

agriculture purposes and if the insurance company takes a specific defence that the vehicle was used for commercial purpose, it is required to lead evidence in this regard, which however has not been done in the case in hand.

9. Counsel for the Insurance company on the other hand submits that the compensation awarded by the Tribunal is in accordance with law and no enhancement is required in the awarded sum. He however disputes the liability of the Insurance Company to satisfy the award impugned on the ground that the offending vehicle was insured for agriculture purposes but it was being used for carrying the bricks i.e. for commercial purpose in contravention of the terms and conditions of the policy on the part of its owner, therefore, liability cannot be on it.

10. Heard counsel for the parties and perused the documents on record.

11. Let us first deal with the liability part of the award impugned. According to the Insurance Company, as the bricks were being transported in the offending tractor, it was used for commercial purpose and therefore it is not liable to pay compensation to the claimants. This stand of the Insurance Company has no substance for the reason that it has not led any evidence to prove that the vehicle in question was in fact being used for commercial purposes. Even assuming that the bricks were being transported in the said tractor, in the absence of any specific defence that such transportation was for commercial purpose, it cannot be held so. It is known to one and all that the bricks are required for agriculture purposes also like constructing tube-well and conduits etc. and

therefore mere transportation of bricks in the tractor will not create a presumption that it was used for commercial purpose. This argument on behalf of the Insurance Company is, therefore, rejected.

12. Further, it is clear from the documents on record that in one of the columns of the Insurance Policy meant for giving description of sitting capacity, it has been mentioned as 1 + 1. Perusal of the Insurance Policy makes it manifestly clear that extra premium of Rs. 100/- was accepted by the Insurance Company for covering the risk of driver and owner and that of Rs. 25/- was accepted by it under the head of IMT 29 which is the legal liability of one employee other than the paid driver and/or conductor and/or cleaner. Thus, apart from the risk of owner and driver, risk of labour/employee was also covered in the Insurance Policy and therefore, for at least one person the Insurance Company is liable to satisfy the award. Accordingly, we hold that at least one employee travelling in the tractor was duly insured and being so the Insurance Company is held liable to compensate the dependents of one of the deceased travelling in the tractor at the time of accident. Death of which deceased employee would be covered in the Insurance Policy, would be dealt with in the succeeding paragraphs.

13. Yet another argument advanced on behalf of the Insurance Company that driver of the offending vehicle was not having valid and effective driving licence to drive the vehicle also has no substance for the reason that as per the evidence on record the driver of the offending vehicle was having the licence to drive LMV

and the mere fact that the trolley was attached to the tractor will not convert the said vehicle into a transport vehicle because the vehicle itself was insured for agriculture and forestry purposes.

14. Rule 2(b) of the Central Motor Vehicles Rules, 1989 defining agricultural tractor, appears worth reference, which reads as under:

“2(b) “agricultural tractor” means any mechanically propelled 4-wheel vehicle designed to work with suitable implements for various field operations and/or trailers to transport agricultural materials. Agricultural tractor is a non-transport vehicle.”

15. The above definition thus makes it clear that under no circumstance, the tractor attached with the trolley can be termed as transport vehicle.

16. Dealing with an identical issue in the case of ***Nagashetty Vs. United India Insurance Co. Ltd. and others*** reported in **(2001) 8 SCC 56**, the Apex Court in paragraph 10 has held as under:

“10. We are unable to accept the submissions of Mr S.C. Sharda. It is an admitted fact that the driver had a valid and effective licence to drive a tractor. Undoubtedly under Section 10, a licence is granted to drive specific categories of motor vehicles. The question is whether merely because a trailer was attached to the tractor and the tractor was used for carrying goods, the licence to drive a tractor becomes ineffective. If the argument of Mr. S.C. Sharda is to be accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner

would be deemed to have no licence to drive that vehicle. It would lead to absurd result. Merely because a trailer is added either to a tractor or to a motor vehicle by itself does not make that tractor or motor vehicle a transport vehicle. The tractor or motor vehicle remains a tractor or motor vehicle. If a person has a valid driving licence to drive a tractor or a motor vehicle, he continues to have a valid licence to drive that tractor or motor vehicle even if a trailer is attached to it and some goods are carried in it. In other words, a person having a valid driving licence to drive a particular category of vehicle does not become disabled to drive that vehicle merely because a trailer is added to that vehicle.”

17. The Division Bench of this Court in the matters of ***Royal Sundaram Alliance Insurance Co. Ltd. Vs. Jhool Bai and others, 2007(3) C.G.L.J. 347 (DB)*** placing reliance upon the principles of law laid down in the aforementioned decision of the Apex Court has held that since the driver of the tractor had a valid and effective driving licence to drive the tractor, he would not become disabled to drive it merely because a trailer was attached to the tractor. This apart, if the weight of the vehicle is taken into consideration, then also it can be ascertained that the driver was having a valid and effective licence to drive the vehicle in question i.e. tractor-trolley. So far as breach of policy conditions due to use of vehicle for commercial purposes is concerned, the burden of proving the said breach was on the insurance company.

18. Thus considering the material on record and the legal position referred to above, we are of the view that since the driver of the tractor had a valid and effective driving licence to drive the

light motor vehicle, he would not become disabled to drive the tractor merely because the trolley was attached to it. We thus hold that the driver of the offending vehicle was competent enough to drive the tractor in spite of the fact that he was having the licence to drive LMV.

19. Now as regards quantum, in MAC No. 599/2013 on account of the death of Rameshar alias Rameshwar his wife, mother, son and daughter claimed a compensation of Rs. 11,59,490/- whereas the Tribunal has awarded a compensation of Rs. 3,90,000/- in their favour which appears to be extremely insufficient in the facts and circumstances of the case. Since the deceased namely Rameshar alias Rameshwar was working as labourer, notional income of Rs. 7,000/- per month is required to be taken for computing the compensation and if that is done, his annual income comes to Rs. 84,000/-. Tribunal has not awarded anything for future prospects but this Court considering the age of the deceased i.e. 38 years, thinks it quite reasonable to award 50% of the annual income for that purpose and doing so the future loss of income comes to 42,000/- per annum which he could have earned if alive. Thus adding Rs. 42,000/- the annual income of the deceased is assessed at Rs. 1,26,000/- (Rs. 84,000/- + Rs. 42,000/-). As the claimants are four in number, 1/4 of the annual income of the deceased is required to be deducted for personal expenses which comes of Rs. 31,500/- and having done so the annual loss of dependency which the deceased might be spending on the claimants comes to Rs. 94,500/-. The record goes to show that at the time of death, the deceased was aged about 38 years and therefore this Court deems it just and proper to apply the multiplier of 15 so as to arrive at the

total loss of dependency and being so the figure comes to Rs. 14,17,500/-. Furthermore, this Court is also conscious of the fact that the Tribunal has awarded a very meager amount on conventional heads and therefore it appears to be the need of hour to award a lump sum of Rs. 2,00,000/- on the said head. It is done accordingly. The total amount of compensation for which the claimants are entitled thus comes to Rs. 16,17,500/-.

20. Since the Tribunal has already awarded a sum of Rs. 3,90,000/- it is required to be deducted from the total compensation awarded by this Court and doing so the enhanced compensation for which they are now entitled comes to Rs. 12,27,500/- which shall carry interest at the rate of 9% per annum from the date of application till realization.

21. Now as regards quantum in MAC No. 598/2013, on account of the death of Toshantal his mother and grand-mother claimed a compensation of Rs. 13,94,691/- whereas the Tribunal has awarded a compensation of Rs. 2,00,000/- in their favour which appears to be extremely insufficient in the facts and circumstances of the case. Since the deceased namely Toshantal was working as labourer, notional income of Rs. 7,000/- per month is required to be taken for computing the compensation and if that is done, his annual income comes to Rs. 84,000/-. Tribunal has not awarded anything for future prospects but this Court considering his age i.e. 21 years, thinks it quite reasonable to award 50% of the annual income for that purpose and doing so the future loss of income comes to 42,000/- per annum which he could have earned if alive. Thus adding Rs. 42,000/- the annual income of the deceased is

assessed at Rs. 1,26,000/- (Rs. 84,000/- + Rs. 42,000/-). As the claimants are two in number, 1/2 of the annual income of the deceased is required to be deducted for personal expenses which comes of Rs. 63,000/- and having done so the annual loss of dependency which the deceased might be spending on the claimants comes to Rs. 63,000/-. The record goes to show that at the time of death, the deceased was aged about 21 years and therefore this Court deems it just and proper to apply the multiplier of 18 so as to arrive at the total loss of dependency and being so the figure comes to Rs. 11,34,000/-. Furthermore, this Court is also conscious of the fact that the Tribunal has awarded a very meager amount on conventional heads and therefore it appears to be the need of hour to award a lump sum of Rs. 1,00,000/- on the said head. It is done accordingly. The total amount of compensation for which the claimants are entitled thus comes to Rs. 12,34,000/-.

22. Since the Tribunal has already awarded a sum of Rs. 2,00,000/- it is required to be deducted from the total compensation awarded by this Court and doing so the enhanced compensation for which they are now entitled comes to Rs. 10,34,000/- which shall carry interest at the rate of 9% per annum.

23. Next question to be decided by this Court is as to which of the award is to be satisfied by the Insurance Company. This issue is squarely covered with the decision of the Supreme Court in the matter of **National Insurance Co. Ltd. v. Anjana Shyam and Ors** reported in **AIR 2007 SC 2870**, relevant portion of which reads as under:

“16. Then arises the question, how to determine the compensation payable or how to quantify the compensation since there is no means of ascertaining who out of the overloaded passengers constitute the passengers covered by the insurance policy as permitted to be carried by the permit itself. As this Court has indicated, the purpose of the Act is to bring benefit to the third parties who are either injured or dead in an accident, we think that the practical and proper course would be to hold that the insurance company, in such a case, would be bound to cover the higher of the various awards and will be compelled to deposit the higher of the amounts of compensation awarded to the extent of the number of passengers covered by the insurance policy. Illustratively, we may put it like this. In the case in hand, 42 passengers were the permitted passengers and they are the ones who have been insured by the insurance company. 90 persons have either died or got injured in the accident. Awards have been passed for varied sums. The Tribunal should take into account, the higher of the 42 awards made, add them up and direct the insurance company to deposit that lump sum. Thus, the liability of the insurance company would be to pay the compensation awarded to 42 out of the 90 passengers. It is to ensure that the maximum benefit is derived by the insurance taken for the passengers of the vehicle, that we hold that the 42 awards to be satisfied by the insurance company would be the 42 awards in the descending order starting from

the highest of the awards. In other words, the higher of the 42 awards will be taken into account and it would be the sum total of those higher 42 awards that would be the amount that the insurance company would be liable to deposit. It will be for the Tribunal thereafter to direct distribution of the money so deposited by the insurance company proportionately to all the claimants, here all the 90, and leave all the claimants to recover the balance from the owner of the vehicle. In such cases, it will be necessary for the Tribunal, even at the initial stage, to make appropriate orders to ensure that the amount could be recovered from the owner by ordering attachment or by passing other restrictive orders against the owner so as to ensure the satisfaction in full of the awards that may be passed ultimately.”

Thus in view of this legal position we hereby hold that the highest of the award being Rs.16,17,500/- passed in Claim Case No. 42/2012 for the death of Rameshar alias Rameshwar shall be satisfied by the Insurance Company after deducting the amount paid already, if any, with interest as above. This has to be done within a period of three months from today.

24. On such deposit being made by the Insurance Company, the apportionment is directed to be made in 60 : 40 ratio, i.e. 60% in favour of the claimants of Claim Case No. 42/2012 for the death of Rameshar alias Rameshwar and 40% in favour of the claimants of Claim Case No. 41/2012 for the death of Toshani Lal. This apportionment is arrived at keeping in mind the number of

claimants - 60% where the claimants are 04 in number (wife, mother, son and daughter) and 40% where they are just two (mother and grand-mother).

25. The claimants of both the cases, however, shall be at liberty to recover the balance amount from the owner of the vehicle. This would however be done after adjusting the amount paid by the insurance company, if any.

26. In the light of the aforesaid observations, all the appeals are thus disposed of with the modification in the impugned awards to the extent indicated above.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.P. Sharma)
Judge