NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1169 of 2009

ICICI Lombard General Insurance Co.Ltd. through officer in charge, ICICI, Lalganga Shopping Mall, 3rd Floor, GE Road, Raipur (CG).

---- Appellant

Versus

1. Shailbala Shrivastava, aged about 37 years Wd/o Vineet Shrivastava,
2. Agmaya Shrivastava S/o Late Vineet Shrivastava, aged about 12 years,
3. Ku.Ayushi Shrivastava, aged about 9 years, D/o Late Vineet Shrivastava,t Respondents No.2&3 are minor represented through Mother Smt. Shailbala Shrivastava, W/o Vineet Shrivastava.
4. Badri Prasad Shrivastava, aged about 72 years, S/o not known Respondents No.1to 4 are R/o Near Gurudwara, Devendra Nagar, Raipur (CG).
5. Angaram Sahu S/o Shri D.L.Sahu, R/o Village-Ulba (Khorpa), PS -Abhanpur, Distt Raipur (CG).
6. Hidayatulla National Law University Through-Vice Chancellor, Near Chhattisgarh Rajyapal Bhawan, Civil Lines, Raipur (CG).

---- Respondents

For Appellant	:	Shri Pawan Kesharwani, Advocate.
For Claimants	:	Shri Suresh Tandon, Advocate.
For respondent No.5	:	Shri Shivendu Pandya, Advocate.
For respondent No.6	:	Shri Ankit Singhal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

09.11.2017

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurance company against the award dated 30.03.2009 passed by the 11th Additional Motor Accident Claims Tribunal (FTC) Raipur (in short, the Tribunal) in Claim Case No.23/2008. Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.10,81,700/- to the claimants. While passing the award, the Tribunal has fastened the liability upon the driver, owner and insurer of the vehicle jointly and

severally.

2. The claimants in the present case have also preferred cross objection seeking for enhancement of compensation awarded by the Tribunal.
3. The appeal of the insurance company is mainly on two grounds. Firstly, that the vehicle belonging to the respondent No.6 did not have valid permit at the time of accident to operate the Bus as passenger carrying vehicle and secondly, the driver of offending vehicle did not have proper licence at the time of accident. Therefore, the insurance company should have been exonerated of its liability and the liability should have been fastened upon the owner and driver of the vehicle. Referring to the issue of permit, he would further submit that the findings of the Tribunal bringing the vehicle of respondent No.6 within the ambit of Section 66(3)(a) of the MV Act is erroneous as the respondent No.6 cannot be under any circumstances be treated as Central Govt. or the State Govt. office nor can it be said that the vehicle was being used for government purpose. Thus, prayed that the award be suitably modified by shifting the liability upon the owner and driver of the offending vehicle.
4. It was further contended that the driver at the relevant point of time was not having a valid licence inasmuch as the original licence number and the number of renewed licence were entirely different and it appears that the document used is fake or fraudulent document created by the driver of the offending vehicle.
5. However, a perusal of records would show that the insurance company has not led any evidence to prove its contention so far as

licence being fake or invalid. The insurance company has also not led any evidence of the concerned RTO officials to prove that the licence being fake. Thus, the said ground raised by the appellant-insurance company stands negated.

6. The only issue which is now left for consideration for this court is as to whether the respondent No.6 would fall within the ambit of Section 66(3)(a) of the MV Act or not?.

7. Admittedly, the respondent No.6 has been established under an Act of the State Govt. known as Hidayatullah National University of Law Chhattisgarh, Act, 2003. The said university is an autonomous body being run and maintained by an independent body not connected and controlled by the State Govt. in any manner except for periodical funds given by the State Govt for smooth functioning of the university. Except for receiving periodical funds there is no control of the State Govt. over the said establishment. Further, it is also not a case where the university is imparting free education. The university is charging substantial amount as fees from the students who are taking education in the said university. Thus, under no circumstance, can the university be said to be an office of the Central Govt. or for that matter of the State Govt. nor can the use of the vehicle be said to be for government purpose when the accident occurred. Thus, this court finds sufficient strength on the arguments of the appellant-insurance company.

8. So far as law in respect of vehicle being run without proper permit is concerned, it is relevant to refer to the decision of Supreme Court in

case of National Insurance Co.Ltd. Vs. Challa Bharathamma & Ors., 2004(8)SCC 517 as also Division Bench judgment of Kerala High Court in case of Suresh Kumar Vs. Oriental Insurance Co.Ltd.& Ors. 2016 ACJ 679.

9. If we look into the decision in case of Suresh Kumar (Supra), the Division Bench of Kerala High Court in paragraphs 18 & 19 has held as under :

> "18. As the Apex Court in Bijaya C. Tripathy's case, AIR 2005, SC 1431, was of the view that what is prevented under Section 66 of the Act is the use of the vehicle as a transport vehicle without a permit an it dos not prohibit plying of such a vehicle on public road, the same principle will apply herein also. It was also held therein that the vehicle can be driven in a public road so long as it is not used as a transport vehicle. The Apex court categorically held that an owner of such a vehicle may use the vehicle for taking his family out for a picnic, etc. and Section 66 will not bar such a use.
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> 19.Judged in the light of the above principle, we are of the view that the facts proved in this case will definitely show that the vehicle was not used as a transport vehicle. Therefore, the absence of permit will not result in any violation of the conditions of policy, as contended by the learned Senior Counsel for the insurance company. As held by this court in Sethunath's case, 2011 (1) KLT 222 also, the prohibition is limited to the use of the vehicle as a transport vehicle without a valid permit."

10. So far as the factual matrix of present case is concerned, there is sufficient material to show that the vehicle was being operated without proper and valid permit. In the given facts, the findings of the Kerala High Court in case of Suresh Kumar (Supra) would squarely apply in the facts of the present case.

11. Likewise, in case of Chhalla Bharathamma (Supra) the Supreme Court referring to Sections 66 and 149 (2)(a)(i)(c) of the MV Act dealing with such a situation has in paragraphs 12 held as under:

> "12. High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise.

> The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal vis-`-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. High Court was, therefore, not justified in holding the insurer liable."

12. Following the ratio of law laid down in these two cases, this court also in case of Jagdish Ram Chandel & Anr. Vs. Dheerja Bai & Ors. (MAC No.927 of 2011, decided on 03.11.2017) has re-iterated the same principles.

13. Thus, this court is of the opinion that the appeal of the insurance company deserves to be and is allowed to the extent that responsibility of payment of compensation shall first fall upon the insurance with liberty to recover the same from the respondent No.6 by initiating appropriate recovery proceedings applying the principle of pay and recover.

14. So far as enhancement of compensation is concerned, the counsel for the claimants submits that the income assessed by the Tribunal is proper, but the calculation made is not in accordance with the principles laid down by the Supreme Court in case of Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. 2009 (6)SCC 121 inasmuch as the compensation under future prospects has not been awarded and the deduction made is also 1/3rd when it should had been 1/4th. Further, the compensation paid under the conventional head is also on lower side and thus prayed for suitable enhancement of compensation.

15. A perusal of records, this court finds that there is sufficient force in

the submissions made by the claimants inasmuch as if we apply the principle as has been laid down in case of Sarla Verma (Supra), it would clearly reflect that deduction towards personal expenses made should had been 1/4th instead of 1/3rd as assessed by the Tribunal. Likewise, so far as future prospects is concerned, this court is of the opinion that 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.

16. Accordingly, accepting the yearly income of the deceased at Rs.1,00,000/- if 40 percent of it is added towards future prospects, the amount would reach to Rs.1,40,000/-, of which if 1/4th is deducted towards personal expenses, the income would come to Rs.1,05,000/-, which if multiplied applying the multiplier of 15, the compensation would reach to Rs.15,75,000/-. Thus, it is ordered that the claimants shall be entitled for Rs.15,75,000/- for loss of dependency.

17. 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. Thus, the total compensation payable to the claimants would become Rs.16,45,000/- It is ordered accordingly that the claimants shall be entitled for a total compensation of Rs.16,45,000/- instead of Rs.10,81,700/- as awarded by the Tribunal.

18. The enhanced amount of compensation shall also carry interest at

the same rate as awarded by the Tribunal.

19. Accordingly, the cross objection of the claimants also stands allowed and disposed of. The liability of payment of compensation shall first be upon the appellant-insurance company with liberty to recover the same from the respondent No.6-owner by initiating appropriate recovery proceedings.

Sd/-
(P.Sam Koshy)
Judge

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