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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1068 of 2013

- The New India Assu. Co. Ltd. Thru- The Divisional Manager, Division No. 2, Jeevan Bima Office, Behind Pandri, Thana- Pandri, Distt. Raipur C.G., Chhattisgarh

---- Appellant.

Versus

1. Smt. Bhuneshwari Bai W/o Late Dev Lal Sahu Aged About 32 Years R/o Badra, Thana- Pathriya, Distt. Bilaspur C.G., Presently R/o Parastarai, Thana- Dharseeva, Raipur C.G., Chhattisgarh

2. Manish Kumar S/o Dev Lal Sahu Aged About 12 Years Minor, Thru- Mother Smt. Bhuneshwari Bai, R/o Badra, Thana- Pathriya, Distt. Bilaspur C.G., Presently R/o Parastarai, Thana- Dharseeva, Raipur C.G., District : Raipur, Chhattisgarh

3. Ku. Jyoti D/o Dev Lal Sahu Aged About 10 Years Minor, Thru- Mother Smt. Bhuneshwari Bai, R/o Badra, Thana- Pathriya, Distt. Bilaspur C.G., Presently R/o Parastarai, Thana- Dharseeva, Raipur C.G., District : Raipur, Chhattisgarh

4. Ku. Renuka D/o Dev Lal Sahu Aged About 8 Years Minor, Thru- Mother Smt. Bhuneshwari Bai, R/o Badra, Thana- Pathriya, Distt. Bilaspur C.G., Presently R/o Parastarai, Thana- Dharseeva, Raipur C.G., District : Raipur, Chhattisgarh

5. Ku. Rambha D/o Dev Lal Sahu Aged About 6 Years Minor, Thru- Mother Smt. Bhuneshwari Bai, R/o Badra, Thana- Pathriya, Distt. Bilaspur C.G., Presently R/o Parastarai, Thana- Dharseeva, Raipur C.G., District : Raipur, Chhattisgarh

6. Smt. Kanti Bai W/o Badri Prasad Sahu Aged About 70 Years R/o Badra, Thana- Pathriya, Distt. Bilaspur C.G., Presently R/o Parastarai, Thana- Dharseeva, Raipur C.G., District : Raipur, Chhattisgarh

7. Raj Kumar S/o Ramvishal Sai R/o Sel, Thana- Kasdol, Tah. And Distt. Raipur C.G., District : Raipur, Chhattisgarh

8. Pravin Kumar Singh S/o Late Vijay Kumar Singh R/o Civil Lines, Near Baloda Bazar, High School, Thana- Baloda Bazar, Distt. Raipur C.G., District : Raipur, Chhattisgarh

---- Respondents

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For appellant	:	Mr. Mahavir Bhatnagar, Advocate.
For respondents	:	None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

Oral Order

16-02-2018

1. This appeal arises out of impugned award dated 22-8-2013 passed by the 7th Additional Motor Accident Claims Tribunal (for short, “the Tribunal”), Raipur, in claim case No.62 of 2011 awarding a compensation of Rs.7,15,000/- in favour of respondents No. 1 to 6/claimants for death of Dev Lal Sahu in a motor accident.
2. Facts of the case, in brief, are that deceased Dev Lal Shu was sitting on a motor-cycle bearing registration No. CG 04 CL 3797 driven by Leeladhar Verma on 28-8-2010 and when they reached near J.K. Colony, Raipur, respondent No.7 Raj Kumar by driving Truck bearing registration No. CG 04 JB-3753 rashly and negligently dashed the motor-cycle causing fatal injuries to Dev Lal Sahu who died instantaneously. The matter was reported at Police Station Dharseeva wherein the police registered the case vide crime No.415/10 under Section 304-A of IPC against the said driver of offending vehicle. Deceased was a driver in S.K.S Company and used to earn Rs.6,000/- per month and there was future prospects. Respondents No. 1 to 6 who happen to be legal heirs of the deceased filed a claim petition claiming compensation, *inter alia,* pleading that deceased was aged about 35 years at the relevant time. However, pleadings of the claimants have been denied by the appellant/Insurance Company. After evaluating the evidence of eye-witnesses AW/2 Mahendra Yadav, AW/1 Praveen Kumar Singh and documents Ex.P/1 to

P/7, the Tribunal awarded compensation of Rs.7,15,000/- along with interest @ 6% per annum in favour of respondents No. 1 to 6/claimants assessing the age of the deceased as 38 years on the basis of his driving licence and taking into consideration his income as Rs.5,000/- per month and deducting 1/4th towards his personal expenses and applied multiplier of 15.

3. Learned counsel appearing for the appellant submits that driver of the offending vehicle i.e., Truck was not having a valid and effective licence at the time of accident which has been proved by legal and cogent evidence and there is breach of policy even then the tribunal fastened the liability on Insurance Company. He further submits that the finding arrived at by the Tribunal is perverse and violates Section 3 of the Motor Vehicles Act, 1988.

4. I have heard learned counsel for the appellant and perused the record of the court below.

5. From the evidence of AW/2 Mahendra Yadav, AW/1 Praveen Kumar Singh, it is established that respondent No.7 was driving the offending vehicle at the time of incident rashly and negligently and dashed the motorcycle on which deceased Dev Lal Sahu was sitting and he died out of use of motor vehicle. Version of these witnesses is supported by first information report, post-mortem report, seizure of offending vehicle and other relevant documents. The evidence adduced by the claimants' side was unshaken during cross examination and there was nothing to discard the same, therefore, the Tribunal is right in holding that the accident occurred due to rash and negligent driving by respondent No.7 Raj Kumar. Insurance Company examined NAW-1 Triloknath Mishra and NAW/2 Janardhan Singh to wriggle out from liability and both have stated that licence submitted by the driver was not valid on the date of incident.

6. The core issue for consideration is whether the Insurance Company can avoid its liability towards the insured/owner of the vehicle on the ground that the driver was not having a valid licence on the date of incident. Praveen Kumar Singh AW/1 was the owner of the offending vehicle (truck) and he deposed that he had seen licence of the driver before handing over the vehicle to him. No witness adduced by the Insurance Company had deposed that the owner was guilty of negligence and failed to exercise reasonable care regarding use of vehicle by a duly licensed driver.

7. In **National Insurance Company Limited vs. Swaran Singh and others, reported in (*2004(3) SCC 297**, it is held by the Hon'ble Apex Court as under:

> "(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.
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> (ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.
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> (iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves

defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them".

8. As the insurance company failed to prove the negligence on the part of the owner, it cannot avoid liability towards third party and the finding of the Tribunal is not liable to be interfered with on this count. As per evidence led by the claimants that deceased was driver having monthly income of Rs.6,000/-, the Tribunal in absence of any certificate assessed his income at Rs.5,000/- per month. Claimants are six in numbers, claimant No.1 is wife of the deceased and others are children. The Tribunal deducted ¼ towards his personal expenses and loss of dependency comes out to Rs.3750/- per month and Rs.45,000/- per annum. Looking to the age of the deceased who was aged about 38 years , multiplier of 15 was applied that comes to Rs.6,75,000/- and awarded Rs.40,000/- on conventional head on the basis of guidelines/principles adopted in the case of **Sarla Verma vs. Delhi Transport Corporation and another (2009) 6 SCC 121**. The amount assessed by the Tribunal cannot be termed on higher side.

9. In a motor accident claim case, what is important is that the compensation to be awarded by the Courts/Tribunals should be just and proper compensation in

the facts and circumstances of the case. It should neither be a meagre amount of compensation nor a Bonanza. Thus, there is no substance in the arguments advanced on behalf of the appellant.

10. Accordingly, the appeal is liable to and is hereby dismissed.

Sd/-

(**Ram Prasanna Sharma**)
JUDGE

Raju