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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 19/09/2018

Judgment delivered on : 14/12/2018

MAC No. 147 of 2009

- Kumari Bai @ Laxmi Bai, aged about 35 years, W/o Rajkumar R/o Village Tarbahar Near Bade Masjid Bilaspur PS Tarbahar, Bilaspur, Tahsil and Distt. Bilaspur (CG)

---- Appellant

Claimant

Versus

1. Kamal Prasad son of Arjun Das, aged about 26 years, the then Vehicle Driver Tractor No. CG 10 A 5456 and Trolley No. CG 10A 5457, permanent resident of Village Karankapa, PS and Tahsil Lormi, Distt. Bilaspur (CG)

2. Janak Ram son of Manrakhan Satnami, aged about 50 years, co-owner of Tractor No. CG 10 A 5456 and Trolley No. CG 10A 5457, resident of Dhondapara, PS and Tahsil Lormi, Distt. Bilaspur (CG)

3. Shiv Das son of Shiv Prasad, aged about 45 years, co-owner of Tractor No. CG 10 A 5456 and Trolley No. CG 10A 5457, permanent resident of Village Bandhwa, PS Lalpur Tahsil Lormi, Distt. Bilaspur (CG)

4. Ganga Prasad, aged about 40 years son of Ratiram Satnami,

5. Smt. Kumari Bai, aged about 38 years,

Respondents No. 5 & 6 are resident of Village Karankapa, PS Lalpur, Tahsil Lormi, Distt. Bilaspur (CG)

6. The Oriental Insurance Co. Ltd. Bilaspur, Dist. Bilaspur (CG)

---- Respondents

For Appellant	:	Shri GP Kurre, Advocate.
For Respondent No.1 to 3	:	Shri Rohitashva Singh, & Shri Bhaskar Pyasi, Advocates.
For Respondents No. 4 & 5	:	None though served.
For Respondent No.6	:	Smt. Chitra Shrivastava, Adv.

Hon'ble Shri Gautam Chourdiya, J

CAV Judgment

This appeal is by the claimant, mother of the deceased, against the award 29.11.2008 passed by II Additional Motor Accident Claims Tribunal (FTC), Mungeli, Distt. Bilaspur (CG) in Claim Case No.49/2007 awarding total compensation of Rs.2,52,500/- with interest @ 9% per annum from the date of application till realization, fastening liability on the non-applicants No. 1 to 3 jointly and severely.

02. As per claim petition, on 24.10.2004 due to rash and negligent driving of Tractor bearing No. CG 10A 5456 and Trolley No. CG 10A 5457 by non-applicant No.1 Kamal Prasad, which was owned by non-applicants No.2 Janakram, non-applicant No.3 Shivdas and one Sonu (who died during pendency of claim petition) jointly, and insured with non-applicant No.6 Oriental Insurance Co. Ltd., Manoj Kumar who was travelling in the said vehicle fell down from the vehicle, came under the wheel of trolley and died on the spot.

03. Against the death of Manoj Kumar, his mother Kumari Bai filed a claim petition under Section 166 of the Motor Vehicles Act (in short “the Act”) which was registered as Claim Case No.49/2007 and father of the deceased Gangaprasad along with one Smt. Kumari Bai also filed a petition under Section 166 of the Act, which was registered as Claim Case No.51/2007. Both these petitions were decided by the Tribunal by a common award dated 29.11.2008. While making apportionment of the compensation, the Tribunal ordered that out of the awarded amount, 80% would be payable to father of the deceased Gangaprasad and 20% would be payable to mother of the deceased Kumari Bai @ Laxmi Bai.

04. Aggrieved by the aforesaid award, mother of the deceased Kumari Bai @ Laxmi Bai has filed this appeal for enhancement of compensation. She has also challenged the apportionment made by the Tribunal and the exoneration of insurance company of its liability.

05. No appeal has been filed by the insurance company.

06. Learned counsel for the appellant submits that the insurance company has wrongly been exonerated by the Tribunal. In this case, there is a package policy for agriculture purpose taken by the owner of the vehicle. Non-applicants No.2 Janakram, non-applicant No.3 Shivdas and one Sonu were joint owner of the offending vehicle and Sonu died during pendency of claim petition. It is an admitted fact that the deceased died in an accident arising out of use of the offending vehicle; the driver was having a valid and effective driving licence and as such, there was no breach of policy conditions and therefore, the Tribunal ought to have fastened liability on the insurance company.

He further submits that the deceased was 16 years of age at the time of accident, so multiplier of 18 ought to have been applied as per decision in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121*** on the basis of age of the deceased and not age of his parents whereas the Tribunal applied multiplier of 10. He submits that towards future prospects, there should have been 40% addition to the annual income of the deceased and under the conventional heads, the Tribunal should have awarded Rs.30,000/- as per decision in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, but the Tribunal has not done so.

07. Learned counsel for the appellant further submits that as per evidence adduced by the claimant, Kumari Bai @ Laxmi Bai is mother of the deceased and Gangaprasad is father of the deceased, but in claim case No.51/2007 filed by Gangaprasad, mother of the deceased Kumari Bai @ Laxmi Bai was not made a party and as such, she could not adduce any evidence in that case. Thus, both Kumari Bai @ Laxmi Bai and Gangaprasad are biological parents of the deceased. Therefore, considering the fact that Kumari Bai @ Laxmi Bai was about 35 years of age at the time of filing claim petition and father Gangaprasad was 42 years of age, the apportionment of compensation should have been in the ratio of 60 : 40 but the Tribunal has done it in the ratio of 20 : 80 which is per se illegal and bad in law.

08. Learned counsel for respondents No. 1 to 3/driver and owner opposes the contention of learned counsel for the appellant regarding enhancement of compensation and submits that in this case, deduction towards personal and living expenses should have been 50% whereas the Tribunal has deducted 1/3rd. However, as regards breach of policy, learned counsel supports the contention of the appellant and submits that there was no breach of policy conditions. As per Ex. NA-1, particulars of driving licence of non-applicant No.1 Kamal Prasad go to show that its validity was from 5.1.1999 to 16.8.2018, it was for motorcycle with gear and LMV and since the offending vehicle falls in the category of LMV, he was having a valid and effective driving licence to drive the same on the date of accident. NAW-4 Arvind Khalkho admitted in para-3 of his statement that NA-2 driving licence was verified by the insurance company and its validity was from 5.1.1999 to 16.8.2018. As such, from the evidence on record it stands proved that on the date of accident, the driver was having a valid and effective driving licence to drive the offending vehicle.

09. Learned counsel for respondent No.6/insurance company has supported the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly exonerated the insurance company of its liability. No premium was taken by the insurance company for covering the risk of the deceased and there was no sitting capacity in the offending vehicle for the deceased. As such, on account of there being breach of policy conditions, the Tribunal has rightly exonerated the insurance company and there is no need to interfere with the award impugned.

10. Heard learned counsel for the parties and perused the material available on record.

11. So far as quantum of compensation is concerned, considering the pleadings of the respective parties, the evidence adduced by them, it is found that the deceased was 16 years of age at the relevant time. The notional income of the deceased @ Rs.3000/- per month assessed by the Tribunal appears to be just and proper looking to the price index at the relevant time. However, the Tribunal has erred in

applying multiplier of 10 in this case whereas in view of decision in Sarla Verma (supra) it should have been 18. Likewise, the Tribunal should have deducted 50% towards personal and living expenses of the deceased but it has deducted 1/3rd. Further, as per decision in *Pranay Sethi* (supra), there should have been 40% addition to the annual income of the deceased towards future prospect and Rs.30,000/- should have been awarded towards conventional heads but the Tribunal appears to have ignored the same. Thus, keeping in view the aforesaid decision, the compensation is re-calculated as under:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs.3,000/- per month	36,000/- per annum
02.	40% of (i) above to be added towards future prospects	36,000 + 14,400/- = 50,400/-
03.	50% deduction towards personal and living expenses of the deceased	25,200/-
04.	Multiplier of 18 to be applied	4,53,600/-
05.	Towards loss of estate and for funeral expenses	Rs.30,000/-
	Total compensation	**Rs.4,83,600/-**

12. As regards apportionment of the compensation, considering the overall facts and circumstances of the case, the conduct of the parties, age of the claimants and the fact that the finding of the Tribunal that deceased was son of claimant Kumari Bai @ Laxmi Bai has not been challenged by father Gangaprasad by filing appeal, this Court is of the opinion that ends of justice would be served if they are awarded compensation in the ratio of 50 : 50. Thus, out of the total amount of compensation of Rs.4,83,600/-, claimant Kumari Bai @ Laxmi Bai (mother of the deceased) shall be entitled for Rs.2,41,800/- and father of the deceased Gangaprasad shall also be entitled for Rs.2,41,800/-. They shall also be entitled for interest accrued on the aforesaid sum @

9% from the date of application till realization. The amount, if any, already paid to them shall be accordingly adjusted.

13. As for liability, from perusal of the evidence available on record it is seen that on the date of accident the deceased was sitting on the engine of the offending vehicle; as per insurance policy, no premium was taken by the insurance company for covering risk of such person and further there was no sitting capacity for such person in the offending vehicle. In these circumstances, on account of there being breach of policy conditions, the Tribunal was justified in exonerating the insurance company.

14. In the matter of ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796***, the Hon'ble Supreme Court held as under:

> "13. The only question, which arises for consideration in these appeals, is whether the appellants are entitled for an order against the Insurer of the offending vehicle, i.e., (respondent No. 3) to pay the awarded sum to the appellants and then to recover the said amount from the insured (owner of the offending vehicle-Tata Sumo)-respondent No.1 in the same proceedings.
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> 14. The aforesaid question, in our opinion, remains no more res integra. As we notice, it was subject matter of several decisions of this Court rendered by three Judge Bench and two Judge Bench in past, viz., National Insurance Co. Ltd. vs. Baljit Kaur & Ors., (2004) 2 SCC 1, National Insurance Co. Ltd. vs. Challa Upendra Rao & Ors., (2004) 8 SCC 517, National Insurance Co. Ltd. vs. Kaushalaya Devi & Ors., (2008) 8 SCC 246, National Insurance Co. Ltd. vs. Roshan Lal, (2017) 4 SCC 803 and National Insurance Co. Ltd. vs. Parvathneni & Anr., (2009) 8 SCC 785.
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> 15. This question also fell for consideration recently in Manager, National Insurance Company Limited vs. Saju P. Paul & Anr., (2013) 2 SCC 41 wherein this Court took note of

entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of “pay and recover”.

16. R.M. Lodha, J. (as His Lordship then was and later became CJI) speaking for the Bench held in paras 20 and 26 as under: (Saju P. Paul Case)

> *“20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).*
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> *26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur, (2004) 2 SCC 1 and Challa Upendra Rao, (2004) 8 SCC 517 should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 (National Insurance Co. Ltd. vs. Saju P. Paul, and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the*

> *case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in Challa Upendra Rao(supra)."*

19. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in Saju P. Paul's Case (supra). Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in Saju P. Paul's Case (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in Saju P. Paul's case (supra). That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.

20. It is for all these reasons, we find no good ground to take a different view than the one consistently being taken by this Court in all previous decisions, which are referred supra, in this regard.

21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then

> to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra."

15. Therefore, considering the facts and circumstances of the case and the decision of the Hon'ble Supreme Court in the matter of ***Manuara Khatun*** (supra) this Court feels it proper to order for "*pay and recover*" in this case. Hence, respondent No.6/Oriental Insurance Company Ltd. is directed to pay the awarded sum to the claimants and then recover the same from the owner of the offending vehicle as per law laid down in Manager, National Insurance Company Limited vs. Saju P. Paul & Anr., (2013) 2 SCC 41.

16. In the result, the appeal is allowed in part with modification in the impugned award as per paras 12 and 15 of this judgment.

Sd/

(Gautam Chourdiya)

Judge

Khan