

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 71 OF 2013**

IFFCO Tokio General Insurance Co. Limited, 3rd Floor, Shop No. 345-347 Ganga Shopping, Near Mata, G.E. Road, Raipur, Tehsil & District Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Smt. Leela Bai, wife of Late Shri Shivbhajan, aged about 44 years
2. Santoshi, daughter of Late Shri Shivbhajan, aged about 29 years
3. Kumari Jyoti, daughter of Late Shri Shivbhajan, aged about 26 years
4. Kumari Aarti, daughter of Late Shri Shivbhajan, aged about 24 years
5. Abhishek, son of Late Shri Shivbhajan, aged about 15 years
6. Suruchi, daughter of Late Shri Shivbhajan, aged about 12 years

Respondent Nos. 5 & 6 are being minors are represented through their mother
Smt. Leela Bai

All residents of Village Passan, Thana Pasaan, Tehsil Katghora, District Korba,
Chhattisgarh

7. Durgesh Warkade, son of Shri Tej Kumar Warkade, aged about 21 years,
resident of Village Dhanpur, Thana & Tehsil Pendra, resident of 165, Kanshi
Nagar, Raipur, District Raipur, Chhattisgarh
8. Baidnath Singh Warkade, son of Shri Lalji Warkade, through T.K. Warkade,
C.S.TD.C.-4, M.R. Colony, Shailendra Nagar, Raipur, District Raipur,
Chhattisgarh.

---- Respondents

For Appellant	: Mr. Amrito Das with Mr. P. Acharya, Advocates.
For Respondents No. 1 to 6	: Mr. Yogendra Chaturvedi, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**Judgment On Board****26/06/2018**

1. By the instant appeal, the Insurance Company is challenging the legality and validity of the impugned award dated 05/10/2012 passed by the Additional Motor Accident Claims Tribunal, Pendra Road, District Bilaspur (C.G) (in short 'Claims Tribunal') in Motor Accident Claim Case No.53/2011 wherein the learned

Claims Tribunal had allowed the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'M.V. Act') and passed an award of Rs.14,22,100/- in total on account of death of late Shiv Bhajan and fastened the liability on the Insurance Company.

2. The brief facts of the case, are that on 20/10/2010, late Shiv Bhajan who is a Constable and was coming towards the Court at Pendra in discharge of his duty on his motorcycle and when he reached near *Dubatiya* square Pendra at that relevant time, the motorcycle bearing No.C.G.04/CA/8850 (offending vehicle) driven by respondent No. 7, dashed the motorcycle of the deceased by coming on wrong side. In the aforementioned accident, Shiv Bhajan sustained several grievous injuries on his body and he was immediately taken to the Hospital at Pendra, where during the course of treatment, he died.

3. The claimants, who are widow and children of the deceased have filed an claim application under Section 166 of the M.V. Act before the competent Claims Tribunal claiming Rs.24,41,144/-, on the ground that all of them were dependent on the deceased. The respondents No. 7 & 8, who are said to be driver and owner of the offending vehicle submitted their reply and have denied all the allegations made by claimants in their claim application and further stated that the deceased was himself driving his motorcycle rashly and negligently, due to which, the accident occurred.

4. The appellant/Insurance Company also submitted the reply to the claim application and have denied all the adverse pleadings made in the claim application. The appellant/Insurance Company have further pleaded that there is no certificate or document with regard to prove of age as also the prove of income of the deceased on the date of accident. The appellant/Insurance Company further taken a plea that there was violation of the conditions of the insurance policy, therefore, it may not be made liable for payment of

compensation, if any, along with the other grounds mentioned in the reply. The appellant/Insurance Company have further pleaded that a copy of the license, which has been issued in Form-7 is a duplicate license and not a original one. The appellant/Insurance Company have lastly pleaded that there was an head on collusion between two motorcycles, therefore, the deceased was also contributory negligent in the accident, but the learned Claims Tribunal have failed to consider the said plea.

5. The learned Claims Tribunal after considering the pleadings, evidence and other materials available on record had arrived at a conclusion that the driver of the offending vehicle was having a valid and effective driving license on the date of the accident, which is (Ex. D-3) and further considering that as per the salary certificate issued by the Superintendent of Police, Bilaspur, the income pleaded has been proved by the claimants and had arrived at a conclusion that the claimants are entitled for compensation to the tune of Rs.14,22,100/- in total along with 6% yearly interest from the date of passing of the award till the date of its realization and fastened the liability upon the appellant/ Insurance Company.

6. This impugned award was challenged by the appellant/Insurance Company on the ground that the driving license (Ex. D-3) has been issued on 12/11/2010, which is after the date of the accident with retrospective effect i.e. 28/07/2006, therefore, looking to the particulars of the license, it appears to be the suspicious document and could not have been relied upon by the learned Claims Tribunal.

7. I have perused the records of the learned Claims Tribunal as well as the document Ex. D-3, which is a driving license, in which, it has been clearly mentioned that the original date of issuance of license was 28/07/2006 and that license was valid up to 27/07/2026. From bare perusal of the aforementioned

document, it reveals that though the duplicate license might have been issued on 12/11/2010, but the original license was issued to respondent No. 7 on 28/07/2006 for driving the 'Motorcycle with Gare' and 'Light Motor Vehicle' (Non-Transport). Further considering the document placed on record by the appellant/Insurance Company along with an application for taking additional document on record, which is a document issued by the Transport Department with regard to the history of the driving license of respondent No. 7. From perusal of that document, it is clear that as per the records of the Transport Department, the license was originally issued on 28/07/2006, which was valid up to 27/07/2026, whereas the date of accident was 20/10/2010. Considering the submissions of the learned counsel for the appellant/Insurance Company and the perusing the driving license (Ex. D-3) as well as the driving license history produced by the appellant in this appeal, on the date of accident, the driver of the offending vehicle was having a valid and effective driving license to drive the offending vehicle, therefore, the grounds raised by the appellant/Insurance Company in this appeal with regard to violations of the conditions of the Insurance Policy for want of valid and effective driving license of the driver on the date of accident does not sustained and no ground is made out for interfering in the award passed by the learned Claims Tribunal fastening liability upon the appellant/Insurance Company.

8. On perusal of the records and the evidence led by the parties, it reveals that the appellant/Insurance Company had not led any evidence and not brought any cogent and reliable piece of evidence on record to prove the plea of contributory negligence, and therefore, this ground is also not sustainable in view of the judgment passed by the Hon'ble Supreme Court in the matter of ***Jiju Kuruvila and others v. Kunjamma Mohan and others, (2013) 9 SCC 166***, in which, the Hon'ble Supreme Court has held as under:-

“20.5 The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.”

9. I have also heard the learned counsel appearing for respective parties on cross-objection filed by respondents No. 1 to 6/claimants under Order 41 Rule 22 of the Civil Procedure Code, 1908 for enhancement of the award on the ground that the learned Claims Tribunal had not awarded the compensation towards the loss of income on future prospects as also the learned Claims Tribunal awarded very meager amount on other conventional heads and deducted the deductions made in salary slip towards savings of the deceased while assessing the monthly salary for calculating loss of income.

10. In the case in hand, on the date of accident, the deceased was aged about 51 years as per the service records, therefore, in view of the law laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others, AIR 2017 SC 5157***, 15% of additional income towards future prospects on the proved income is to be added in the monthly income of the deceased. The Hon'ble Supreme Court in the aforementioned judgment itself have also held that the claimants in the case of fatal accidents

are also entitled for Rs.70,000/- of total amount towards conventional heads. For the aforementioned reasons, the award passed by the learned Claims Tribunal is recalculated as below :-

The monthly gross income of the deceased as per (Ex. P-3) was Rs.15,842/-, but the learned Claims Tribunal had illegally made deduction in the salary slip towards DPF and Life Insurance totaling to Rs.1,700/- from the gross salary. In view of the law laid down by the Hon'ble Supreme Court, the said deduction made in the salary slip cannot be deducted from the income of the deceased, therefore, the monthly income of the deceased is to be taken to Rs.15,842/- and by multiplying the same with 12, the yearly income comes to Rs.1,90,104/-, in which, 15% additional income adding towards future prospects, that comes to Rs.28,515.60/- and after rounding it, it comes to Rs. 28,515/-. The total yearly income of the deceased based on the aforementioned calculation would be Rs.2,18,619/-. After deducting 1/4th of income towards personal expenses of deceased, the yearly loss of income would be Rs.1,63,964/-. As the deceased was aged about 51 years on the date of accident, the multiplier of 11 would be applicable and the loss of income comes to Rs.18,03,604/- (Rs. 1,63,964/- X 11). Apart from the loss of income as calculated above, the claimants are also entitled for total Rs.70,000/- towards other conventional heads.

As per aforementioned recalculation, the respondents No. 1 to 6/claimants are now entitled for total compensation of Rs. 18,73,604/-. Since the learned Claims Tribunal has already awarded Rs.14,22,100/-, after deducting the same, the respondents No.1 to 6/claimants are entitled for additional compensation to a sum of Rs.4,51,504/-. This additional amount of compensation shall carry interest @ 6% p.a. as awarded by the Claims Tribunal from the date of filing of the claim petition till realization.

11. For the reasons stated above, the appeal filed by the appellant/Insurance Company being devoid of merit. The same is liable to be and is dismissed. The cross objection filed by the respondents No. 1 to 6/claimants is allowed in part and the award passed by the learned Claims Tribunal is modified accordingly.

12. No order as to costs.

**Sd/-
(Parth Prateem Sahu)
Judge**