NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 914 of 2013

1. Smt. Hirmat Bai Sagarwanshi (Gond) W/o Late Baratu Sagarwanshi Aged About 40 Years
2. Roshan Sagarwanshi S/o Late Baratu Sagarwanshi Aged About 23 Years

   Both are R/o Shivnagar, Mathpuraina, Raipur, At Present R/o Ramnagar, Supela-Bhilai, Police Station Bhilai, Tahsil Durg, Ciil and Revenue District Durg, Chhattisgarh

---- Appellants

Versus

1. Chetan Pal S/o Khedu Pal Aged About 25 Years R/o Village Chikhli, P.S. Palari, Civil and Revenue District Raipur, Chhattisgarh (Driver)
2. Kheduram Pal S/o Dukalha Ram Pal R/o Village Chikhli, P.S. Palari, District Raipur, Chhattisgarh (Owner)

3(a) Manager, Reliance General Insurance Company Limited, Ravi Bhawan, G.E. Road, Raipur, Tahsil and P.S. Raipur, District Raipur, Chhattisgarh

(b) Branch Manager, Reliance General Insurance Company Limited, Near Vijya Bank, Nehru Nagar (East), Bhilai, P.S. Bhilai, District Durg, Chhattisgarh

---- Respondents

For Appellants	:	Mr. Vikas Pandey, Advocate on behalf of Mr. Goutam Khetrapal, Advocate
For Respondents No.3(a) & (b)	:	Mr. Sourabh Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/02/2018

1. Present is an appeal by the Claimants seeking for enhancement. The challenge is to the award dated 10.05.2013, passed by the 3rd Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh, in Claim Case No.387/2011, whereby the Tribunal in a death case of a 13 years old boy has awarded a compensation of Rs.2,77,000/- with interest @ 7.5% per annum.

2. While passing the impugned award the Tribunal has exonerated the Insurance Company of its liability and has fastened the liability upon the Driver and Owner of the vehicle i.e. the respondent No.1 & 2.

3. The counsel for the appellants submits that firstly the exoneration of the Insurance Company is bad in law in view of the facts of the case and secondly the amount of compensation is on the lower side and the same deserves for suitable enhancement. The deduction made towards personal expenses would be 1/3rd and not 1/2 as has been made by the Tribunal and thus prayed for the suitable modification of the award.

4. Counsel for the Insurance Company however opposing the appeal submits that it is a case where the Driver at the first instance did not have a valid license, in as much as there was no proper endorsement permitting him to drive a commercial vehicle, as the vehicle involved in the accident was a Matador used for commercial purpose. He submits that since the Driver only had a license to drive a Light Motor Vehicle, he did not have the permission to drive a commercial vehicle, therefore, there is a breach of policy condition. It was further contended that even otherwise the deceased in the instant case Kishore Sagarwanshi was a gratuitous passenger in the vehicle and that the Insurance Company while issuing the policy had not covered the risk of any gratuitous passenger on the said vehicle. He submits that the risk covered was only that of third party plus the Owner, Driver and the Cleaner and not anybody else and thus prayed for the rejection of the appeal, so also prayed for upholding the award so far as the liability which has been fastened upon the Owner.

5. Having heard the contentions put forth on either side and on perusal of record, so far as the first ground on which the liability has been shifted upon the Owner that of the Driver not having a valid license is concerned, the same is no longer ***res integra*** as the issue stands

decided in the recent Larger Bench decision of the Hon'ble Supreme Court in the case of ***"Mukund Dewangan vs. Oriental Insurance Company Limited" AIR 2017 S.C. 3668.*** The said judgment has been further reiterated again in the case of ***"Sant Lal vs. Rajesh and Others"*** reported in ***AIR 2017 S.C. 4054.***

6. As regards the second ground of the deceased being a gratuitous passenger is concerned, though the Claimants have claimed that the deceased was a worker engaged in contract work, but what cannot be brushed aside is the fact that the deceased was a 13 years old boy, it cannot be presumed that at that age somebody would be going in for a contract employment in the village. However, there is no substantive evidence led by the respondents to show that the deceased in the instant case was a gratuitous passenger having boarded the vehicle on payment of any fair to the Owner of the offending vehicle. It also reflects that the policy issued in the instant case was a package policy. The package policy under the normal circumstances also covers the risk of an occupant, though in the instant case separate extra premium has been charged for covering the risk of the Driver, Owner and the Conductor. Since, there was a package policy issued and the Insurance Company having obtained the substantive premium of a package policy, this Court is of the opinion that it is a fit case where the doctrine of '**pay and recovery**' could be applied and accordingly the present appeal deserves to be modified to the extent of the liability is concerned.

7. It is ordered that the Insurance Company in the instant case shall pay the entire amount awarded and shall recover the same from the respondent No.1 & 2, the Driver and Owner of the offending vehicle.

8. So far as the quantum of compensation is concerned, the Tribunal has rightly assessed the income of the deceased at Rs.3000/- per month and Rs.36,000/- yearly, of which if 1/3rd is deducted towards the personal expenses, the amount left with the Rs.24,000/-, which if multiplied applying the multiplier of 15, the amount would come to Rs.3,60,000/- instead of Rs.2,70,000/- as awarded by the Tribunal. In addition, the Claimants shall also be entitled for the amount of compensation under the conventional head as awarded by the Tribunal of Rs.7000/- to make the total compensation payable at Rs.3,67,000/- instead of Rs.2,77,000/-.

9. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

10. The entire amount of compensation shall be deposited by the Insurance Company with liberty to recover the same from the Driver and Owner of the offending vehicle i.e. the respondent No.1 & 2.

11. Thus the appeal stands allowed and the impugned award stands modified.

Sd/-
(P. Sam Koshy)
Judge

Ved