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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 705 of 2014

1. Shururam Baghel S/o Late Sadhuram Aged About 44 Years
2. Smt. Gorimani W/o Shururam Baghel Aged About 42 Years

Both are R/o Bazarpara, Mundagaon, P.S. Bhanpuri, Distt. Bastar C.G.

---- Appellants

Claimants

Versus

1. Parmeshwar Sinha S/o Sukuram Sinha Aged About 40 Years R/o Garenga, Post- Garenga, Distt. Bastar C.G., - Driver
2. Pradeep Pathak S/o Upendra Pathak Aged About 36 Years R/o Sargipal, Post- Sargipal, Police Chowki- Bakawand, Distt. Bastar C.G.- Owner of the vehicle.
3. The Oriental Insu. Co. Ltd. Thru- Branch Manager, Main Road, Jagdalpur, Distt. Bastar C.G. - Insurer

---- Respondent

For Appellants	:	Shri PK Dhurandhar, Advocate.
For Respondent No.3	:	Shri Anumesh Shrivastava, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

23/10/2018

This is claimants' appeal under Section 173(2) of Motor Vehicles Act against the award dated 9.4.2014 passed by First Motor Accident Claims Tribunal, Bastar at Jagdalpur (CG) in Claim Case No.22/2013.

02. As per averments in the claim petition, on the date of accident i.e. 31st July, 2012 Lachchhin Ram Baghel, aged 26 years, earning Rs.6000/- per month by working as talior, was dashed by bus bearing registration No. CG 17F/0320 driven by respondent No.1 in a rash and negligent manner, as a result of which Lachchhin Ram died on the

spot. At the time of accident, the vehicle in question was owned by respondent No.2 and insured with respondent No.3.

03. Respondents No. 1 & 2 remained ex-parte before the Tribunal and respondent No.3 contested the case on general grounds that the driver was not having valid and effective driving licence and the vehicle was being driven in violation of policy conditions and as such, respondent No.3 is not liable to pay any compensation to the claimants.

04. The Tribunal vide award dated 9.4.2014 considering the evidence led by the parties awarded a total compensation of Rs.3.28 lacs in favour of the claimants with interest @ 6% per annum from the date of application till realization, fastening the liability on the insurance company. However, subsequently vide order dated 11.4.2014 the said award in respect of liability was modified and it was fastened upon respondent No.2/owner of the vehicle as in the award dated 9.4.2014 the Tribunal had recorded a finding regarding breach of policy conditions but due to inadvertence, the insurance company was held liable for satisfying the award.

05. Learned counsel for the appellants submits that on the date of accident, there was no breach of policy conditions on the part of owner of the vehicle and as such, the Tribunal has erred in fastening liability on the owner and exonerating the insurance company. He submits that from the evidence of the applicants and non-applicants, it stands proved that the deceased was 26 years of age on the date of accident, he was working as tailor and thereby earning Rs.6000/- whereas the Tribunal has wrongly assessed his income at Rs.3000/- p.m. Even if the notional income of the deceased is considered, as per minimum wages prevalent at the relevant time, it comes to approximately Rs.5000/- p.m. This apart, the Tribunal has not awarded any amount towards future prospect whereas in view of decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, considering the age of the deceased and the nature of his employment, 40% of his annual income ought to have been added thereto towards future prospect. Lastly, he

submits that under the conventional heads also the amount awarded by the Tribunal needs to be enhanced suitably.

06. On the other hand, learned counsel appearing for respondent No.3/insurance company supporting the impugned award submits that the Tribunal considering the entire evidence on record has rightly passed the award which needs no interference by this Court.

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

08. So far as liability part is concerned, the Tribunal has exonerated the insurance company of its liability on the ground that the vehicle in question was being plied in breach of permit conditions as the vehicle was being driven on a route other than the route prescribed in the permit. The Tribunal has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *National Insurance Co. Ltd. Vs. Challa Bharathamma, 2005(1) TAC 4 (SC),* wherein the insurance company was exonerated on the ground of breach of permit conditions.

However, in the present case, from the document of Ex.P/3 i.e. spot map, it is clear that the accident took place at Bhanpuri-Ghotiya road and as per documents Ex.NA-3C & NA-3, permit was for Jagdalpur-Bhanpuri route. There is no specific evidence before the Court that Jagdalpur is not accessible through Bhanpuri-Ghotiya route. In this case, only general pleading was taken by the insurance company before the Tribunal regarding breach of permit conditions in the written statement whereas according to evidence adduced before the Tribunal it is proved that the owner of the vehicle had a valid and effective permit for Jagdalpur-Bhanpuri route. This Court in the matter of ***Bajaj Allianz General Insurance Co. Ltd. Vs. Power Julius and others, 2013(2) CGLJ 395***, held that plying of vehicle without a permit is an infraction, therefore, in terms of Section 149(2) of the Motor Vehicles Act, defence is available to the insurer on that aspect only.

09. Thus, considering the overall evidence available on record, oral and documentary, it cannot be said that the vehicle in question was being driven in breach of permit conditions and as such, the Tribunal

has erred in exonerating the insurance company of its liability and fastening the same on the owner of the vehicle.

10. As regards the quantum of compensation, though no cogent and reliable evidence could be adduced by the claimants in respect of income of the deceased, however, considering the fact that the deceased was a skilled labour, doing the job of tailor, the minimum wages at the relevant time, his monthly income can safely be taken as Rs.4500/- per month. Thus, considering the age and status of the deceased, the nature of his job, keeping in view the decision of the Hon'ble Supreme Court in ***Pranay Sethi*** (supra) and ***Sarla Verma & others Vs. Delhi Transport Corporation, (2009) 6 SCC 121***, the amount of compensation is recalculated as under:

Sl. No.	**Heads**	**Calculation**
01.	Income of the deceased	Rs.4,500/- per month i.e. Rs.54,000/- per annum
02.	40% of (i) above to be added towards future prospects	(54,000 + 21,600) = Rs.75,600/-
03.	50% deduction towards personal and living expenses of the deceased as he was unmarried	Rs.37,800/-
04.	Multiplier of 17 to be applied	Rs.37,800 x 17 = Rs.6,42,600/-
05.	Towards loss of estate and for funeral expenses	Rs.30,000/-
06.	Towards filial consortium	Rs. 40,000/-
	Total compensation	**Rs.7,12,600/-**

11. In the result, the appeal is allowed in part. Since the Tribunal has already awarded Rs.3.28 lacs, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.3,84,600/- with interest @ 6% per annum from the

date of application till realization. The liability to pay the entire amount of compensation shall be of the insurance company. The impugned award stands modified to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge

Khan