NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 462 of 2015

1. Devsingh S/o Shri Sitaram Dewangan Aged About 49 Years
2. Smt. Kamla Bai W/o Shri Devsingh Dewangan Aged About 44 Years
3. Smt. Putai Bai Wd/o Late Shri Sitaram Dewangan Aged About 70 Years

All R/o Shivaji Nagar, Kurud Road, Kohka, Behind Pandit Madan Mohan Malviya School, Chowki Smriti Nagar, PS Supela, Tahsil & Distt. Durg (CG)

---- Appellants
Claimants

Versus

1. Bholaram S/o Shri Keshav Sav Sahu Aged About 23 Years R/o Shankar Nagar, Ward No. 18, Camp-2, Near Mehman Koyla Depot, P.S.- Chawni, District- Durg, Chhattisgarh. - Driver.
2. Deepak Sen S/o Shri Jatischandra Sen R/o M.P. Housing Board, Lig-131, Nehru Nagar, Near SBI Bank, Bhilai, Tahsil And District-Durg, Chhattisgarh – owner.
3. National Insurance Company Limited Through Divisional Manager, G.E. Road, Power House, Bhilai, Tahsil And District-Durg, Chhattisgarh. Insurer.

---- Respondents

For Appellants	:	Shri PR Patankar and Shri Vedant Bhelonde, Advocates.
For Respondent No.3	:	Shri Gautam Khetrapal, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

07/12/2018

This appeal is by the claimants against the award 28th July, 2014 passed by 6th Additional Motor Accident Claims Tribunal, Durg in Claim Case No.365/2011 awarding total compensation of Rs.4,28,500/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No.1 & 2/driver & owner jointly and severely while exonerating non-applicant No.3/insurance company of its liability on the ground of breach of policy.

In fact, the Tribunal assessed the total loss of dependency at Rs.4,32,000/-, however, considering the fact that a separate claim case bearing No.16/2011 has been filed by wife and minor son of the deceased for compensation against the death of the deceased, 50% of the same i.e. Rs.2,16,000/- was awarded to the parents of the deceased alongwith the amount of conventional heads of Rs.2,12,500/-, totaling to Rs.4,28,500/- plus interest as mentioned above.

02. As per claim petition, on 17.3.2011 while deceased Nathuram Dewangan was travelling in vehicle D.I. 207 No. CG 07 C 9054 as a labour, due to rash and negligent driving by non-applicant No.1 Bholaram, the said vehicle turned turtle as a result of which Nathuram suffered grievous injuries and died on the spot. At the relevant time, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

03. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellants/claimants submits that the accident took place on 17th March, 2011, at that time, minimum wages was approximately Rs.4,500/- but the Tribunal has taken it as Rs.3000/. Further, no amount towards future prospect has been granted in this case whereas in view of decision in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, there should be 40% addition to the annual income of the deceased under this head. He further submits that the Tribunal has wrongly exonerated the insurance company of its liability on the ground that driver of the offending vehicle was not having a valid and effective licence to drive the same whereas in view of decision of the Hon'ble Supreme Court in the matter of ***Mukund Dewangan Vs. Oriental Insurance Company Ltd.***, reported in ***(2017) 14 SCC 663***, the driver was though having licence to drive LMV, yet he was competent to drive the offending vehicle without there being any requirement of endorsement in the same for driving the said vehicle.

05. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal

considering all the relevant aspects of the matter has rightly awarded compensation, which needs no interference by this Court. However, he does not dispute the fact that no counter appeal has been filed by the insurance company in this case.

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

07. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.16,000/- per month by doing the work of diesel refilling in Airtel Mobile Company, however, no evidence, oral or documentary has been adduced in support thereof. In these circumstances, considering the fact that the accident occurred in March, 2011 when minimum wages of skilled labour was Rs.4000/-, the income of the deceased can safely be taken as Rs.4000/- per month. Further, considering the age of the deceased i.e. 23 years as assessed by the Tribunal on the basis of postmortem report and other documents, which appears to be just and reasonable, in view of decision in *Pranay Sethi* (supra), there should be 40% addition to the annual income of the deceased towards future prospect.

08. As regards deduction towards personal and living expenses, from perusal of the impugned award it is seen that apart from the claimants herein, who are parents and grand-mother of the deceased, the wife and minor son of the deceased had also filed a claim petition bearing No. 16/2011, which was decided by a separate award dated 28.7.2014 by the Tribunal. In both the claim cases, the Tribunal assessed the total compensation and then 50% of the same was granted in favour of parents of the deceased and 50% in favour of the wife and minor son of the deceased. Thus, in this case, the total number of dependents on the deceased is three i.e. mother, wife and minor son and not father and grand-mother of the deceased. Being so, deduction has to be 1/3rd towards personal and living expenses of the deceased in view of decision of the Hon'ble Supreme Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***.

09. On the basis of aforesaid discussions, the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs.4,000/-	48,000/- per annum
02.	40% of (i) above to be added towards future prospects	48,000 + 19,200 = 67,200/-
03.	1/3rd deduction towards personal and living expenses of the deceased	67,200-22,400 = 44,800/-
04.	Multiplier of 18 to be applied	44,800 x 18 = 10,30,400/-

As regards the amount of Rs.2,12,500/- awarded by the Tribunal towards loss of love and affection and for funeral expenses to the claimants herein and Rs.2,12,500/- awarded to the wife and minor son in claim case No.16/11 towards loss of spousal consortium, parental consortium respectively and funeral expenses, considering the overall facts and circumstances of the case, the loss of parental, spousal and filial consortium, the same is being kept intact. Thus, the total compensation comes to Rs.14,55,400/-.

10. So far as apportionment of the above compensation between the claimants is concerned, considering the fact that at the time of filing of claim petition by wife and minor son of the deceased, they were 22 years and 2 ½ years of age, fair submission made by counsel appearing for the claimants in this appeal that there is no objection if 2/3rd of the compensation is awarded in favour of wife and minor son of the deceased and the fact of dependency, this Court is of view that parents of the deceased shall be entitled for 1/3rd of the above amount which comes to Rs.4,85,133/- and the wife & minor son of the deceased shall be entitled for 2/3rd of the total compensation which comes to Rs.9,70,267/-. The aforesaid amount shall carry interest @ 6% per annum from the date of application till realization. The amount, if any, already paid to the respective claimants shall be adjusted accordingly.

11. So far as liability part is concerned, the Tribunal has fastened liability on the owner/non-applicant No.2, jointly and severely along with driver/non-applicant No.1 on the ground that driver was not having a valid and effective licence to drive the offending vehicle. From perusal of Ex.D/1 i.e. particulars of driving licence of the driver, it is seen that the driver/non-applicant No.1 was having licence to drive LMV and it was valid till 23.7.2030. The accident occurred on 17.3.2011 and as such, the driver was having a valid licence to drive the vehicle. Now it is to be seen whether the driver was competent to drive the offending vehicle. From perusal of the insurance policy it is found that gross weight of the offending vehicle was 2950 kg.

At this juncture, the principles laid down in *"Mukund Dewangan* (supra) is to be noted as the question involved herein, as to whether a driver who is having a license to drive the "light motor vehicle" is competent to drive "transport vehicle" of that class in absence of such an endorsement, was considered in the said case and it was held therein as under:-

> "Held, the effect of amendment of Form 4 by insertion of "transport vehicle" related only to categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same – There was no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect – Further held, even otherwise the Form could not control the substantive provisions carved out in Ss. 10(2)(d) and 10(2)(e) and the interpretation of the Form has also to be in tune with the Statement of Objects & Reasons and the provisions of the Act inserted by virtue of the amendment – Interpretation of Statutes – Basic Rules – Harmonious Construction – Subordinate/Delegated Legislation/Rules Under the Act – Central Motor Vehicles Rules, 1989, Form 4 and R.14 (before and after 28.03.2001)"

12. Applying the ratio of law laid down by the Supreme Court in the matter of Mukund Dewangan (supra), it is apparent that the driver/non-applicant No.1 was holding a valid and effective driving license and even in absence of any endorsement as such in his driving license authorizing him to drive the said transport vehicle, it cannot be held that he was not possessing the valid and effective driving license at the relevant time. The finding so recorded by the learned Claims Tribunal

in this regard is, therefore, liable to be and is hereby set aside. It is accordingly held that the driver of the offending vehicle was holding the valid and effective driving license and was not driving the same in violation of the terms and conditions of the insurance policy. Being so, it is held that the non-applicant No.3/insurance company, jointly and severely along with non-applicants No. 1 & 2/driver & owner, is liable to satisfy the compensation awarded to the claimants.

13. In the result, the appeal is allowed. The impugned award is modified to the following extent:

(i) Out of the total compensation of Rs.14,55,400/- assessed by this Court, 1/3rd of the same i.e. Rs.4,85,133/- shall be payable to parents of the deceased and 2/3rd of the same i.e. Rs.9,70,267/- shall be payable to wife and minor son of the deceased. The aforesaid amount shall carry interest @ 6% per annum from the date of application till realization. The amount, if any, already paid to the respective claimants shall be adjusted accordingly. Disbursement of the amount of compensation to the claimants shall be as per awards passed by the Tribunal in the respective claim cases.

(ii) It is the insurance company/non-applicant No.3 which shall be jointly and severely liable along with driver/non-applicant No.1 and owner/non-applicant No.2, to pay the above amount of compensation to the respective claimants.

Sd/

(Gautam Chourdiya)

Judge

Khan