

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 438 of 2018

- Magma H.D.I. General Insurance Company Limited Through Branch Manager, Address- 3/naya Ground Floor, Chiruldih Ward, Near Rajkumar College, G.E.Road, Raipur, Chhattisgarh, At Present D.B.Plaza, 5th Floor, Beside Dainik Bhaskar Press, Raipur, Chhattisgarh (Insurer Of Vehicle No. Cg-22-G-3243), District : Raipur, Chhattisgarh

---- Appellant

Versus

1. Jagdish Bandhe S/o Late Jhumuklal Bandhe Aged About 60 Years R/o Bazar Chauck, Bhanpuri, Thana Khamtarai, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
2. Rajkumari D/o Jagdish Bandhe Aged About 17 Years Minor Representing Through Father, Respondent No.1 Jagdish Bandhe, R/o Bazar Chauck, Bhanpuri, Thana Khamtarai, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
3. Ku. Motim D/o Jagdish Bandhe Aged About 15 Years Minor Representing Through Father, Respondent No.1 Jagdish Bandhe, R/o Bazar Chauck, Bhanpuri, Thana Khamtarai, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
4. Ku. Reena D/o Jagdish Bandhe Aged About 13 Years Minor Representing Through Father, Respondent No.1 Jagdish Bandhe, R/o Bazar Chauck, Bhanpuri, Thana Khamtarai, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
5. Lalit Kumar S/o Jagdish Bandhe Aged About 13 Years Minor Representing Through Father, Respondent No.1 Jagdish Bandhe, R/o Bazar Chauck, Bhanpuri, Thana Khamtarai, District Raipur, Chhattisgarh (Claimants), District : Raipur, Chhattisgarh
6. Niraj Parvat Allies Pintu Singh S/o Shri Bramha Parvat Aged About 35 Years R/o Lalbahaddur Shashtri Ward, Housing Board Colony, Patpar Thana Bhatapara (City) District Balodabazar, Chhattisgarh (Owner And Driver Of Vehicle Tata Magic No. Cg-22-G-3243), District : Balodabazar-Bhathapara, Chhattisgarh

---- Respondents

For the appellant : Mr. Shokie Yadav, Advocate.
For respondents No. : Mr. A.L. Singroul, Advocate.
1 to 5.

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

9-8-2018

1) This appeal is preferred by the appellant under Section 173 of the Motor Vehicles Act, 1988 against the award dated 23-9-2017 passed by 6th Additional Motor Accident Claims Tribunal, Raipur (CG) in Claim Case No. 501 of 2016, wherein the said Tribunal awarded compensation of Rs.9,58,672/- on account of death of one Dularin Bai in a motor accident occurred 29-4-2016.

2) As per the claim case, deceased Dularin Bai and her daughter Ku. Motim were going towards village Majgaon from village Bhachamath on 29-4-2016 at about 3.00 pm and when they reached at village Pendri turning, respondent No.6 by driving vehicle Tata Magic bearing registration No. CG-22/G-3243 rashly and negligently dashed the deceased as a result of which she sustained grievous injuries on vital parts of her body and died during the course of treatment on 5-5-2-16. After hearing the parties, the Tribunal awarded the compensation as mentioned above.

3) Learned counsel appearing for the appellant/Insurance Company would submit that the driver of the offending vehicle was having driving licence to drive the light motor vehicle but he was driving one TATA Magic vehicle for which driving licence to drive commercial vehicle was required.

4) On the other hand, learned counsel appearing for respondents No. 1 to 5 would submit that the finding arrived at by the

tribunal is based on proper appreciation of evidence which does not call for any interference by this Court.

5) I have heard learned counsel for the parties and perused the record of the Tribunal including the impugned award.

6) As per law laid down in the matter of **Mukund Dewangan vs. Oriental Insurance Company Ltd., reported in (2017) 14 SCC 663**, Hon'ble the Apex Court held that the "light motor vehicle" as defined under [Section 2\(21\)](#) of the Motor Vehicles Act, 1988 Act includes transport vehicle or omnibus, the gross vehicle weight of either of which does not exceed 7500 kgs and it includes tractor or road roller, unladen weight of, which, does not exceed 7500 kg., and holder of a driving licence to drive class of "light motor vehicle" is competent to drive the transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg i.e., to say that no separate endorsement on the licence is required to drive the transport vehicle of light motor vehicle as enumerated above.

7) In the present case, Insurance Company has not proved that unladen weight of the offending vehicle was more than 7500 kg, therefore, respondent No.6 who was having a valid and effective driving licence for light motor vehicle, was authorised to drive any transport vehicle or omnibus, the gross vehicle weight of which does not exceed to limit. In absence of any proof by the Insurance

Company, the Insurance Company cannot be absolved from its liability.

8) Learned counsel for the appellant would submit that awarded sum is on higher side and same is liable to be reduced. He would further submit that the Tribunal awarded Rs.1,25,000/- on conventional head which is also on higher side.

9) In the present case, the tribunal has not awarded any sum on account of future prospects. Age of decease was 45 years at the time of incident, therefore, as per law laid down by Hon'ble the Supreme court in the matter of **Sarla Verma and others vs. Delhi Transport Corporation and another, reported in (2009) 6 SCC 121.** future prospects may be calculated to 30%. If 30% of the future prospects would have been calculated, the awarded sum must have been increased. Therefore, looking to the factual aspect of the matter, this court is not inclined to reduce the sum awarded by the Tribunal.

10) Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju