AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 73 of 2014

1. Smt. Geeta Jha, W/o Late Gulshan Madindra, Aged About 30 Years R/o Near Geedam Naka, Jagdalpur, Tah. Jagdalpur, Distt. Bastar C.G.,

2. Shubhang Jha, S/o Late Gulshan Madindra Jha, Aged About 5 Years Minor, Thru- Mother Smt. Geeta Jha, R/o Near Geedam Naka, Jagdalpur, Tah. Jagdalpur, Distt. Bastar C.G.,

3. Ku. Darshita Jha D/o Late Gulshan Madindra Jha Aged About 7 Years Minor, Thru- Mother Smt. Geeta Jha, R/o Near Geedam Naka, Jagdalpur, Tah. Jagdalpur, Distt. Bastar C.G., **---- Appellants**

Versus

1. Santosh Kumar Sahu S/o Dayaram Sahu Aged About 23 Years R/o Porpadar Para, Post- Geedam, Tah. Dantewada, Distt. Dantewada C.G.,

2. Tulsiram S/o Sonuram Yadav R/o I.T.I. Para Geedam, Tah. Dantewada, Distt. Dantewada C.G.,

3. The Branch Manager, United India Insu.Co.Ltd., Branch Office-Jagdalpur, Tah. Jagdalpur, Distt. Jagdalpur C.G., **---- Respondents**

For Appellants	:Shri Rakesh Thakur, Advocate.
For Respondent No.1 & 2	:None appears
For Respondent No.3	:Shri Dashrath Gupta, Advocate.

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

20.09.2018

1. This Miscellaneous Appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the M.V.Act) by the claimants questioning the award dated 09.12.2013, by which, the learned Claims Tribunal, while allowing the claim in part, has awarded a total compensation amount to the tune of Rs.3,92,000/- with 6% interest per annum from the date of filing of the claim petition till its realisation by exonerating Respondent No.3/United Indian Insurance Company Limited

from its liability.

2. Briefly stated the facts of the case are that on 06.10.2011 at 8.45 PM an accident occurred when the deceased Gulshan Jha was returning from Bacheli to Jagdalpur along with his friend Shambhunath Mourya by Santro Car. At the relevant time, the Santro Car was dashed vehemently by the offending vehicle TATA 709, a “light goods vehicle”, bearing registration No. CG-17/ZB/0116, which was being driven rashly and negligently by its driver, namely, Santosh Kumar Sahu, respondent No.1 herein, owned by Tulsiram Yadav, respondent No.2 and insured with respondent No.3/United India Insurance Company Limited. As a result of the said accident, Gulshan Jha died on the spot owing to injuries sustained by him. It is pleaded in the claim petition that the deceased used to earn Rs.10,000/- per month by doing the job of Agent of Life Insurance and also by performing as a Journalist. It was put forth that since the claimants are widow and two minor children, and therefore, they are entitled to obtain the amount of compensation for the death of sole bread earner in the motor accident occurred on 06.10.2011 and, thus the claimants have claimed total amount of compensation of Rs.80,60,000/- on different heads.

3. Respondents No. 1 & 2, the driver and owner of the vehicle in question were treated as ex parte, while the insurance company, respondent No.3 herein, contested the claim mainly on the ground that the driver of the offending vehicle was not possessing effective and valid driving licence at the time of accident, and therefore, the insurance company cannot be held liable to indemnify the insured. According to written statement, the driver of the said offending vehicle was possessing the licence of light motor vehicle, however, the vehicle in question was a light goods vehicle and the same was being driven by its driver, who was not

holding effective and valid driving licence, and therefore, because of breach of policy, the insurer cannot be held liable to pay compensation.

4. The learned Claims Tribunal, after considering the evidence led by the parties, has held that the alleged accident took place on 06.10.2011 at 8.45 PM due to rash and negligent driving of Santosh Kumar Sahu, the driver of the offending vehicle. It held further that the driver was not holding effective and valid driving licence as he was authorised to drive only the light motor vehicle whereas the vehicle in question was a light goods vehicle and in absence of any endorsement in this regard authorising him to drive the said vehicle, the insurance company cannot be held liable to indemnify the insured. As a consequent of it, while exonerating the insurance company from its liability and that by assessing the income of the deceased as Rs.3,000/- per month awarded total amount of compensation to the tune of Rs.3,92,000/- (Rupees three lakhs ninety two thousand only) along with interest @ 6% per annum from the date of filing of claim petition till its realisation.

5. Being aggrieved, the claimants have preferred this appeal for enhancement as well as for fastening the liability upon the insurer. Shri Rakesh Thakur, learned counsel for the appellants submits that the award impugned as passed by the learned Claims Tribunal while exonerating the insurance company is apparently contrary to law. He submits that though said Santosh Kumar was holding the light motor vehicle's driving licence but it cannot be held that he was not authorised to drive the said offending vehicle, particular, when it was a light goods vehicle. He submits further that while assessing the amount of compensation, the learned Claims Tribunal has erred in taking into consideration the monthly income of deceased only to the tune of Rs.3000/-, however, being an agent of Life

Insurance, it cannot be held that he used to earn only that much of amount. He, therefore, submits that the award impugned be modified by enhancing the just and proper compensation and that by holding the liability upon the insurer. In support, he placed reliance upon the decisions rendered in ***Mukund Dewangan*** vs***. Oriental Insurance Company Limited*** and ***National Insurance Company Limited*** vs. ***Pranay Sethi*** reported respectively in **(2017) 14 SCC 663** and **AIR 2017 SC 5157.**

6. On the other hand, Shri Dashrath Gupta, learned counsel for respondent No.3/insurance company while supporting the award impugned submits that the driver of the offending vehicle was not holding valid and effective driving licence as he was authorised to drive only a light motor vehicle, however, the vehicle in question was admittedly a light goods vehicle and in absence of any endorsement to drive the said vehicle as a transport vehicle, the learned Claims Tribunal has not committed any illegality in exonerating the insurer from its liability. He submits further that the monthly income of the deceased has rightly been assessed by the Claims Tribunal while awarding just and proper amount of compensation payable to the claimants, therefore, findings so recorded by the learned Claims Tribunal do not warrant any interference.

7. I have heard learned counsel for the parties and perused the entire record carefully.

8. While assessing the income of the decerased, the learned Claims Tribunal has taken into consideration the monthly income of the deceased as Rs.3,000/- as the claimants have failed to produce any document in order to establish the fact that he used to earn Rs.10,000/- per month, as pleaded by the claimants. However, from a bare perusal of the statements

of Geeta Jha (A.W.1) and Tarachand @ Motu (A.W.2), it is clear that the deceased was performing his duty as an agent in the Life Insurance Corporation and since the alleged accident occurred in the year 2011, therefore, at that particular time, he must have used to earn at least a sum of Rs.6000/- per month. The finding of the Claims Tribunal, therefore, deserves to be set aside in this regard and I accordingly hold that the deceased Gulshan Jha used to earn Rs.6000/- per month. After assessing the monthly income of the deceased as such and that by deducting 1/3rd of it, the dependency would come to Rs.4000/- per month and in view of the principles laid down in the matter of **National Insurance Company Limited** vs. **Pranay Sethi** (supra) the future prospects to the extent of 40% of the income of the deceased is also required to be taken into consideration as he was below the age of 40 years for assessing just and proper compensation payable to the claimants. Therefore, the total monthly dependency would come to Rs.5,600/- (Rs.4000 + 40% of said monthly income of Rs.6000 x 1/3), annually Rs.67,200/-. Since the age of the deceased was 37 years at the time of the accident, therefore, the proper multiplier would be 15, as applied by the learned Claims Tribunal in this regard. Thus, the total dependency would come to Rs.10,08,000/- (Rs.67,200 x 15 = Rs.10,08,000/-). Besides, the claimant No.1 – Smt. Geeta Jha, being the widow, would also be entitled to Rs.40,000/- towards consortium and claimants are entitled to further sum of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Thus, the claimants are entitled to obtain Rs.10,78,000/- (Rupees ten lakhs seventy eight thousand only) as total amount of compensation instead of Rs.3,92,000/- as assessed by the learned Claims Tribunal.

9. As far as the exoneration of the insurance company from its liability to

indemnify the insured, is concerned, the same is also liable to be interferred as admittedly the driver of the offending vehicle was possessing the driving licence to drive the light motor vehicle and the vehicle in question, which was admittedly a light goods vehicle, therefore, it cannot be said that merely in absence of any endorsement in his alleged driving licence authorising him to drive the said light goods vehicle, he was not entitled to drive the same.

10. At this juncture, the principles laid down in **Mukund Dewangan *Vs.* Oriental Insurance Company Limited** (supra) is squarely applicable as the question involved herein, as to whether a driver who is having a licence to drive the "light motor vehicle" and who is driving the "transport vehicle" of that class in absence of such an endorsement, was considered and it was held therein at paragraphs 60.1, 60.2 and 60.4 as under:-

> **60.1.** "Light motor vehicle" as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 1994.
>
> **60.2.** A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor or a roadroller, "unladen weight" of which does not exceed 7500 kg and holder of a driving license to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or roadroller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the license is required to drive a transport vehicle of light motor vehicle class as enumerated above. A license issued under Section 10(2)(d) continues to be valid after Amendment Act 54 of 1994 and 28-3-2001 in the form.
>
> **60.4.** The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving license for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding license to drive light motor vehicle, he can

> drive transport vehicle of such class without any endorsement to that effect.

11. By applying the aforesaid principles, it is evident that although there is no endorsement in the alleged driving licence possessed by the driver Santosh Kumar Sahu authorising him to drive the said light goods vehicle, but he is certainly entitled to drive the alleged "light goods vehicle". The finding of learned Claims Tribunal, based upon the aforesaid principles, is, therefore, liable to be and is hereby set aside and, accordingly I hold that the driver of the alleged offending vehicle was possessing the effective and valid driving licence to drive the same and as such, the insurance company is liable to indemnify the insured.

12. In the result, the claimants are entitled to total amount of compensation to the tune of Rs.10,78,000/-, instead of Rs.3,92,000/- as awarded by the learned Claims Tribunal and the enhanced amount of compensation, i.e., Rs.6,86,000/- [Rs.10,78,000 - Rs.3,92,000 = Rs. 6,86,000/-] shall carry interest @ 6% per annum from the date of filing of claim petition till its realisation.

13. Out of the total amount of compensation, the claimant No.1 (Smt. Geeta Jha) shall be entitled to a sum of Rs.3,78,000/- while remaining amount, i.e., Rs.3,50,000/- each would be payable to claimants No. 2 & 3/ minor children and which shall be deposited in any Nationalised Bank, as per the terms and conditions contained in the impugned award.

14. In view of the foregoing discussions, the appeal is allowed in part with the aforesaid direction. No order as to costs.

Sd/-
(**Sanjay Agrawal)**
Judge

Anjani