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HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 6-4-2018

Order passed on 20-4-2018.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

MAC No. 237 of 2014

1. Dilip Kumar S/o Late Hemsingh Aged About 30 Years R/o Kunwar Dalli, Post- Azarkund, Tah. And Thana- Mohla, Distt. Rajnandgaon C.G., Chhattisgarh

2. Kanak Bai W/o Dilip Kumar Aged About 27 Years R/o Kunwar Dalli, Post- Azarkund, Tah. And Thana- Mohla, Distt. Rajnandgaon C.G., District : Rajnandgaon, Chhattisgarh

3. Devesh Kumar S/o Dilip Kumar Aged About 6 Years Minor, Thru- Father Dilip Kumar, R/o Kunwar Dalli, Post- Azarkund, Tah. And Thana- Mohla, Distt. Rajnandgaon C.G., District : Rajnandgaon, Chhattisgarh

---- Appellants

Versus

1. Mukesh Kumar Sahu S/o Ratiram Sahu Aged About 28 Years R/o Kulhar Doh, Post- Azarkund, Tah. And Thana- Mohla, Distt. Rajnandgaon C.G., Chhattisgarh

2. Naguram S/o Late Rajuram Taram Aged About 40 Years R/o Kulhar Doh, Post Azarkund, Tah. And Thana- Mohla, Distt. Rajnandgaon C.G., District : Rajnandgaon, Chhattisgarh

3. Branch Manager S/o Bajaj Alliance General Insu.Co.Ltd., Shiv Mohan Bhavan, Vidhan Sabha Road, Pandri, Raipur, Distt. Raipur C.G., District : Raipur, Chhattisgarh

---- Respondents

&

MAC No. 489 of 2014

- Branch Manager, Bajaj Alliance General Insurance Company Limited S/o Thru- Branch Manager, Its Authrized Officer, Bajaj Allianz General Insu.Co.Ltd., Branch Office, Shiv Mohan

Bhawan, 2nd Floor, Vidhansabha Road, Pandri, Raipur, Distt. Raipur C.G., Chhattisgarh

---- Appellant.

Versus

1. Dileep Kumar S/o Late Hem Singh Aged About 30 Years R/o Kunwar Dalli, Post- Arajkund, Tah. Mohla, Distt. Rajnandgaon C.G., Chhattisgarh

2. Kanak Bai W/o Dileep Kumar Aged About 27 Years R/o Kunwar Dalli, Post- Arajkund, Tah. Mohla, Distt. Rajnandgaon C.G., District : Rajnandgaon, Chhattisgarh

3. Devesh Kumar S/o Dileep Kumar Aged About 6 Years Minor, Thru- Father Dileep Kumar, R/o Kunwar Dalli, Post- Arajkund, Tah. Mohla, Distt. Rajnandgaon C.G., District : Rajnandgaon, Chhattisgarh

4. Mukesh Kumar Sahu S/o Rati Ram Sahu Aged About 28 Years R/o Kulhar Dhoh, Post- Arajkund, Tah. Mohla, Distt. Rajnandgaon C.G., District : Rajnandgaon, Chhattisgarh

5. Nagu Ram S/o Late Rajuram Taram Aged About 40 Years R/o Kulhar Dhoh, Post- Arajkund, Tah. Mohla, Distt. Rajnandgaon C.G., District : Rajnandgaon, Chhattisgarh

---- Respondents

For appellants in MAC No.237 of 2014 & respondents No. 1, 2 & 3 in M.A.C.No.489 of 2014	:	Mr. A.L. Singroul, Advocate
For respondents No. 1 & 2 in MAC No. 237 of 2014 & respondents No. 4 & 5 in MAC No. 489 of 2014.	:	Mr. Shobhit Kostha, Advocate

For appellant in MAC No.489 of 2014 and respondent No.3 in MAC No. 237 of 2014.	:	Mr. Ghanshyam Patel, Advocate.

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1. Since MAC No. 237 of 2014 preferred by the claimants/appellants No. 1 to 3 for enhancement of the compensation awarded by the Motor Accident Claims Tribunal and MAC No. 489 of 2014 preferred by the Insurance Company for setting aside the award passed by the Tribunal arise out of common award dated 1-2-2014 passed by the Motor Accident Claims Tribunal, Rajnandgaon (CG) in Claim Case No. 102 of 2012, they are heard analogously and are being disposed of by this common order.
2. In MAC No. 237 of 2014 preferred by the appellants/claimants, the Tribunal has partly awarded compensation of Rs.1,33,000/- in favour of the appellants/claimants for death of Hemant Kumar who was son of appellants Dilip Kumar and Kanak Bai and brother of appellant Devesh Kumar in a motor accident. On 21-5-2012 at about 7.00 pm when deceased Hemant Kumar aged about 11 years was standing near his house at village Kunwardalli, at the same time Mukesh Kumar who was driving the Tractor bearing registration No. CG 08/P/1883 and Trolley bearing registration No. CG 08/P/1884 rashly and negligently dashed Hemant Kumar causing his instantaneous death. However, pleadings of the

appellants/claimants have been denied by the appellant/Insurance Company in MAC No. 489 of 2014.

3. Learned counsel appearing for the appellants/claimants in MAC No. 237 of 2014 would submit that the Tribunal has awarded very a meagre amount of compensation to the claimants. He would further submit that the Tribunal while passing the award has not considered the relevant facts and thereby committed illegality, therefore, the compensation awarded by the Tribunal be enhanced.

4. On the other hand, learned counsel appearing for the appellant/Insurance Company in MAC No. 489 of 2014 would submit that initially driving licence was issued to respondent Mukesh Kumar in the year 2005 for light motor vehicle and thereafter on 25-8-2008 endorsement of transport vehicle was made which was valid upto 24-10-2011 and again on 12-7-2012 licence was renewed upto 11-7-2015. However, on the date of incident i.e., 21-5-2012 licence was not renewed and driver was not in possession of driving licence, therefore, as per provisions of Section 15 of the Motor Vehicle Act, 1988, Insurance Company is not liable. It is further argued on behalf of the Insurance Company that the Tractor-Trolley was used for carrying passengers for marriage purpose in violation of terms and conditions of the policy, therefore, Insurance Company is not liable and even on the date of

accident vehicle was plying without any fitness and permit, therefore, the impugned award passed by the Tribunal be set aside.

5. Insurance Company examined NAW/1 Punit Rathore and NAW/2 Umesh Tripathi who deposed that driving licence was renewed on 12-7-2012 and earlier driving licence was for the period from 4-8-2005 to 24-10-2011. No witness of the Insurance Company proved the negligence of the insured i.e., owner of the Tractor and Trolley. As per the evidence, incident occurred due to negligent driving by Mukesh Kumar and owner of the vehicle is Naguram. Insurance company's contract is between Naguram, the owner of Tractor and Trolley and Insurance Company, but the Insurance Company has not adduced any evidence regarding negligence of the owner.

6. The core issue for consideration is whether the Insurance Company can avoid its liability towards the insured/owner of the vehicle on the ground that the driver was not having a valid licence on the date of incident.

7. In **National Insurance Company Limited vs. Swaran Singh and others, reported in (*2004(3) SCC 297**, it is held by the Hon'ble Apex Court as under:

> "(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by

compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

> (iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them".

8. As the insurance company failed to prove the negligence on the part of the owner, it cannot avoid liability towards third party and the finding of the Tribunal is not liable to be interfered with on this count. Again, there is no direct evidence that the vehicle was used for carrying passengers for marriage purpose or there is negligence on the part of the owner and there is no evidence that when vehicle is used for transporting goods or passengers, permit or fitness was not required, therefore, the ground raised in MAC No.489 of 2014 by the Insurance Company is not sustainable. It is established by the evidence that driver Mukesh Kumar is responsible for negligent driving of Tractor and Trolley and for causing death of Hemant Kumar who is son of appellants Dilip Kumar and Kanat Bai and brother of appellant Devesh Kumar.

9. In the matter of **Kishan Gopal and another vs. Lala and others, reported in (2014) 1 SCC 244**, Hon'ble the Apex Court has held that if death of child in motor accident is between age group of 10 to 15 years who was assisting the appellant for their house-hold work

and outside the work and had he been alive, he would have certainly contributed substantially to the family of the appellants by working hard. In the present case, date of incident is 21-5-2012 and if notional income of the deceased is taken as Rs.3,000/- per month, which comes to Rs.36,000/- per annum, age of the father of the deceased was 30 years and age of the mother of the deceased was 27 years at the time of incident and if multiplier of 17 is applied, that comes to Rs.6,12,000/-. Furthermore, this Court is also conscious of the fact that the Tribunal has not awarded the amount on conventional head towards love and affection and therefore, it appears to be the need of hour to award a lump sum of Rs.50,000/- on the said head. It is done accordingly. Thus, the total amount of compensation comes to Rs.6,62,000/-.

10. Since the Tribunal has already awarded a sum of Rs.1,33,000/-, it is required to be deducted from the total compensation of Rs.6,62,000/- awarded by this Court and doing so the enhanced compensation for which the claimants are now entitled comes to Rs.5,29,000/-.

11. Accordingly, the appeal filed by the Insurance Company ie., MAC No. 489 of 2014 is liable to be dismissed and is hereby dismissed.

12. MAC No.237 of 2014 preferred by the claimants/appellants for enhancement of compensation is allowed and the impugned award passed by the Tribunal is set aside. It is directed that in addition to

awarded amount of Rs.1,33,000/-, the Insurance Company will also pay additional amount of compensation of Rs.5,29,000/- to the appellants within a period of two months from the date of receipt of a copy of this order, failing which interest @ 9% per annum from today shall also be payable till its realization of the additional amount of compensation. It is directed that all the three appellants will get equal share of total enhanced compensation of Rs.5,29,000/-,. The share amount of appellant Devesh Kumar will be deposited in the account of his guardian in a nationalised bank till he attains the age of majority and the guardian can withdraw interest amount accrued thereon every year. After depositing the amount of compensation, the tribunal shall transfer the fund into account of the appellants.

Sd/-
(**Ram Prasanna Sharma**)
JUDGE

Raju