AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 23 of 2014

1 Smt. Subay Korram W/o Late Palturam Korram, aged about 38 years,

2 Ku. Bhagwati Korram, D/o Late Palturam Korram, aged about 16 years,

3 Omprakash Korram S/o Late Palturam Korram, aged about 08 years.

[Appellant nos. 2 to 3 being minor on behalf of through their legal guardian mother appellant no.1 Smt. Subay Korram W/o Late Palturam Korram]

All R/o Village Gulabpara, Singhanpur, Post Office, Police Station & Tahsil Keshkal, District Kondagaon, C.G.

---- Appellants

Claimants

Versus

1 Ghanshyam Baghel, S/o Ramdayal Baghel, R/o Village Nirachhindali, Kathiya no.2, Post Office, Police Station & Tahsil Keshkal District Kondagon, C.G. (Driver of the vehicle Commander Jeep bearing registration no. CG17/T/0315)

2 Dhaleshwar Sahu, S/o Ganeshram Sahu, R/o Nayapara, Singhanpur, Post Office , Police Station & Tahsil Keshkal, Arang, District Kondagaon, C.G. (Registered Owner of the vehicle Commander Jeep bearing registration No.CG 17/T/0315)

3 The National Insurance Company Limited, through Branch Manager, Branch Office, Above The Central Bank, Near R.S.S. Office, Jagdalpur, Post Office, Police Station & Tahsil Jagdalpur, District Bastar, C.G. (Insurer of vehicle Commander Jeep bearing registration No. CG 17/T/0315)

---- Respondents

For Appellants	:	Shri R.K. Pali, Advocate.
For Respondent No.3	:	Shri R.N. Pusty, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Order on Board

12.12.2018

1 This appeal is filed by the claimants under Section 173 of the Motor Vehicles Act (for short 'the Act'), against the award dated 14.06.2013 passed by the Additional Motor Accident Claims Tribunal, Kondagoan, C.G. in claim case no. 85/2012 awarding compensation of Rs.1,75,500/- with interest @ of 6 percent per annum from the date of application till its realization, fastening the liability on the non-applicants no. 1 & 2/driver and owner of the offending vehicle, while exonerating non-applicant no.3 Insurance Company.

2 As per averments in the claim petition on 04.12.2010 Paltu Ram Korram was travelling in jeep bearing no. CG17/T/0315 for bringing the dead body from village Sonabahar, driven by non-applicant no.1, owned by non-applicant no.2 and insured with non-applicant no.3. However, on the way due to rash and negligent driving non-applicant no.1, the said jeep dashed against a bus, as a result of which Paltu Ram Korram suffered grievous injuries and died during treatment in hospital.

3 On claim petition being filed by the claimants under Section 163A of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties awarded compensation in favour of the claimants as mentioned above.

4 Counsel for the appellants submits that the deceased was 42 years of age, there was no amendment in the Act since 1994 by the Government when the award was passed and as such,

the Tribunal awarded compensation as per the then Second Schedule of Section 163A of the Act. He submits that now amendment has been made in the Act in relation to Second Schedule of Section 163A of the Act to this effect, whereby a lumpsum amount of Rs. 5 lacs is awarded as compensation in death case. Learned counsel for the appellants also submits that the Tribunal has wrongly exonerated the Insurance Company of its liability because there was no breach of policy conditions on the part of the owner of the offending vehicle. Lastly, he submits that the Tribunal has committed an error in deducting 50% from the compensation amount as present is in fact a case of composite negligence, there was no fault on the part of the deceased and as such no amount is liable to be deducted under this head.

5 On the other hand, learned counsel for the Insurance Company submits that the Tribunal was fully justified in exonerating the Insurance Company on the ground of policy conditions as on the date of accident the offending vehicle which was a passenger carrying commercial vehicle was being plied without a valid permit. The said fact has duly been proved by the Insurance Company by adducing oral as well as documentary evidence whereas the owner has utterly failed to rebut the said contention of the Insurance Company. Reliance has been placed on ***Amrit Paul Singh and another Vs.TATA AIG General Insurance Company Limited and others, (2018) 7 SCC 558.***

6 No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

7 Heard both the parties and perused the material available on recording including the impugned award.

8 As regards the quantum of compensation, considering the facts and circumstances of the case, the fact that no amendment in the act has been made by the Government since 1994, the benevolent provisions of the Act, the fact that appeal is the continuation of the suit and in particular the fact that as per amendment in 2nd Schedule of Section 163A of the Act, the lumpsum amount of Rs.5 lacs is awarded in a death case, this Court is of the opinion that the claimants are entitled for a lumpsum amount of Rs.5 lacs for the death of Paltu Ram Korram with interest as awarded by the Tribunal.

9 So far as exoneration of the Insurance Company is concerned, admittedly, the offending vehicle was a passenger carrying commercial vehicle for which permit is required as per Section 66 of the Motor Vehicles Act. However, no evidence has been adduced by the owner that on the date of accident the offending vehicle was being plied with a valid permit. The Insurance Company has specifically pleaded that the offending vehicle was not having a valid permit on the date of accident and has also adduced oral and documentary evidence in this regard. As per Ex.P-10, Ex.D-2 and Ex.D-3, the non-applicant no.1 was not having a valid permit. As per Ex.P-7 i.e. seizure memo, the permit of the vehicle was valid

from 09.09.2010 to 30.11.2010 whereas the accident occurred on 04.12.2010 and as such on the date of accident it was not having a valid permit. The Tribunal considering the over all aspects of the matter, pleadings of the parties and the evidenced adduced by them has rightly exonerated the insurance company of its liability on the ground that the offending vehicle was being plied without any valid permit on the date of accident which is a fundamental breach of policy conditions.

10 As regards deduction of 50% of the compensation amount by the Tribunal, considering the facts and circumstances of the case and the material available on record, it is seen that present is not a case of contributory negligence but it is a case of composite negligence. There was no negligence on the part of the deceased. In the matter of ***Khenyei Vs. New India Assurance Company Limited, (2015) 9 SCC 273,*** it has been held as under :-

> “There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the accident cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence. Extent of his negligence is required to be determined as damages recoverable by him in respect of the injuries have to be reduced in proportion to his contributory negligence. However, in the case of composite negligence, a person who has suffered has not contributed to the accident but due to the outcome of combination of negligence of two or more other persons. In such case, the plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the

> entire compensation as liability of joint tortfeasors is joint and several.
>
> Composite negligence of more than one person (excluding victim/claimant) cause of accident – Remedies available to one of the joint tortfeasros from whom (entire) compensation recovered by claimant – He can sue non-impleaded joint tortfeasors in independent proceeding for recovery of contribution to the extent o their negligence – If, however, all joint tortfeasors are before court/Tribunal and sufficient evidence available, it may determine extent of their negligence for purpose of adjusting inter se liability so as to enable one to recover sum from the other(s) in execution proceeding in the main case- Motor Vehicles Act, 1988, Ss.166,168,170."

11 In view of above, there is no need to make any deduction from the amount of Rs.5 lacs hereby awarded to the claimants on the ground of composite negligence. Considering the facts and circumstances of the case, the fact that the deceased was occupant/passenger in the vehicle and admittedly on the date of accident the offending vehicle was duly insured with non-applicant no.3 Insurance Company, keeping in view of the decision of Hon'ble Supreme Court in ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796***, it is directed that the Insurance Company shall first pay the amount of compensation to the claimants and then recover the same from the owner in accordance with law.

12 Since there is nothing on record to show whether the amount awarded by the Tribunal has already been paid by the owner to the claimants or not and the counsel for the appellants also has no knowledge about the same, the Insurance Company

shall pay the balance amount to the claimants if the amount awarded by the Tribunal has already been paid to the claimants by the owner and then recover the same from the owner in accordance with law.

13 In view of decision of Hon’ble Supreme Court in ***Khenyei*** (supra) the non-applicant no.3/Insurance Company shall be at liberty to sue the other joint tortfeasor in independent proceedings after passing of this judgment.

14 In the result, the appeal is allowed in part to the above extent.

Sd/-
Gautam Chourdiya
Judge

Akhilesh