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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 301 of 2014

- Iffco Tokio General Insu. Co. Ltd. Thru- The Divisional Manager, 3rd Floor, Shop No. 345-347, Ganga Shopping, G.E. Road, Raipur, Tah. And Distt. Raipur C.G.

---- Appellant

Versus

1. Radha Bai W/o Late Ratiram Kumbhkar Aged About 57 Years

2. Bhuvan Prasad Kumbhkar S/o Late Ratiram Kumbhkar Aged About 21 Years

Respondents No. 1 & 2 residents of Village Podi, Tahsil Bilha, PS Chakarbhata, Distt. Bilaspur (CG) - claimants

3. Pramod Kumar Mahilange S/o Shivdas Mahilange R/o Village Raank, Post- Kaudiya, P.S. Masturi, Distt. Bilaspur C.G. - driver.

4. Shivdas Mahilange S/o Lainu Mahilange R/o Village Raank, Post- Kaudiya, P.S. Masturi, Distt. Bilaspur C.G. - owner.

---- Respondents

For Appellant	:	Shri P. Acharya, Adv.
For Respondents No.1 & 2	:	Shri Anand Kesharwani, Adv.
For Respondents No. 3 & 4	:	None though served.

MAC No. 440 of 2014

1. Smt.Radha Bai Wd/o Late Ratiram Kumbhkar Aged About 54 Years

2. Bhuwan Prasad Kumbhkar S/o Late Ratiram Kumbhkar Aged About 18 Years

Both R/o Village Podi, P.S. Chakarbhatha, Tah. Bilha, Distt. Bilaspur C.G.

---- Appellants

Versus

1. Pramod Kumar Mahilange S/o Shivdas Mahilange (Driver of Bolero Jeep No. CG 10 T/2017)

2. Shivdas Mahilange S/o Lainu Mahilange R/o Village Rank, Post-Kaudiya, P.S. Masturi, Distt. (Civil and Revenue) Bilaspur C.G., (owner of Bolero Jeep No. CG 10 T/2017)

3. Iffco Tokyo General Insu.Co.Ltd. Thru- Branch Office, 3rd Floor, Shop No. 345-347, Lalganga Shopping Mall Complex, G.E. Road, Pandari, Raipur, P.S. Raipur, Tah. And Distt. Raipur C.G. (Insurer of Bolero Jeep No. CG 10 T/2017)

---- Respondents

For Appellants	:	Shri Anand Kesharwani, Adv.
For Respondents No.1 & 2	:	None though served.
For Respondent No.3	:	Shri P. Acharya, Adv.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

27/11/2018

As both these appeals arise out of the award dated 28.10.2013 passed by 6th Additional Motor Accidents Claims Tribunal, Bilaspur in Claim Case No.35/2013, they are being disposed of by this common judgment.

02. As per averments made in the claim petition, on 5.6.2011 when deceased Ratiram Kumbhkar, who was electrician by profession, along with his colleagues, was repairing a transformer, non-applicant No.1 Pramod Kumar by driving vehicle Bolero Jeep bearing No. CG 10 T 2017 in a rash and negligent manner dashed Ratiram Kumbhkar and Jaikumar Lahre. Ratiram Kumbhkar suffered grievous injuries and succumbed to the same during the course of treatment in hospital.

03. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act, the Tribunal considering the overall evidence on record by the impugned award granted a total compensation of Rs.24,42,928/- with interest @ 7.5% p.a. from the date of application till realization in favour of the claimants, fastening the liability on non-applicant No. 3, jointly and severely with non-applicants No. 1 & 2/driver and owner of the offending vehicle.

04. **<u>MAC No.301/2014</u>**: Learned counsel for the appellant submits that on the date of accident the driver of the offending vehicle was not having a valid and effective driving licence as the vehicle in question was a transport vehicle whereas the driver was having licence for LMV (Non-Transport). As such, on account of there being breach of policy conditions, the Tribunal was not justified in fastening liability on the insurance company.

05. On the other hand, learned counsel for the claimants supports the impugned award insofar as it relates to fastening of liability on the insurance company.

06. The issue involved in this case has already been considered by the Hon'ble Supreme Court in the matter of **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in ***(2017) 14 SCC 663*** whether a driver who is having a licence to drive the "light motor vehicle" is competent to drive "transport vehicle" of that class in absence of such an endorsement, 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)"

07. Applying the ratio of law laid down by the Supreme Court in the matter of **Mukund Dewangan (supra)**, it is apparent that the driver of the vehicle in question was holding the valid and effective driving licence and even in absence of any endorsement as such in his driving licence authorizing him to drive the said transport vehicle, it cannot be held that he was not possessing valid and effective driving licence at the relevant time. Therefore, this Court finds no substance in the

appeal preferred by the insurance company and the same is liable to be dismissed.

08. **MAC No.440/2014**: Learned counsel for the appellants/claimants submits that the Tribunal has erred in assessing income of the deceased at Rs.40,398/- whereas as per Ex.P/7 i.e. salary slip, his monthly salary was Rs.44,856/-. Further, the Tribunal has wrongly applied multiplier of 8 whereas considering the age of the deceased i.e. 58 years, it should have been 9 in view of decision in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***. The Tribunal has also committed an error by not awarding any amount towards future prospect and in the present case, it should have been 15% of the annual income in view of decision in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***. Lastly he submits that the amount awarded towards conventional heads is also on the lower side and needs to be enhanced suitably.

09. On the other hand, learned counsel for the respondent/insurance company submits that the Tribunal has rightly assessed compensation on the basis of evidence available on record and therefore, the same needs no interference by this Court.

10. From perusal of Ex.P/7 i.e. salary slip of the deceased, it is seen that he was drawing Rs.44,856/- per month as salary. The aforesaid document has been duly proved by the claimants. Therefore, the Tribunal was not justified in assessing the income of the deceased at Rs.40,398/-. Thus, taking the monthly income at Rs.44,856/-, the annual income comes to Rs.5,38,272/- and after deducting income tax of Rs.30,477/-, it comes to Rs.5,07,795/-. As the deceased was in permanent job, keeping in view age of the deceased i.e. 58 years, the number of dependents and the law laid down in *Sarla Verma* and *Pranay Sethi* (supra), the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (In Rupee)**

01.	Income of the deceased @ Rs.44,856/- per month i.e. Rs.5,38,272/- p.a., after deducting Rs.30,477/- towards income tax.	5,07,795/-
02.	15% of (i) above to be added towards future prospects	5,07,795 + 76169 = 5,83,964/-
03.	1/3rd deduction towards personal and living expenses of the deceased	(5,83,964-1,94,654) = 3,89,310/-
04.	Multiplier of 9 to be applied	3,89,310 x 9 = 35,03,790/-
05.	Towards conventional heads	70,000/-
	Total compensation	**Rs.35,73,790/-**

Since the Tribunal has already awarded Rs.24,42,928/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.11,30,862/- with interest @ 7.5% per annum from the date of application till realization.

11. In the result:

- MAC No.301/2014 preferred by the appellant/insurance company being without any substance is hereby dismissed.

- MAC No.440/2014 preferred by the appellants/claimants is allowed in part. The impugned award is hereby modified to the extent that the claimants are held entitled for an additional compensation of Rs.11,30,862/- with interest @ 7.5% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge

Khan