HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 193 of 2015

Universal Sompo General Insurance Co. Ltd. First Floor, B-7 Shriram Nagar, T.V. Tower Road, Raipur District Raipur C.G.

---- Appellant

Versus

1. Smt. Duleshwari @ Durga Verma W/o Late Shri Goverdhan Prasad Verma Aged About 38 Years.
2. Manish Kumar Verma S/o Late Shri Goverdhan Prasad Verma Aged About 19 Years.
3. Khemesh Kumar Verma S/o Late Shri Goverdhan Prasad Verma Aged About 16 Years.

   Respondent No. 3 being minor is represented by her mother Smt. Duleshwari @ Durga Verma.

   All residents of Village- Persada, Thana Nayapara, District- Raipur (C.G.)

   Presently residing at Ward No. 14, Mahasamund, District- Mahasamund (C.G.).
4. Jitendra Kumar Dhruv S/o Hiralal Dhruv Aged About 26 Years R/o Village Saalehbhata, Thana Mahasamund, District Mahasamund, Chhattisgarh (Driver).
5. Phool Singh S/o Bisamber Yadav Aged About 47 Years R/o Village Maanpur, Chowki Patewa, Thana Tumgaon, District Mahasamund, Chhattisgarh (Ex-Owner).
6. Hirala Dhruv S/o Motiram Dhruv Aged About 58 Years R/o Village Saalehbhata, Thana Mahasamund, District Mahasamund, C.G. (Owner).

---- Respondents

For Appellant	:	Mr. Amrito Das & P. Acharya, Advocates.
For Respondent No. 1 to 3	:	Mr. Anil Gulati, Advocate.
For Respondent No. 4 & 6	:	Mr. Sunil Sahu, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

02/08/2018

1. This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 against the order dated 22.09.2014 passed by Motor Accident Claims Tribunal, Mahasamund, District- Mahasamund (C.G.) in Claim Case No. 40/2013 wherein, the said tribunal awarded compensation of Rs. 15,85,000/- to the claimants on

account of death of one Goverdhan Prasad Verma who was husband of claimant No. 1 (Respondent No. 1) and father of claimants No. 2 & 3 (Respondents No. 2 & 3).

2. As per the pleading in the claim case, the deceased was sitting in a Hero Honda motor cycle bearing registration No. CG-04 KA-1481 and when he was returning to Mahasamund a tractor bearing registration No. CG-06 B-3516 and trolley bearing registration No. CG-06 B-3517 dashed the motor cycle. The driver of the said tractor was driving negligently which caused injuries on the body of Goverdhan Prasad Verma, who died later on. After hearing both sides, the tribunal awarded the compensation as mentioned above.

3. Learned counsel for the appellant submits that the driver of offending vehicle tractor namely Jitendra Kumar Dhruv was not having driving license to drive the vehicle on the date of incident therefore, there is breach of insurance contract and the insurance company is not liable to pay the compensation.

4. He further submits that the amount awarded by the tribunal on conventional head is on higher side as per law laid down in the matter of **National Insurance Company Limited Vs. Pranay Sethi & others** reported in **(2017) 16 SCC 680**.

5. As per the record, the insurance company led no evidence to prove negligence on the part of the owner of the tractor as laid down in the matter of **National Insurance Co. Ltd. Vs. Swaran Singh & others** reported in **(2004) 3 SCC 297** which read as under:-

> *"110.........(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section(2)(a)(ii) of Section 149, has 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 the 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 a duly licensed driver or one who was not disqualified to drive at the relevant time."*

6. The insurance company can avoid its liability only when the owner of the offending vehicle is guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by duly licensed driver.

7. In the present case, there is no evidence against the owner of offending vehicle that he was negligent in delivering the vehicle to the driver therefore, the insurance company cannot be absorbed from its liability. The quantum of compensation is based on monthly earning of the deceased and the same is properly assessed by the tribunal.

8. In view of this Court, the award passed by the tribunal on 22.09.2014 and ratio of **Pranay Sethi** (Supra) was not before the tribunal, as the same is pronounced on 31st October, 2017.

9. In view of the above, the amount awarded by the tribunal on conventional head cannot be faulted with. On over all assessment of the entire record, the award passed by the tribunal is just and proper and the same cannot be termed as excessive.

10. Accordingly, the appeal liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun