NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No.1613 of 2016

- I C I C I Lombard General Insurance Company Ltd. Through Its Legal Manager, Office at Chawla Complex, Devendra Nagar Turn, Raipur, Tehsil And District Raipur, Chhattisgarh

---- Appellant

Versus

1. Smt. Ahilya Sabar @ Ahilya Kishan W/o Late Shri Dingar Sabar, Aged About 40 Years R/o C/o Krishna Kumar Sahu, Santoshi Mandir Parisar, Gudiyari Road, Kota, Tehsil And District Raipur, Chhattisgarh
2. Smita Sabar D/o Late Shri Dingar Sabar, Aged About 13 Years Minor Represented Through Her Natural Guardian Mother Smt. Ahilya Sabar, Herein Respondent No.1, R/o C/o Krishna Kumar Sahu, Santoshi Mandir Parisar, Gudiyari Road, Kota, Tehsil And District Raipur, Chhattisgarh ....Claimants
3. Sanatan Ketki S/o Shri Kashi Ketki, Aged About 27 Years R/o Village Ichhapur, Post Darlipada, Thana Komna, District Nuapada, Odisha (Driver)
4. Ghanshyam Sahu S/o Late Shri Nath Sahu, Aged About 50 Years R/o Village Ichhapupr, P-8/ Block, Thana Komna District Nuapada, Odisha (Owner)

---- Respondents

For Appellant	: Shri Amrito Das and Shri K. Rohan, Advocates.
For respondent No.3	: Smt. Mandavi Bharadwaj, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

Order

16.02.2018.

1. This miscellaneous civil appeal arises out of award dated 26.7.2016 passed by the Additional Motor Accident Claims Tribunal, Raipur, Civil Distt. Raipur (CG) in Claim Case No.106/2014 awarding compensation of Rs.34,37,525/- in favour of respondents 1 & 2/claimants for death of one Dingar Sabar.

2. Facts of the case in brief are that on 29.6.2013 deceased Dingar was returning from school at about 11.30 am after duty hours in a Motor Cycle bearing registration No.OR 26A- 1347 and at that time driver of Tata Magic bearing registration No.OD 26-2524 dashed the motor cycle by driving the vehicle negligently causing instant death of Dingar Sabar. Jitendra Sunani who was driving the motor cycle also sustained grievous injuries. The matter was reported to Police Station Komna Distt. Nuwapada, Orissa. After registration of FIR, offence under Sections 279, 338, 304(a) of the IPC was registered against respondent No.3 (driver of the offending vehicle). The deceased was Assistant Teacher at Government Higher Secondary School, Tarbod, and was getting monthly salary of Rs.24,500/-. Respondents 1 & 2 were dependent on him being wife and daughter.

3. Pleadings of the claimants have however denied by the appellant/Insurance Company.

4. After evaluating the evidence adduced on record, the Tribunal assessed the compensation as mentioned above.

5. Learned counsel for the appellant submits that respondent No.3 who is the driver of the insured vehicle was not holding the valid and effective driving licence. The insured vehicle was Tata Magic which was registered as passenger carrying vehicle and it is classified as transport vehicle, but the driver did not have the driving licence for driving a transport passenger carrying vehicle. As the driver was holding the licence of LMV he was not competent to drive a passenger carrying commercial transport vehicle and there was a clear breach of terms of insurance policy. It is further submitted that as per the State Government Policy, there is provision for providing compassionate appointment and therefore, the claimants are not entitled for compensation from the appellant. The Tribunal has awarded the amount which is highly exorbitant.

6. Heard learned counsel for the appellant and perused the documents on record.

7. From the pleadings of the respective parties and overall evidence on record, specially version of Ahilya Saber (AW-1) and Trilochan Hans (AW-2) it is clear that the accident was occurred with the offending vehicle which was insured with the appellant and was being driven by respondent No.4. From the evidence of Sharat Chandra Panigrahani (AW-3) who is the Assistant Block Educational Officer it is established that the gross salary of the deceased was Rs.24,464/- per month and there is nothing contrary on the record. The evidence further goes to show that the appellant examined Vibudatt Panda (NAW-1) who deposed that the driver was not having licence to drive the commercial vehicle.

8. The core issue for consideration is whether the respondent who was having driving licence to drive light motor vehicle can drive the light goods vehicle. This issue is no longer *res integra* as laid down by Hon'ble Apex Court in the matter of **Kulwant**

Singh and others vs. Oriental Insurance Company Limited reported in **(2015) 2 SCC 186** which reads as under:

> "In Annappa Irappa Nesaria (National Insurance co. Ltd. v. Annappa Irappa Nesaria, (2008) 3 SCC 464 , this Court referred to the provisions of Sections 2(21) and (23) of the Motor Vehicles Act, 1988, which are definitions of "light motor vehicle" and "medium goods vehicle" respectively and the rules prescribing the forms for the licence i.e. Rule 14 and Form 4. It was concluded: (SCC p. 468, para 20)
>
> 20. From what has been noticed hereinbefore, it is evident that 'transport vehicle' has now been substituted for 'medium goods vehicle' and 'heavy goods vehicle'. The light motor vehicle continued, at the relevant point of time to cover both 'light passenger carriage vehicle' and 'light goods carriage vehicle'. A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well."
>
> 9. In S. Iyyapan (S. Iyyapan v. United India Insurance Co. Ltd., (2013)7 SCC 62, the question was whether the driver who had a licence to drive "light motor vehicle" could drive "light motor vehicle" used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the insurance company could not disown its liability. It was observed (SC p 77, para 18)
>
> 18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor

> vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle."

In the light of the pronouncement by the Hon'ble Apex Court, submission put forth by the Insurance Company is without substance.

9. From the evidence recorded by the Tribunal it is clear that respondent No.3 was negligently driving his vehicle and there is no contributory negligence on the part of the driver of the motor cycle. In respect of contributory negligence on the part of the victim the law holding the field is that the burden of proof regarding breach of policy conditions or contributory negligence lies on the insurance company as has been held by the Apex Court in the case of **Usha Rajkhowa V. Paramount Industries (2009) 14 SCC 71** and also in the case of **Minu Rout v. Satya Pradyumna Mohapatra (2013) 10 SCC 695.**

10. In the present case though the insurance company has pleaded that the accident took place due to negligence on the part of the deceased but no evidence in support of such pleading has been adduced by it and in these circumstances and the law laid down by the Apex Court referred to above, it cannot be said that the victim was having contributory negligence leading to the accident and the resultant death.

11. The Tribunal assessed the dependency on the basis of monthly salary and again awarded 30% of the assessed dependency for future aspect which are based on the precedent in the case of **Sarla Verma v. Delhi Transport Corporation and another, (2009) 6 SCC 121.** The amount awarded under the conventional head also appears to be adequate and the same is not liable to be interferred with invoking the jurisdiction of the appeal.

12. The appeal is thus liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Bini