

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1181 of 2017**

1. Kaushilya Tandan, widow of Late Prakash Tandan, aged about 28 years,
2. Kumari Garima tandan, aged about 7 years (minor) D/o Late Prakash Tandan,
3. Prateek Tandan, aged about 03 years, son of late Prakash tandan (Minor)
4. Sukwara Bai, widow of Late Tiharu Ram Tandan, aged about 56 years,

Appellants No. 2 and 3 are minors, through their natural guardian i.e. mother Kaushilya Tandan, aged about 65 years, widow of late prakash Tandan

All are resident of village- Anandpur, Police Station- Ramchandrapur, Distt.- Balrampur- Ramanujganj (C.G.).

---- Appellants/Claimants**Versus**

1. Vinod Kumar Rajak, aged about 30 years, son of Shri Indradev Ram Rajak, Occupation- Driver, r/o Village- Barwadih, P.S.- Ramchandrapur, District- Balrampur- Ramanujganj (CG) (Driver of Tata Star School Bus No. CG 15 AB/0489)
2. St. Joseph English Medium School, Through Manager, Village- Bishunupur, P.S. Ramchandrapur, Distt.- Balrampur- Ramanujganj (CG) (owner of Tata Star School Bus No. CG 15 AB/0489)
3. The Oriental Insurance Company Limited, Divisional Office, Rama Trade Centre, Near Bus Stand, Bilaspur, Distt.- Bilaspur (C.G.) (Insurer of Tata Star School Bus No. CG 15 AB/0489) (Insurance Policy Cover Note No. 76472, valid from 30.06.2015 to 29.06. 2016).

---- Respondents

For Appellants	:Shri Sushil Dubey, Advocate.
For Respondent No. 1 & 2.	:Shri M. L. Saket, Advocate
For Respondent No.3 :	:Shri Abhishek Sinha, Advocate with Shri D. L. Dewangan, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****27.02. 2019**

This appeal is by the claimants against the award dated 15.05.2017, passed by Second Additional Judge, to the Court of Motor Accident Claims Tribunal, Ramanujganj, Distt.- Surguja (C.G.), in Claim Case No.25/2016 awarding total compensation of Rs. 15,78,000/- along with interest @ 6% per annum from the date of application, In case the amount is not paid within one month from the date of award then the said amount shall carry 9% p.a. interest, fastening liability on the non-applicant No. 3 along with non-applicant Nos. 1 & 2 jointly and severally.

02. As per claim petition, on 26.01.2016, deceased Prakash Tandan, aged about 30 years, earning Rs.17,800/- per month as Government Teacher Grade-III died in the motor vehicle accident caused due to rash and negligent driving of offending vehicle bearing registration No. CG15-AB/0489 by non-applicant No.1-Vinod Kumar Rajak. The offending vehicle is owned by non-applicant No. 2 & insured with Non-applicant No. 3/The Oriental Insurance Company Limited.

03. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellants/claimants submits that at the time of accident the deceased was earning Rs. 18,803/- per month as per his salary slip (Ex. P/11) but the learned Tribunal has wrongly assessed his income as Rs. 6,150/- per month, therefore, it is prayed that it should be assessed as Rs. 18,803 (Ex. P/11). He further submits that no amount towards future prospect was granted to the claimants looking to the age of deceased and job as permanent Govt. employee at the time of accident, therefore, 50 % future prospect should be added into the income of the deceased. In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme

Court in the matters of ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121, National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

05. Learned counsel for the respondent No. 1 & 2 submits that there is no need to interfere with the award as there is no violation of the terms and conditions of the insurance policy. Permit, RC Book and other document are produced before the Tribunal and no any cogent evidence available to show the breach of policy, therefore, the Insurance Company is liable to indemnify the owner and pay compensation to the claimants.

06. Learned counsel for the respondent No. 3/Insurance company has also filed cross-objection under Order 41 Rule 22 of CPC in the present appeal, in which the Insurance Company is challenging the liability fastened upon it on the ground of breach of policy conditions. The objection raised by the Insurance Company is that vehicle was registered as a school bus but it was plied on the road without having a valid permit, which is violation of the terms and conditions of the insurance policy. He further submits that learned Tribunal considered the age of the deceased as 30 years but the date of birth of deceased i.e. 19.10.1981 is mentioned in salary slip Ex. P/11 and it can be considered 35 years at the relevant time and looking to the age the multiplier of 16 would be applicable in this case.

07. Heard learned counsel for the parties on appeal as well as on cross-objection and perused the material available on record and the award impugned.

08. As regards the income of the deceased is concerned, looking to the pay slip i.e. Ex. P/11 at the time of accident the deceased was earning Rs. 18,803/- per month, therefore, the deceased as Government permanent employee the salary of deceased as Rs. 18,800/- per month(rounded off) can be considered. It is not disputed by both the parties as per Ex. P/11 date of birth of deceased is 19.10.1981 and the accident occurred on 26.01.2016 therefore, looking

to the aforesaid certificate the deceased was aged about 35 years at the time of accident and considering the age, the multiplier of 16 would be applicable in place of 17. Further, considering the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma, Pranay Sethi*, (supra), the claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.18,800/- per month (rounded off).	Rs. 18800x12= Rs. 2,25,600/- per annum
02.	50% of (1) above to be added towards future prospects.	Rs.2,25,600+ Rs. 1,12,800= Rs. 3,38,400/-
03.	After 1/4th deduction towards personal and living expenses of the deceased	Rs.2,53,800/-
04.	Multiplier of 16 to be applied	Rs. 40,60,800/-
05.	Towards love & affection and loss of consortium and funeral expenses (as awarded by the Tribunal)	Rs. 25,000+1,00000+ Rs. 25,000= Rs. 1,50,000/-
06.	Total compensation	Rs. 42,10,800/-

Since the Tribunal has already awarded Rs.15,78,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.26,32,800/- with interest @ 6% per annum from the date of application till realization.

09. So far as the liability is concerned, looking to the fitness certificate Ex. D/3(c) and permit vide ExD/4(c) which is valid from the date of accident it goes to show that there is no violation of the terms and conditions of the insurance policy and the driver of the offending vehicle was having a valid and effective driving licence at the time of accident, therefore the objection raised by the respondent No. 3/Insurance Company on the ground of breach of policy has no

substance.

10. In the result, the appeal is allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

11. In view of above, the cross objection filed by the respondent No. 3/Insurance Company is liable to be and is hereby dismissed.

Sd/-

(Gautam Chourdiya)

Judge