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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 565 of 2013

- The Oriental Insurance Company, Divisional Office-1, Post Box 49 Kutchery Chowk, Raipur, District- Raipur C.G.

  Limitation period- 26-10-2011 to 25-10.2012

---- Appellant

Versus

1. Smt. Sarswati Bai W/o Sewadas Jangde age 30 years,
2. Minor Jageshwari D/o Sewadas Jangde, age 17 years,
3. Minor Aanchal D/o Sewadas Jangde age- 15 years,
4. Minor Santoshi D/o Sewadas Jangde age- 12 years,
5. Minor Yogesh Kumar S/o Sewadas, age- 7 years,

   For above minor respondent No. 2 to 5, through Guardian Mother Smt. Sarswati Bai W/o Sewadas Jangde age 30 Years

6. Bishat Das S/o Sukalu age- 60 years
7. Susheela Bai W/o Bishat Das, age- 55 years

   All resident- Village Kosmandi, Thana and Tahsil- Palari, District- Raipur (C.G.)

   (New Baloda Bazar, Bhatapara C.G.)

8. Punesh Kumar S/o Baldev Prasad Chandravanshi, age- 30 years resident- Gopalbhavna Thana- Pipariya, District- Kawardha C.G. (Driver of Offending Vehicle Tata Magic No. C.G.09/T/0215).
9. Baldev Chandravanshi S/o Krishna Chandravanshi age-52 years resident- Gopal Bhavna, Thana- Pipariya, District- Kawardha C.G. (Owner of offending vehicle Tata Magic No. C.G.09/T/0215).

---- Respondents

For Appellant : Shri Sudhir Agrawal, Advocate

For Respondents No. 1 to 7 : Shri A.L. Singroul, Advocate.

For Respondents No. 8 & 9 : Shri Sanjeev Sahu, Advocate.

MAC No. 580 of 2017

1. Smt. Sarswati Bai Wd/o. Late Sewa Das Jangade aged about 30 years.

2. Jageshwari D/o. Late Sewa Das Jangade aged about 17 years.

3. Anchal D/o. Late Sewa Das Jangade aged about 15 years.

4. Minor Santoshi D/o. Late Sewa Das Jangade aged about 12 years.

5. Minor Yogesh Kumar S/o Late Sewa Das Jangade aged about 07 years.

   Appellant No. 2 to 5 are minor through legal guardian mother Smt. Sarswati Bai Wd/o. Late Sewa Das Jangade aged about 30 years.

6. Bishat Das S/o Sukalu (wrongly mentioned s/o Bishat Das in the cause title) aged about 60 years.

7. Sushila Bai W/o Bishat Das aged about 55 years.

   All Are R/o Village- Kosmandi, P.S. & Tahsil, Palari Distt.- Raipur (C.G.) (Now- Baloda, Bazar Bhathapara (C.G.).

---- Appellants

Versus

1. Punesh Kumar S/o Baldev Prasad Chandrawanshiaged about 49 Years, R/o Gopal Bhavna Thana Pipariya Distt.- Kawardha (C.G.).

   (Driver of the offending vehicle Tata Magic No. C.G.09/T/0215)

2. Baldev Prasad Chandrawanshi S/o Krishna Chandrawanshi aged about 52 years, R/o Gopal Bhavana, Thana Pipariya Distt.- Kawardha (C.G.).

   (Registered owner of the offending vehicle Tata Magic No. C.G.09/T/0215).

3. The Oriental Insurance Company Divisional Ofice- 1, Post Box 49 Katchehari Chowk Raipur District- Raipur (C.G.). Limitation Period 26.10.2011 to 25/10/2012

---- Respondents

For Appellants	: Shri A. L. Singroul, Advocate
For Respondent No. 1 & 2	: Shri Sanjeev Sahu, Advocate.
For Respondent No.4	:Shri Sudhir Agrawal, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

13/03/2019

1. As both these appeals filed by the Insurance Company & the claimants under Section 173 of the Motor Vehicles Act arising out of the common award dated 14.03.2013 passed by the 1st Additional Motor Accident Claims Tribunal, Baloda-Bazar, District- Raipur (C.G.) in claim case No. 103/2012, they are heard together and are being disposed of by this common judgment.

2. Appellant/Insurance Company has filed the appeal being MAC No. 565/2013 challenging the liability fastened upon it on the grounds that the driver of the offending vehicle did not have valid and effective driving licence at the time of accident and also the offending vehicle was being driven on a route other than the route prescribed in the permit *whereas* appellants/claimants, who are the widow, children & parents of the deceased- Sevadas, have filed the appeal being MAC No. 580/2017 seeking enhancement of the amount of compensation under award.

3. On claim petition being filed by the claimants, who are unfortunate wife, Children & parents of the deceased, under Section

166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award to the tune of Rs. 4,75,800/- alongwith interest @ 6% per annum from the date of filing of claim petition till its actual payment in favour of the claimants, fastening liability of payment of compensation upon the non-applicants jointly and severally.

4. As per claim petition, on 15.07.2012 at around 6.00 pm, when deceased namely Sevadas along with his friends namely Raju Goyal was going to Kosmandi on his own motorcycle bearing registration No. CG-04/DW/6458, near the Amera Mod, Non-applicant No. 1/driver-Punesh Kumar, by driving the offending vehicle Tata Magic bearing registration No. CG-09-T/0215 in a rash and negligent manner, dragged the motorcycle of the deceased upto 200 meters, as a result thereof, deceased -Sevadas sustained grievous injuries and died on the spot.

5. Learned counsel for the appellant/Insurance Company in MAC No. 565/2013 submits that the Claims Tribunal has erred in fastening liability upon the Insurance Company because the driver was having licence for LMV whereas he was driving the offending vehicle i.e. Tempo (Magic) which is a transport vehicle on the date of accident without there being any endorsement to this effect in his driving licence. Further the offending vehicle was being driven in violation of the permit conditions beyond the limit prescribed in the permit at the time of accident. He further submits that at the time of accident Sevadas (since deceased) was the driver of motorcycle and he himself

was responsible for the accident, thus, the finding recorded by the Tribunal that the Appellant/Insurance Company is liable to pay compensation to the claimants is liable to be set aside.

6. Shri A. L. Singraul, learned counsel appearing for the appellants/claimants in MAC No. 580/2017 submits that the Claims Tribunal after considering all the relevant aspects of the matters has rightly fastened liability on the Insurance Company as it could not establish the violation of policy conditions. He submits that at the time of accident the driver of the offending vehicle was using his vehicle for his personal work i.e. for taking his father for treatment and not for carrying the passengers, therefore, there is no violation of the permit conditions prescribed in the permit.

7. Learned counsel for the claimants further submits that the learned Tribunal has erred in assessing monthly income of the deceased as Rs. 3,000/-, therefore, it is prayed that it ought to have been assessed as Rs. 4500/- per month as per minimum wages at the relevant point of time. He further submits that no amount towards future prospect was granted to the claimants looking to the age of deceased at the time of accident, therefore, 40% future prospect should be added into the income of the deceased. The amounts toward conventional head is also on the lower side which is suitably enhanced. 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*.

8. Learned counsel for the Insurance Company also opposes the contention made by learned counsel for the claimants regarding enhancement of compensation.

9. Learned counsel for the driver & owner supports the award to the extent of liability fastened upon the insurance Company.

10. Heard learned counsel for the parties and perused the material available on record and the award impugned.

11. So far as MAC No.565/2013 filed by Insurance Company is concerned, it is not disputed that the at the time of accident the non-applicant No. 1 did have valid & effective driving licence; further there is no evidence adduced by the Insurance Company regarding contributory negligence on the part of the deceased. Furthermore, against the final report (Ex.A-1), filed against the driver of the offending vehicle & FIR lodged against the non-applicant No.1 vide Ex. A/3, no counter FIR was lodged by the owner or driver of the offending vehicle and no other evidence adduced by the appellant/Insurance Company regarding breach of policy conditions. Raju Goyal (AW-2) eye-witness to the incident has specifically and categorically stated the circumstances in which the accident occurred stated that deceased -Sevadas was driving his motorcycle very slowly & cautiously and the non-applicant No. 1, while driving the offending vehicle lost his control upon the offending vehicle and dashed the motorcycle being driven by deceased, and therefore, the accident had occurred, this fact is also supported by FIR and the charge sheet. In this case, driver of the offending vehicle was also examined and he stated in paragraph 4 of his statement that no

counter report was filed by him against the driver/deceased of the motorcycle.

12. As per RC book Ex. NA1C the offending vehicle is Light Motor Vehicle and its gross weight is 900 kilograms. At the time of accident, the driver of the offending vehicle did have valid and effective driving licence vide Ex. NA4C and it is valid from 30.12.2011 to 29.12.2031. Insurance Policy (Ex.NA2) produced in this case is a package policy. He also submits that Ex.NA3C is a permit and it is valid and effective at the time of accident. At the time of accident, the offending vehicle being used by the non-applicant No. 1 for his personal use i.e. for taking his father for treatment at Charkpur. In paragraph 16 of the award, the non-applicant No. 1 is admitted the fact that at the time of accident, offending vehicle was being used for personal purposes and the same is not being used for carrying the passengers but no contrary evidence has been adduced by the Insurance Company in this regard and, therefore, as per judgment of the Supreme Court in the matter of **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in (2017) 14 SCC 663, in which, it has been held that there is no endorsement is required to drive the transport vehicle who has below the 7500 and that view of the matter the learned Claims Tribunal is absolutely justified in fastening the liability upon the Insurance Company to pay compensation to the claimants, which does not call for any interference.

13. In <u>**MAC 580/2017**</u>: So far as income of the deceased is concerned, though the claimants have pleaded that the deceased was earning Rs. 8,400/- per month by computer job, however, no evidence

in support thereof has been adduced by them. In these circumstances, monthly income of the deceased as Rs. 4,500/- per month as skilled labour at the relevant point of time, Further, looking to the age of the deceased i.e. 35 years, 40% towards future prospect would be added into the yearly income of the deceased. Further considering the job, dependency and In view of the judgments of the Supreme Court in the matter 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***, I propose to re-compute the amount of compensation as under :-

Sl. No.	Heads	Calculation
01.	Income of the deceased	Rs.4500x12= Rs.54,000/- per annum
02.	40% of above to be added towards future prospects	Rs.54,000 +21600= Rs.75600/-
03.	After 1/5th deduction towards personal and living expenses of the deceased	Rs.60480/-
04.	Multiplier of 16 to be applied	Rs.967680/-
05.	Towards loss of estate, funeral expenses & loss of consortium	Rs.70,000/-
06	**Total compensation**	Rs. 10,37,680/-

Since the Tribunal has already awarded Rs.4,75,800/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.5,61,880/- along with interest

@ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

14. In the result:

- MAC No. **565 of 2013** preferred by the insurance company being without any substance is hereby dismissed.

- **MAC No. 580/2017** filed by the claimant is allowed in part.

Sd/-

(Gautam Chourdiya)
Judge

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