AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 422 of 2014

- The Oriental Insurance Company Ltd. Through- its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur, Distt. Bilaspur C.G.

----Appellant

Versus

1. Smt. Devki Bai Wd/o Late Amar Das Aged About 24 Years
2. Ku. Aruna D/o Late Amar Das Aged About 5 Years
3. David Kumar S/o Late Amar Das Aged About 2 Years
4. Jethuram S/o Late Bharosa Aged About 62 Years
5. Hemlal S/o Jethuram Aged About 21 Years

   Respondent Nos. 2 & 3 are minor and represened throught their mother and natural guardian Respondent No.1 Smt. Devki Bai W/o Late Amardas.

   All the respondent nos. 1 to 5 above are R/o Bhelwadih, P.O. Uparwara, P.S. Abhanpur, Distt. Raipur C.G.

6. Budharuram Tandon S/o Itwari Ram Tandon Aged About 52 Years R/o Abhanpur Basti, P.S. Abhanpur, Distt. Raipur C.G.
7. M/s. Adarsh Rice Mill, A Partnership Firm, Having its Office At Shanti Nagar, Bhilai, P.S. Bhilai 3, Distt. Durg C.G., and having its Factory at Village-Jhanki, P.S. Abhanpur, Distt. Raipur C.G.

---- Respondents

For Appellant	Shri R.N. Pusty, Advocate.
For Respondent Nos. 1 to 5	Shri Amiyakant Tiwari, Advocate.
For Respondent Nos. 5 & 7	None.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

13/03/2019

1. This appeal is by the Insurance Company against the award dated 03.02.2014 passed by Chief Motor Accident Claims Tribunal, Raipur, District Raipur, C.G. in Claim Case No.43/2012 awarding total

compensation of Rs.8,59,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.

2. As per claim petition, on 11.05.2012 deceased Amar Das, aged about 25 years, earning Rs.200/- per day as Mason died in the motor vehicular accident caused due to rash and negligent driving of vehicle Truck bearing no. CG07-C-5706 by its driver non-applicant no.1, as a result of which deceased Amar Das suffered grievous injuries and died on the spot. At the time of accident, offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.

3. On claim petition being filed by the claimants i.e. wife, children, father and brother of the deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.14,06,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

4. Learned counsel for the appellant insurance company submits that in this case owner and driver of the vehicle after filing of the written statement remained ex-parte and no any permit during investigation is seized by the I.O. in criminal case. Despite being granted number of opportunities, the driver and owner of the offending vehicle did not produce permit or fitness certificate of the vehicle before the Tribunal which makes it clear that on the date of accident the offending vehicle was plied without valid permit or fitness. As such the Tribunal was not justified in fastening liability on the Insurance Company on account of there being specific breach of policy conditions. He also submits that the compensation awarded by the Tribunal without there being any evidence is on the higher side and needs to be reduced suitably.

5. The claimants have filed cross objection under Order 41 Rule 22 of CPC seeking enhancement of compensation with an application I.A. No.3 for condonation of delay in filing the cross objection.

6. On due consideration, the application I.A. No.3 for condonation of delay in filing the cross objection which is duly supported by the affidavit is allowed and, accordingly, the delay in filing the cross objection is hereby condoned.

7. On the other hand learned counsel for the respondents/claimants submits that the Tribunal considering all the relevant aspects of the matter has rightly fastened the liability on the Insurance company and that the amount awarded by the Tribunal is not on the higher side, therefore, he has also filed cross objection in this appeal seeking enhancement of the same. He submits that the Tribunal wrongly deducted ¼ towards loss of personal and living expenses, whereas it should have been 1/5. He also submits that at the time of accident deceased was earning Rs.200/- per month, but learned Tribunal only considered Rs.3000/- per month, whereas it should have been Rs.5,000/- as per minimum wages at the relevant time and that no amount towards future prospect has been granted to the claimants. He further submits that the Tribunal has awarded 6% simple interest whereas it should have been 9%.

8. Learned counsel for the appellant/Insurance Company submits that there is no need to enhance the award as per the cross objection filed by the claimants.

9. Heard both the parties on appeal as well as on cross objection and perused the material available on record.

10. It is not disputed by the parties that at the time of accident offending

vehicle was a heavy goods vehicle. As per Ex.D-1 gross weight of vehicle is 25000 Kg which was insured as per Ex.D-1. In this case the owner and driver of the vehicle after filing the written statement remained ex-parte till passing of the award. No any evidence has been adduced along with the written statement by the owner and driver of the vehicle regarding permit. Owner and Driver were not examined before the Tribunal, they were exparte. As per the statement of non-applicant witness no.1 Rajeev Singh, Administrative Officer, examined before the Tribunal he specifically stated in paras 1 & 4 of his statement that at the time of accident no any permit and fitness documents were produced by owner of the vehicle. He also mentioned in para 2 that Insurance Company had sent a letter to the owner of the vehicle to submit permit and fitness but that document is not produced by owner and that statement is uncontroverted because the owner and driver remain ex-parte before the Tribunal.

11. In the matter of ***Amrit Paul Singh and another Vs. Tata AIG General Insurance Co. Ltd. and others, (2018) 7 SCC 558***, while dealing with identical issue, the Hon'ble Supreme Court considering the provisions of Section 66(1) of the Act which prescribes that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority, held that use of a vehicle as a transport vehicle in public place without a permit is a fundamental statutory infraction. Though Section 66(3) of the Act carves out certain exceptions to Section 66(1), in order to invoke those

exceptions, the same must be pleaded and proved, the said exceptions cannot be taken aid of in the course of argument to seek absolution from liability.

12. Looking to the judgment in Amrit Paul (supra) and Section 66 of the Motor Vehicles Act, for the goods carrying vehicle permit is required for plying the vehicle in public place. The offending vehicle was being plied by owner in public place as per FIR Ex.P-1 and during investigation other documents concerning the vehicle i.e. RC Book, Insurance Policy and driving licence of driver were seized by the I.O. but no permit was seized and no permit was produced during investigation. In the Insurance Policy Ex.D-1, it is mentioned that permit is required for the vehicle. If the particulars are not given by the owner of the permit, the burden proving the fact that regarding permit cannot be shifted to the Insurance Company. Therefore, in this case as per Apex Court judgment in Amrit Paul (supra) burden lies upon the insured to prove that he had a valid permit on the date of accident. Permit of any nature is a matter of documentary evidence, however, nothing has been brought on record by the insured to prove that he had a permit of offending vehicle on the date of accident. In this case no permit was produced by owner of the vehicle and not seized during investigation, owner and driver remained ex-parte before the Tribunal. The Insurance Company examined its Administrative Officer Rajeev Singh as non-applicant no.3. He specifically stated in paras 1 to 4 that the owner of the vehicle was not having a valid and effective fitness at the time of accident. The document sought by the Insurance Company was not produced by the owner. Therefore, liability fastened upon Insurance Company by learned Tribunal is not acceptable and sustainable

according to the judgment in Amrit Paul (supra).

13. As regards the income of the deceased, though the claimants have pleaded that the deceased was earning Rs.200/- per day as Mason but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs.4,000/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 25 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in ***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***, ***Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal No.9581/2018 arising out of SLP (Civil) No.3192/2018***, the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs.4,000/- per month.	Rs.48,000/- per annum
02.	40% of (i) above to be added towards future prospects.	Rs.19,200/- Rs.48,000/- + Rs.19,200/- = Rs.67,200/-
03.	1/4 deduction towards personal and living expenses of the deceased	Rs.16,800/- Rs.67,200 – Rs.16,800 = Rs.50,400/-
04.	Multiplier of 18 to be applied	Rs.9,07,200/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs.70,000/-

06.	Towards loss of parental consortium to claimants no. 2 & 3 @ Rs.1,00,000/- each.	Rs.2,00,000/- (as awarded by the Tribunal)
07.	Towards loss of filial consortium to claimant no.4	Rs.50,000/- (as awarded by the Tribunal)
08.	Towards loss of love and affection to claimant no.5	Rs.25,000/- (as awarded by the Tribunal)
	Total Compensation	**Rs.12,52,200/-**

Since the Tribunal has already awarded Rs.8,59,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.3,93,200/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

14.However, considering the facts and circumstances of the case, the fact that on the date of accident, the offending vehicle was duly insured with the appellant/insurance company, in view of principles of law laid down by the Hon'ble Supreme Court in ***Manuara Khatun and others*** and ***Shivawwa and another*** (supra), this Court feels it proper to order for "pay and recover" in this case, meaning thereby that the insurance company shall first pay the amount of compensation to the claimants and then recover the same from non-applicants/owner & driver in accordance with law.

15.In the result, the appeal filed by the Insurance Company and cross objection filed by the claimants are allowed in part with modification in the impugned award to the above extent.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh