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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1009 of 2013

- Bajaj Allianz General Insurance Company Limited, Shiv Mohan Bhavan, Vidhan Sabha Marg, Pandri, Raipur Tahsil & District Raipur (C.G.) P.S. Pandari, Revenue and Civil District Raipur Pin 492001 **(Insurance Company)**

---- Appellant

Versus

1. Smt. Rampati W/o Late Navka aged about 38 years, Occupation – Agriculturist,

2. Manoj Kumar S/o Late Navka aged about 16 years,

3. Ku. Jagmaniya D/o Late Navka aged about 14 years,

4. Sitaram S/o Late Navka aged about 11 years,

5. Mahra S/o Lare Ratan aged about 66 years, Occupation – None,

6. Subhagiya W/o Mahra aged about 64 years, Occupation – None,

   Respondent no. 2 to 4 minor represented through natural guardian mother respondent no. 1 Smt. Rampati,

   All Caste – Panika, All R/o Village Khajuriadih, Police Station Chando, Tahsil Samri (Kusmi), District Balrampur (C.G.), **(Claimants)**

7. Amit Goswami S/o Shankar Goswami aged about 29 years, Occupation – Driver, R/o Village Tandwa, Police Station Tadwa, District – Gadhwa, Jharkhand, **(Driver)**

8. Ajay Lal S/o Late Kedar Lal, Occupation - Vehicle Owner, R/o Sangeet Mohalla, Gadhwa, Post and Police Station Gadhwa, District Gadhwa, Jharkhand **(Owner)**

---- Respondents

For Appellant	:	Shri S. S. Rajput, Advocate.
For Respondents 1 to 6	:	Shri A. N. Pandey, Advocate.
For Respondent Nos. 7 & 8	:	Shri Sunil Tripathi, Advocate

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

02.05.2019

1. Heard on application for condonation of delay in filing the cross-objection filed by respondents No. 1 to 6/claimants seeking enhancement of compensation amount under award.

2. For the reason assigned in the application, which is duly supported by the affidavit, the same is allowed and delay in filing the cross-objection is condoned.

3. With the consent of the parties, the appeal is heard finally along with cross-objection filed by the claimants.

4. This appeal is by the Insurance Company against the award dated 06/09/2013, passed by the Third Additional Motor Accident Claims Tribunal, Ambikapur Surguja (C.G.) in Claim Case No. 30/2012, awarding total compensation of 5,90,600/- along with interest @ 6% per annum from the date of filing of claim petition, till its actual payment, fastening liability of payment of compensation upon the non-applicant No. 3/Insurance Company, appellant herein.

5. As per claim petition, when on 18.09.2010 deceased Navka, who was earning Rs. 8,000/- per month as Labour, was going in offending vehicle (Dumpher) bearing registration No. J.H.-14B/3200 for loading the Bauxite from village Chando to Village Samri and driver/Non-applicant No. 1-Amit Goshwami of the said offending vehicle was driving the offending vehicle in a rash & negligent manner, as a result thereof the deceased fell down from the vehicle and sustained grievous injuries and died on the spot on account of the injuries sustained by him in the said accident. The vehicle is owned by Non-applicant No. 2 and insured with Non-applicant No. 3/Insurance Company.

6. On claim petition being filed by the claimants, who are unfortunate widow, children and parents of deceased -Navka, under Section 166 of the Act claiming compensation of Rs.8,90,000/- for the death of deceased in the motor accident occurred on 18.09.2010, the Tribunal

considering the evidence led by the parties, by the impugned award granted compensation as mentioned above, fastening liability upon the appellant/Insurance Company to pay compensation to the claimants.

7. Being aggrieved and dissatisfied with the impugned award fastening the liability of payment of compensation upon Insurance Company, appellant herein, instant appeal under Section 173 of the Act, 1988 has been preferred.

8. Learned counsel for the appellant/Insurance Company submits that he is assailing the award only on the ground that there is no valid permit obtained by the owner of the offending vehicle to ply the vehicle on the road as public transport whereas as per Section 66 of the Motor Vehicle Act valid & effective permit is necessary to ply the vehicle on the public road. He also submits that the offending vehicle is goods vehicle and deceased Nawka was sitting in the dumper (offending vehicle) as gratuitous passenger; the appellant/insurance company is neither statutory liable to cover the risk of gratuitous passenger sitting in the dumper nor had undertaken such risk by entering into special contract and by charging extra premium therefor, therefore, the Tribunal went wrong in fastening the liability of payment of compensation upon the insurance company.

9. On the other hand, learned counsel for the non-applicant Nos. 1 & 2/respondents No. 7 & 8 /driver & owner, while denying the involvement of the offending vehicle in the alleged motor accident submits that deceased died on his own negligence. As per statement of the driver of the offending vehicle, neither deceased was sitting in the offending vehicle as a gratuitous passenger nor he sustained grievous injuries resulting into his spot death due to rash & negligent driving of

the alleged vehicle. He (driver), in paragraph 4 of his statement states that at the place of Marva ghat the offending vehicle was standing on the road in a stationary condition and due to rainy season the place was muddy and due to which the deceased was slipped due to his own negligence and sustained multiple injuries and succumbed to those injuries. As the offending vehicle is insured with the non-applicant No. 3/I. C. therefore, the Claims Tribunal is absolutely justified in fastening liability of payment of compensation upon the appellant/Insurance Company.

10. Learned counsel for the respondents No. 1 to 6/claimants, while filing the cross objection, submits that the Supreme Court in case of **Sarla Verma (Smt.) & others V. Delhi Transport Corporation and another** reported in **2009 (6) SCC 12**1 has held where the deceased is married, the deduction towards personal and living expenses of the deceased should be 1/4th if dependents family members are 4 to 6. In instant case, the dependent family members are 6, therefore, the Tribunal has certainly fallen in error in deducting 1/3rd in place of 1/4th income of the deceased towards his personal expenses. He also submits that no future prospect was awarded to the claimants and amount awarded under the head of conventional head is shockingly on lower side, which deserves to be enhanced suitably in view of the judgment of the Supreme Court in the matter of and others ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***. He also submits that it is very difficult for the claimants to recover the amount of compensation from the owner of the offending vehicle therefore, it is prayed that an order may be passed to direct the Insurance company

to first pay the awarded amount to the claimants and then to recover it from the owner and driver of offending vehicle in view of the judgment of the Supreme Court in the matter of ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796***.

11. Counsel for the owner & driver submits that cross-objection filed by the claimant seeking enhancement of compensation of amount under award has no substance because the compensation awarded by the Tribunal is just & proper, which does not call for any interference.

12. Learned counsel for the Insurance Company also opposes the contention made by learned counsel for the respondents No. 1 to 6 /claimants that the amount of compensation awarded by the Claims Tribunal is shockingly on lower side, which deserves to be enhanced suitably as the amount of compensation awarded by the Claims Tribunal is just & proper, which need not be interfered with by this Court. He further submits that as the owner has not pleaded the order that firstly the Insurance Company would pay compensation to the claimants and then recover it from the owner & driver of the offending vehicle ("Pay & recover") and he is the very much competent to pay the compensation to the claimants, therefore, there is no requirement for passing the order of "Pay & Recover" in the instant case.

13. Heard and perused the material available on record and the award impugned.

14. It is not disputed that vide Ex. D/4, D/5 & D/6, the notice were issued by the Insurance Company to the driver & owner of the vehicle to submit the fitness permit and other documents relating to the

offending vehicle but no documents have been produced by them. As per Supreme Court Judgment in the matter of **Amrit Paul Singh & Anr. Vs. Tata AIG General Insurance Co. Ltd. & Others** reported in **2018 (3) C.G.L.J. 313 (SC)** it is the duty of the Owner of the offending vehicle to produced all the documents i.e. permit, fitness & driving licence related to the offending vehicle involved in the accident. As per documents available with the records of the Claims Tribunal, the offending vehicle is heavy Goods vehicle and its gross weight is 16,200 kg. The owner of the offending vehicle admitted this fact in his statement in para 12 of his statement that at the time of accident no permit was issued in his favour . Therefore, it is proved that at the time of accident, no valid permit was issued in favour of the owner of the offending vehicle and as per Section 66 of the Motor Vehicle Act permit is required exceeding the weight of 3,000 kg and the said vehicle is heavy goods vehicle (weight- 16,200 kg) therefore specific breach of permit is proved by the Insurance Company.

15. As per para 8 of statement of the driver, at the time of accident, one khalashi was sitting in the cabin and only one person can sit in the cabin, deceased was sitting behind the cabin of the offending vehicle (Hyva) and that place is available only for loading of the goods and there is no condition in the insurance policy for sitting the passenger in the goods vehicle. Further, the deceased was not working under the employment for operational and maintenance purpose, therefore, as per insurance policy the no risk is covered for the passenger sitting in the goods vehicle. In these circumstances, learned Tribunal has erred in fastening the liability of payment of compensation upon the

appellant/Insurance Company. Therefore, the finding recorded by the Claims Tribunal regarding liability to pay compensation to the claimants upon the appellant/Insurance Company is liable to be the and is hereby set aside.

16. So far as the cross-objection fled by the claimants/respondent Nos. 1 to 6 is concerned, counsel for the respondents No. 1 to 6/claimants pleaded that in the instant case, the Claims Tribunal has erred in assessing the income of the deceased as Rs. 4,680/- per month, which appears to be on lower side but there is no any oral or documentary evidence is produced regarding the income of the deceased, therefore the learned Tribunal has rightly considered the income as aforesaid, which does not call for any interference. In this case the number of claimants are 6, therefore, 1/4th income of the deceased ought to have deducted instead of 1/3rd towards personal expenses. Furthermore, no future prospect has been awarded in view of the judgment of the Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680,*** therefore, looking to the age of the deceased i.e. below 41 years, 25% of the annual income should be added thereto towards future prospect and further Rs.70,000/- should be given towards incidental heads. Thus, the claimants are held entitled in the following manner :-

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased Rs.4680/- per month	Rs.4680 x 12 = Rs.56,160/-p.a.
02.	25% of (1) above to be added towards future prospects.	Rs.56160+ 14,040/- = Rs.70,200/-

03.	After 1/4th deduction towards personal and living expenses of the deceased	Rs.70200- 17550/- = Rs. 52,650/-
04.	Multiplier of 15 to be applied	Rs.52650x 15 = Rs.7,89,750/-
05.	Towards loss of estate, funeral expenses & loss of consortium	Rs.70,000/-
06.	**Total compensation**	Rs.8,59,750/-

Since the Tribunal has already awarded Rs.5,90,600 /- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.2,69,150/- with interest @ 6% per annum from the date of application till realization.

17. So far as prayer made by counsel for the respondents No. 1 to 6/claimants with regard order of "Pay & recover" is concerned, keeping in view the decisions of the Supreme Court in **Manuara Khatun** (supra) and **Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another**, **(2018) 5 SCC 762**, this Court feels it proper to order for pay and recover in this case.

18. In the result, the appeal filed by the Insurance Company is allowed in part. Part of the award by which the liability has been fastened upon the appellant/Bajaj Allianz General Insurance Company Limited to pay compensation to the claimants is set aside, *whereas,* cross-objection filed by the claimants is allowed to the extent indicated hereinabove. However, as observed above, it is the Insurance Company who shall first pay the compensation to the claimants as enhanced by this Court and then shall be at liberty to recover the same from the driver & owner of the offending vehicle. Rest of the conditions

mentioned in the impugned award shall remain intact.

19. It is made clear that amount, if any, is deposited by the owner pursuant to the impugned award, the same shall be adjusted at the time of execution of award.

Sd/-

(Gautam Chourdiya)
Judge

Amita