AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 302 of 2013

1. Smt. Parmeshwari W/o Purushottam Verma Aged About 22 Years,

2. Rameshar Verma S/o Tijau Ram Verma Aged About 55 Years,

3. Smt. Kumari Bai W/o Rameshar Verma Aged About 53 Years,

(wrongly mentioned as daughter of Rameshar Verma)

All R/o Village And Post- Bhaisa, P.S. Kharora, Distt. Raipur (C.G.)

---- Appellants/Claimants

Versus

1. Kaushal Kumar Verma S/o Bisauha Verma R/o Khaparidih, Post-Bhaisa, P.S. Kharora, Distt. Raipur (C.G.) (**Driver**)

2. Narendra Kumar Verma (Dead) Thru- Legal Representatives -

2a) Smt. Triveni Verma W/o Narendra Verma, Aged about 28 years,

2b) Rahul Verma S/o Late Narendra Verma Aged About 13 Years,

2c) Harsh Verma S/o Late Narendra Verma Aged About 9 Years,

(Respondent No. 2a to 2c are minor hence impleaded through their mother Smt. Triveni Verma respondent No. 2a)

All R/o Village Khaparidih, Post- Bhaisa, P.S. Kharora, Distt. Raipur (C.G.) (**Owner**)

3. Reliance General Insu. Co. Ltd. S/o Thru- In Charge Officer, Reliance Gen. Ins. Co. Ltd., Shop No. 412-413, IVth Floor, Ravi Bhavan Jaistambh Chowk, Raipur, Distt. Raipur (C.G.) (**Insurer**)

---- Respondents

For Appellants	:	Shri Amiyakant Tiwari, Advocate.
For Respondent No. 1	:	None.
For Respondent No. 2	:	Shri Akash Shrivastava, Advocate on behalf of Shri Arvind Shrivastava.
For Respondent No. 3	:	Shri Sourabh Sharma, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

19/06/2019

1) This appeal is preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 04/12/2012 passed by First Additional Motor Accident claims Tribunal, Raipur (C.G.) in Claim Case No. 118/2010 awarding total compensation of Rs. 4,86,500 with interest @ 6% per annum from the date of application till realization, in favour of claimants fastening liability on the non-applicant No. 1/driver of vehicle and non-applicant No. 2/owner of vehicle jointly and severally and exonerated Insurance Company on the ground that at the time of accident driver of offending vehicle Kaushal Kumar not having valid and effective transport license of vehicle.

2) As per averments of claim petition, on 17/01/2009 at about 01:00 AM deceased Purshottam Verma, aged about 26 years, earning Rs. 6,000/- per month as labour, was walking on road near High School at village Kanki, Police Station Kharora, district Raipur (C.G.). On the way non-applicant No.1/Kaushal Kumar driver of offending vehicle Pick-Up bearing registration No. CG04 E 1918 driven the vehicle in a rash and negligent manner dashed Purshottam Verma. As a result of this accident deceased Purshottam Verma sustained grievous injury and died during treatment in Vardan Hospital at Raipur on 23/01/2009. Offending vehicle was owned by Non-applicant No.2/Narendra Kumar Verma and insured with non-applicant No. 3/Reliance General Insurance Co. Ltd.

3) On claim petition being filed by the claimants' wife and parents of deceased under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above in Para-1 of this judgment.

4) Learned counsel for the appellants submits that though he has raised various grounds in this memo of appeal, however, he is

not pressing all those grounds and is assailing the award on the following grounds only :-

i) that income of the deceased has wrongly been considered by the Tribunal as Rs. 3,000/- per month whereas it should have been Rs. 6,000/- per month looking to the age and nature of job of deceased as labour.

ii) that no amount towards future prospect has been granted to the claimants.

iii) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

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*** *and* ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***.

iv) that on the date of accident, the driver/non-applicant No.1 was having a valid and effective driving license to drive LMV which was valid from 21/06/2000 to 20/06/2020 vide Ex. D-3 & D-4. The said driving license has been duly proved before the Tribunal and a finding to this effect has also been recorded by the Tribunal. Though the vehicle in question is Pick-Up, which was a transport vehicle and there is no endorsement in the driving license in this regard. As per Ex. D-4, the offending vehicle is also LMV and gross weight is 2950 kg, in view of decision of the Hon'ble Supreme Court in the matter of ***Mukund Dewangan Vs. Oriental Insurance Company Ltd., reported in (2017) 14 SCC 663***, no such endorsement is required in the driving license for driving transport vehicle if its unladen weight does not exceed 7500 kg. The Tribunal was not justified in exonerating Insurance Company on the ground of breach of policy conditions. Therefore, he submits that the liability has wrongly been fastened upon the driver and owner by the Tribunal; whereas it ought to have held the Insurance Company liable for satisfying the award.

5) On the other hand, learned counsel for the respondent No.2/ legal heirs of the Owner supports the contention made by appellants counsel regarding liability and opposes the contention for enhancement made by the appellant counsel.

6) Learned counsel for the respondent No. 3/Insurance Company submits that looking to all the aspects is considered at the time of accident there is no any endorsement regarding the Light Goods Motor Vehicle in driving license, therefore, learned Tribunal rightly exonerated the Insurance Company. He further submits that he opposes the contention made by the appellant counsel and support the award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

7) No counter appeal has been filed by the respondent as submitted by counsel for the parties.

8) Heard learned counsel for the parties and perused the material available on record.

9) So far as liability is concerned, as per Ex. D-4, which is evident that non-applicant no. 1 was having a license for Light Motor Vehicle which was valid from 21/06/2000 to 20/06/2020 and the weight of vehicle in question is 2950 KG.

10) The issue involved in this case has already been considered by the Hon'ble Supreme Court in the matter of ***Mukund Dewangan (supra)*** whether a driver who is having a license to drive the "light motor vehicle" is competent to drive "transport vehicle" of that class in absence of such an endorsement, and it was held therein as under:-

> "Held, the effect of amendment of Form 4 by insertion of "transport vehicle" related only to categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same – There was no requirement to obtain separate endorsement to drive transport

vehicle, and if a driver is holding license to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect – Further held, even otherwise the Form could not control the substantive provisions carved out in Ss. 10(2)(d) and 10(2)(e) and the interpretation of the Form has also to be in tune with the Statement of Objects & Reasons and the provisions of the Act inserted by virtue of the amendment – Interpretation of Statutes – Basic Rules – Harmonious Construction – Subordinate/Delegated Legislation/Rules Under the Act – Central Motor Vehicles Rules, 1989, Form 4 and R.14 (before and after 28.03.2001)"

11) Applying the ratio of law laid down by the Supreme Court in the matter of Mukund Dewangan (supra), it is apparent that the driver of the vehicle in question was holding a valid and effective driving license and even in absence of any endorsement as such in his driving license authorizing him to drive the offending vehicle, it cannot be held that he was not possessed valid and effective driving license at the relevant time. The finding so recorded by the learned claims Tribunal in this regard is, therefore, liable to be and is hereby set aside. It is accordingly held that the driver of the offending vehicle was holding the valid and effective driving license and was not driving the same in violation of terms and conditions of the Insurance Policy.

12) In this view of the matter, the Insurance Company is held liable jointly and severally alongwith non-applicant No. 1/Driver and Non-applicant 2/Owner for paying compensation to the claimant.

13) As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs. 6,000/- per month as Labour but no documentary 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. 3000/- per month as per minimum wages for labour at the relevant time. Further, considering the age of the deceased i.e. 26 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma and 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 3,000/- per month.	(Rs. 3000x12) = Rs. 36,000 per annum
02.	40 % of (i) above to be added towards future prospects.	(Rs. 36000 + 14400) = Rs. 50400/-
03.	1/3 deduction towards personal and living expenses of the deceased	(Rs. 50400 - 16800) = Rs. 33600/-
04.	Multiplier of 17 to be applied	(Rs. 33600x 17) = Rs. 5,71,200/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
06.	Towards medical expenses (as awarded by Tribunal)	Rs. 29,500/-
	Total compensation	**Rs. 6,70,700-**

14) Since the Tribunal has already awarded Rs. 4,86,500/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 1,84,200/- with interest @ 6% per annum from the date of application till realization. The appeal is allowed with modification in the impugned award to the above extent that the non-applicant No.3/respondent No. 3/Insurance Company alongwith non-applicant No. 1/Driver and Non-applicant 2/Owner is jointly and severally liable to satisfy the claim of claimants, looking to the Insurance Policy valid on the date of accident, Respondent No. 3 is hereby directed to deposit the amount within two months from the date of this judgment.

15) If any amount has been deposited by the non-applicant No. 1 and No. 2 and disbursed to the claimants/appellants, the non-applicant No. 1 and 2 are entitled to recover the same from Insurance Company non-applicant No. 3/respondent No. 3.

16) However, rest of the conditions of the impugned award shall remain intact.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant