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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 933 of 2014

- Branch Manager, Reliance General Insurance Company Limited, Ravi Bhawan, Vidhan Sabha Road, Raipur, At present- 5th Floor, National Corporate Park, G.E. Road, Police Station Saraswati Nagar, Civil and Revenue, District Raipur (C.G.)

---- Appellant/Non-applicant No.3/Insurer

Versus

1. Shivcharan Yadav S/o Prayag Yadav, aged about 19 years, R/o Village Bhagwatpur, Police Station- Shankargarh, Tahsil Kusmi, District Balrampur, Civil and Revenue District Balrampur (C.G.)

(Claimant)

2. Santosh Tiwari S/o Nanhak Tiwari, R/o Gadhwa Through Res.No. 5-Basantlal Gali Ambikapur, Branmhpara, P.S. Ambikapur, Civil and Revenue District Sarguja (C.G.)

(Driver/Non-applicant No.1)

3. Arvind Agrawal S/o Late Radheshyam Agrawal, R/o Gaddipara, Seth Basant Lal Marg, Abmikapur, P.S. Ambikapur, Tahsil Ambikapur, Civil and Revenue District Sarguja (C.G.)

Owner Basant Roadways (No. CG-15 A 5015)

(Owner/Non-applicant No.2)

---- Respondents

And

Miscellaneous Appeal (Civil) No. 932 of 2014

- Branch Manager, Reliance General Insurance Company Limited, Ravi Bhawan, Vidhan Sabha Road, Raipur, At present- 5th Floor, National Corporate Park, G.E. Road, Police Station Saraswati Nagar, Civil and Revenue, District Raipur (C.G.)

---- Appellant/Non-applicant No.3/Insurer

Versus

1. Ajay Narayan Pandey S/o Late Adityanarayan Pandey, aged about 57 years
2. Shilabaso W/o Ajay Narayan Pandey, aged about 44 years
3. Rakapartik Pandey S/o Ajay Pandey, aged about 16 years (Minor)
4. Rukam Pandey S/o Ajay Pandey, aged about 12 years (Minor)
5. Ku. Divya Pandey D/o Ajay Pandey, aged about 08 years (Minor)

Res. No. 3 to 5 are minor and hence representing through father Ajay Pandey

All Resident of Village Dipadihkala, P.S. and Tahsil Shankargarh, Civil and Revenue, District Sarguja (C.G.)

(Claimants)

6. M/s Basant Bus Service Through Proprietor Arvind Agrawal, R/o Basatlal

Gali Ambikapur, Branmhpara, P.S. Ambikapur, Civil and Revenue District
Sarguja (C.G.)

(Owner/Non-applicant No.1)

7. Santosh Tiwari S/o Nanku Tiwari, R/o Gadhwa Through Res. No.6-Basantlal
Gali Ambikapur, Branmhpara, P.S. Ambikapur, Civil and Revenue District
Sarguja (C.G.)

(Driver/Non-applicant No.2)

---- Respondents

For Insurance Company	:	Shri Rohitashava Singh, Advocate
For respective Claimants	:	Shri A.N. Pandey, Advocate and Shri Taran Dadsena, Advocate appears on behalf of Shri Dharmesh Shrivastava, Advocate
For Owner & Driver	:	Shri Roop Naik & Smt. Vijiyita Sahu, Advocates

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

13.03.2019

1. As both above appeals by the Insurance Company arise out of the same accident occurred on 13.09.2010 involving the same vehicle Bus bearing registration No. CG-15/A/5015 (hereinafter referred to as "offending vehicle"), they are being disposed of by this common judgment.
2. M.A.(C) No. 933 of 2014 arises out of separate award dated 30.08.2013 passed by the Third Additional Motor Accident Claims Tribunal, Ambikapur Sarguja (C.G.) in Claim Case No. 110/2012 awarding compensation in favour of the Claimant/injured- Shivcharan of Rs.96,662/-.
3. M.A.(C) No. 932 of 2014 arises out of separate award dated 30.08.2013 passed by the Third Additional Motor Accident Claims Tribunal, Ambikapur Sarguja (C.G.) in Claim Case No. 74/2012 awarding compensation in favour of the Claimants- parents, brothers & sister of deceased- Tejpunjam of Rs.7,62,000/-.
4. In both above claim cases the Tribunal has also awarded interest @ 6% per annum from the date of claim applications till realization and has fastened the liability upon Insurance Company to pay compensation to the Claimants in their respective Claim Cases.
5. In Claim Case No. 110/2012, the Claimant/injured- Shivcharan claimed

compensation of Rs.2,01,930/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for injury sustained by him in the motor accident. In Claim Case No. 74/2012, the Claimants, unfortunate parents, brothers and sister of deceased- Tejpunjam, claimed compensation of Rs.31,00,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for the death of Tejpunjam in the motor accident.

6. Brief facts necessary for disposal of both appeals are that injured-Claimant Shivcharan (in Claim Case No. 110/12) and deceased Tejpunjam (in Claim Case No. 74/12) both were travelling in the offending vehicle. Injured Shivcharan was a conductor and deceased Tejpunjam was sitting as passenger in the offending vehicle Bus bearing registration No. CG-15/A/5015 which was being driven by Santosh Tiwari, owned by Arvind Agrawal and insured with the Insurance Company. However, due to rash and negligent driving of the offending vehicle by non-applicant Santosh Tiwari, it turned turtle on the way near Gullulla river. As a result thereof, Tejpunjam sustained grievous injuries and succumbed to those injuries. Similarly, Shivcharam also sustained grievous injuries and his left leg was fractured.

7. In both appeals, learned counsel of the Appellant/Insurance Company submits that at the time of accident, there was no valid permit of the offending vehicle, therefore, on account of there being breach of policy conditions, the Tribunal was not justified in fastening liability on the Insurance Company as the offending vehicle was being plied towards Jashpur route and the offending vehicle was being used in contravention of insurance policy conditions as well as Motor Vehicles Act.

Learned counsel for the Appellant/Insurance Company submits that as per statement of Ajay Narayan (AW-1), he has stated in para-16 of his statement that the deceased Tejpunjam (in Claim Case No. 74/12) was earning by doing the work of agriculture and the work of priest, but the Tribunal has wrongly assessed the income of the deceased as Rs.5,000/- which is on the higher side. He further

submits that at the time of accident, deceased was bachelor aged about 23 years, but the Tribunal has wrongly deducted 1/3rd towards personal and living expenses of the deceased and it should have been 50%. He placed reliance on the decision of Hon'ble Supreme Court in the matter of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121.**

8. On the other hand, learned counsel for the respective respondents i.e. learned counsel for the Claimants and learned counsel for the owner & driver support the impugned awards and submits that as per document adduced before the Tribunal, the Tribunal has rightly fastened liability on the Insurance Company in both appeals which needs no interference by this Court.

9. In M.A.(C) No. 932 of 2014 arising out of Claim Case No. 74 of 12, learned counsel for the Claimants submits that no amount towards future prospect has been granted to the Claimants and the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. He placed reliance on the decision of Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.**

10. Heard learned counsel for the parties and perused the material available on records.

11. As submitted by learned counsel for the parties, no counter appeal has been filed by the respondents.

12. Regarding breach of permit, learned counsel for the Appellant insisted upon the statement of Abhishek Singh examined on behalf the Insurance Company as NAW-1. Statement of injured Shivcharan is that the bus was coming from Manora to Kusmi via Jashpur road. This is not a case of breach of permit but it is a case of breach of route challenged by the Insurance Company and the accident occurred at place Kusmi near Gulfulla river and as per Ex.-P/1, charge-sheet and Ex.P/2, F.I.R. in Claim Case No. 110/12, the offence is also registered against Satosh Tiwari, driver of the offending vehicle, at the police station Kusmi. This fact is proved by the document produced by the Insurance Company. For the place Kusmi, permit was

issued in favour of the owner which is not disputed by the Appellant/Insurance Company and the Respondents also. As per Ex.D/1 in Claim Case No. 110/12, validity of permit was from 01.11.2006 to 31.10.2011 and accident happened on 13.09.2010, therefore, the permit was effective at the time of accident and route of place Kusmi also mentioned in Ex.-D/1. Abhishek Singh (NAW-1) is not eyewitness of the incident. No any specific evidence adduced by the Insurance Company regarding route. As per evidence of Shivcharan the bus was coming from Jashpur road and other documents show that the accident happened in Kusmi area. In view of the above, Insurance Company failed to prove breach of permit or policy conditions. Therefore, the Tribunal was justified in fastening liability upon the Insurance Company.

13. M.A.(C) No. 932 2014 arising out of Claim Case No. 74/12:

It is not disputed by the both the parties that deceased Tejpunjam was bachelor. As per statement of Ajay Narayan, father of deceased, he has admitted in para-16 that at time of accident, the deceased was earning income by doing the work of agriculture and the work of priest, but no documentary evidence is support thereof has been adduced. Therefore, considering the pleadings of the Claimants, oral evidence adduced by them, the nature of work being done by the deceased and value of rupee at the relevant time, this Court is of the opinion that income assessed by the Tribunal @ Rs.5,000/- per month of the deceased appears to be a bit on the higher side and it can safely be taken @ Rs.4,500/- per month. Further, considering the age of the deceased i.e. in between 21-25, the dependency, nature of his job and the decisions of Hon'ble Supreme Court in *Smt. Sarla Verma* and *Pranay Sethi* (supra), the Claimants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.4,500/- per month	Rs.54,000/- per annum
2.	40% of (1) above to be added towards future	(Rs.54,000/- + Rs.21,600/-)

	prospects	Rs.75,600/-
3.	50% deduction towards personal and living expenses of the deceased	(Rs.75,600/- – Rs.37,800/-) Rs.37,800/-
4.	Multiplier of 18 applied	Rs.37,800/- x 18= Rs.6,80,400/-
5.	Loss of love and affection to the Claimants	Rs.20,000/- (as awarded by the Tribunal)
6.	<u>Conventional heads:</u> Loss of estate and funeral expenses	Rs.30,000/-
	Total Compensation	Rs.7,30,400/-

Thus, the Claimants are awarded Rs.7,30,400/- instead of Rs.7,62,000/- as awarded by the Tribunal.

14. For the foregoing reasons, M.A.(C) No. 932 of 2014 is allowed in part. The amount of compensation of Rs.7,62,000/- awarded by the Tribunal is reduced to Rs.7,30,400/-. The amount of compensation of Rs.7,30,400/- shall carry interest @ 6% per annum from the date of application till its realization as awarded by the Tribunal. The award is modified to the above extent. Rest of the conditions of the award shall remain intact.

15. M.A.(C) No. 933 of 2014 being without any substance is hereby dismissed.

16. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge