AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 910 of 2015

1. Sahadevram Varma S/o Salikram Varma Aged About 45 Years
2. Smt. Melan Bai W/o Sahadevram Varma Aged About 43 Years

Both are R/o Village Hinchhapuri, Post- Badra, Police Station and Tahsil Pathariya, Revenue District Mungeli, Civil District Bilaspur Chhattisgarh.

----Appellants

Versus

1. Akram S/o Eshab Musalman, Aged About 24 Years, at present R/o Mahasati Ward, Bhatapara, Tahsil and Police Station Bhatapara, District Revenue and Civil Balodabazar Bhatapara Chhattisgarh Other R/o Village Ladlaka Tahsil Pahari, District Bharatpur Rajsthan. (Driver of Road Roller No.CG04-0-0001)
2. Nandlal Jaswani S/o Nemandas Jaswani, R/o Mahasati Ward, Bhatapara, Tahsil And Police Station - Bhatapara, District Revenue and Civil Balodabazar Bhatapara Chhattisgarh. (Owner of the Road Roller No.CG04-O-0001)
3. The New India Insurance Company Limited, Through Branch Manager, Branch Office Near Rajiv Plaza, Bus Stand Bilaspur, Tahsil And District Revenue And Civil Bilaspur Chhattisgarh.

---- Respondents

For Appellants	Shri Anand Kesharwani, Advocate.
For Respondent No.3	Smt. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

15/05/2019

1. This appeal is by the claimants against the award dated 28.04.2015 passed by 6th Additional Motor Accident Claims Tribunal, Bilaspur, C.G. in Claim Case No.166/2013 awarding total compensation of Rs.3,34,000/- with interest @ 7.5% per annum from the date of application till realization, fastening

liability on the non-applicants no. 1 & 2 and exonerated Insurance Company on the ground that at the time of accident driver of offending vehicle was not having valid and effective licence to drive the vehicle.

2. As per claim petition on 26.11.2012, Deepak Verma, aged about 24 years, earning Rs.3,300/- per month by running grocery shop, by riding motorcycle discover bearing No.CG10-EH-6310 was going from Hinchapur to village Sargaon through Bilaspur-Raipur Highway. However, on the way non-applicant No.1 had parked the vehicle road roller bearing No. CG04-O-0001 in the middle of the road without any signal or indicator in a negligent manner, as a result of which the motorcycle of Deepak Verma got dashed against the said road roller. In the said accident, the Deepak Verma suffered grievous injuries and succumbed to the same on the spot itself. At the time of accident, the 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. parents of deceased under Section 163A of the Motor Vehicles Act for compensation to the tune of Rs.6,60,500/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

4. Learned counsel for the appellants submits that the Tribunal has wrongly exonerated the Insurance Company of its liability on the ground that at the time of accident non-applicant No.1 was not having a valid and effective driving licence to drive the vehicle

whereas according to the statement of AW-2 R.L. Bagh, Investigating Officer, the final report Ex.A-1 and seizure memo Ex.A-5, it stands proved that non-applicant No.1 was having a valid and effective driving licence on the date of accident. The Insurance Company has not adduced any evidence to substantiate the defence that the vehicle in question was being driven by non-applicant No.1 in violation of the terms and conditions of the Insurance Policy. As per Insurance policy available on record i.e. Ex.D-1, the offending vehicle was duly insured with non-applicant No.3 on the date of accident. In these circumstances, the Tribunal ought to have fastened the liability on non-applicant No.3/Insurance Company. This apart he submits that the Tribunal has also committed an error by not granting any amount towards future prospect and awarded meager amount towards conventional heads.

5. Learned counsel for the Insurance Company opposes the contention made by the appellants' counsel and submits that the Tribunal considering the overall oral and documentary evidence available on record has rightly exonerated the Insurance Company of its liability and granted sufficient compensation in favour of the claimants which needs no interference by this Court.

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

7. Admittedly, in this case non-applicants No. 1 & 2 driver and owner neither filed their written statement nor contented the case and were proceeded ex-parte. The Tribunal has exonerated the

Insurance Company of its liability mainly on the ground that non-applicant No.1 was not having a valid and effective driving licence on the date of accident which amounts to breach of policy conditions. However, as per Ex.A-1 final report filed against non-applicant No.1 by the police and Ex.A-5 i.e. seizure memo, it is apparent that during investigation the police had seized driving licence of non-applicant No.1. As per evidence of AW-2 R.L. Bagh, Investigating Officer, he has categorically stated before the Court that during investigation he had seized the driving licence of non-applicant No.1 and the Insurance Policy. Though, no such driving licence was produced before the Tribunal, the non-applicant Nos. 1 & 2 also remained ex-parte and did not file their written statement, however, in view of unrebutted oral evidence of R.L. Bagh and the documentary evidence (Ex.A-1 and Ex.A-5), the fact that no inquiry/investigation was conducted by the Insurance Company to prove that non-applicant No.1 was not having a valid and effective driving licence, keeping in view the settled principle of law that while deciding the claim cases strict rule of evidence is not insisted upon and the same has to be decided on the basis of preponderance of probabilities, this Court is of the opinion that the Tribunal was not justified in exonerating the Insurance Company of its liability and fastening the same on non-applicants No. 1 & 2. It is held that non-applicant No.3/Insurance Company is jointly and severally liability along with non-applicant Nos. 1 & 2 to pay the compensation to the claimants.

8. As regards the argument of appellants' counsel that the Tribunal has not granted any amount towards future prospect and meager amount towards conventional heads, considering the facts and circumstances of the case, the age of the deceased i.e. 24 years, nature of his job and keeping in view the decision of Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680,*** 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 (as assessed by the Tribunal)	Rs.36,000/- per annum
02.	40% of (i) above to be added towards future prospects.	Rs.14,400/- Rs.36,000 + Rs.14,400 = Rs.50,400/-
03.	1/3 deduction towards personal and living expenses of the deceased	Rs.16,800/- Rs.50,400 – Rs.16,800 = Rs.33,600/-
04.	Multiplier of 18 to be applied	Rs.6,04,800/-
05.	Towards loss of estate and funeral expenses	Rs.30,000/-
	Total compensation	**Rs.6,34,800/-**

9. Since the Tribunal has already awarded Rs.3,34,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.3,00,800/- with interest as awarded by the Tribunal.

10. In the result, the appeal is allowed. The claimants are held entitled for additional compensation of Rs.3,00,800/- with interest as awarded by the Tribunal. The liability of paying the entire amount of compensation shall be of non-applicant No.3/Insurance Company jointly and severally along with non-applicant Nos. 1 & 2 driver and owner. The impugned award stands modified to the above extent. Rest of the conditions of the impugned award shall remain intact.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh