AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1200 of 2016

- Suman Toppo S/o Kedur Toppo, Aged About 34 Years R/o- Village- Kuruwan Aamapara, Post- Dedari, P.S.- Vishrampur, Tahsil And District- Surajpur, Chhattisgarh.

----Appellant

Versus

1. United India Insurance Company Limited Office- Bramah Road Near Kumkum Hotel, Ambikapur, Post And District- Ambikapur, Chhattisgarh.

2. Shashi, W/o Late Harkeshwar, Aged About 30 Years

3. Kartik, S/o Late Harkeshwar, Aged About 2 Year 6 Months, Now Aged About 4 Years,

4. Kishan, S/o Late Harkeshwar, Aged About 9 Months Now Aged About 2 Years

5. Respondent nos. 3 & 4 Minors Therefore They Are Represented By Their Natural Guardian Mother Respondent No. 2.

   Sohago, W/o Late Karamsai, Aged About 50 Years

   Respondent nos. 2 to 4 R/o- Village- Inderpur, Saraipara, P.S.- Odagi, District- Surajpur, Chhattisgarh.

---- Respondents

MAC No. 1201 of 2016

- Suman Toppo S/o Kedur Toppo, Aged About 34 Years R/o- Village- Kuruwan Aamapara, Post- Dedari, P.S.- Vishrampur, Tahsil And District- Surajpur, Chhattisgarh.

----Appellant

Versus

1. United India Insurance Company Limited Office- Bramah Road Near Kumkum Hotel, Ambikapur, Post And District- Ambikapur, Chhattisgarh.

2. Basanti, W/o Late Shivpal, Aged About 45 Years

3. Chuleshwar Rajwade, S/o Late Shivpal, Aged About 18 Years

Respondent nos. 2 & 3 are R/o- Village- Kuruwan, P.S.- Vishrampur, Tahsil And District- Surajpur, Chhattisgarh.

---- Respondents

For Appellant	Smt. Meena Shastri, Advocate.
For Respective Respondents	Shri Dashrath Gupta, Advocate and Shri Santosh Bharat, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

27/03/2019

1. As both these appeal filed by Owner-cum-Driver of the vehicle arise out of the separate awards dated 29.01.2016 passed by the 3rd Additional Motor Accident Claims Tribunal, Surajpur, District Surajpur, C.G. in Claim Case No.16/2015 in MAC No.1201/16 and Claim Case No.15/2015 in MAC No.1200/2016, involving the same vehicle, they are being disposed of by this common judgment.
2. As per averments in the claim petitions, on 04.12.2014 the deceased Shivpal Rajwade, aged about 50 years, earning Rs.25,000/- per month, as Diesel Mechanic & Agriculturist and deceased Harkeshwar, aged about 34 years, earning Rs.20,000/- per month, as Mason and Agriculturist, died in the motor vehicular accident caused due to rash and negligent driving of Motor Cycle bearing no. CG15-CM-7527 by non-applicant No.2/appellant. At the time of accident, the offending vehicle was also owned by non-applicant no.2 and insured with non-applicant no.1/respondent no.1.

3. On claim petition i.e. Claim Case No.16/15 being filed by the claimants of deceased Shivpal Rajwade u/s 166 of the Motor Vehicles Act claiming compensation of Rs.52 lacs under various heads, the Tribunal considering the evidence led by the parties, by the impugned award granted a total compensation of Rs.3,57,000/- with interest @ 9% p.a from the date of application till its realization, fastening the liability on non-applicant no.2. On claim petition i.e. Claim Case No.15/15 being filed by the claimants of deceased Harkeshwar u/s 166 of the Motor Vehicles Act claiming compensation of Rs.54 Lacs under various heads, the Tribunal considering the evidence led by the parties, by the impugned award granted a total compensation of Rs.4.87 lacs with interest @ 9% p.a. from the date of application till its realization, fastening the liability on non-applicant no.2.
4. MAC No.1201/16 arises out of claim case no.16/15 whereas MAC No.1200/16 arises out of claim case no.15/15.
5. Learned counsel for the appellant submits that at the time of accident Suman Toppo had a valid and effective driving licence to ride the vehicle as per Ex.D-3, therefore, learned Tribunal wrongly exonerated the Insurance Company and fastened the liability upon non-applicant no.2.
6. Learned counsel for the claimants submits that the accident occurred on 04.12.2014 and awards were passed on 29.01.2016 but till date no amount is recovered from the

owner of the vehicle because he is a poor villager. Execution proceedings are still pending and except Rs.25,000/- nothing has been deposited by the owner in discharge of his liability for filing this appeal. Therefore, considering the facts and circumstances of the case and in view of decision of Hon'ble Supreme Court in ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others (2017) 4 SCC 796*** order of pay and recover may be passed in this case to safeguard the interest of the claimants.

7. Counsel for the respondent no.1/Insurance Company submits that learned Tribunal rightly exonerated the Insurance Company on the ground of specific breach of policy as no any valid and effective driving licence was held by the driver of the motorcycle non-applicant no.2 on the date of accident to ride the motorcycle and no such licence is produced by him before the Tribunal. He also opposes the contention made by the claimants regarding pay and recover and submits that the Tribunal considering the issue of pay and recover in its award in Para 10 has rightly observed that in this case no such order of pay and recover can be passed against the Insurance Company.

8. Heard both the parties and perused the material available on record including the impugned award.

9. It is admitted by both the parties and as per Ex.D-3 that the driving licence issued in favour of Suman Toppo is only for

light motor vehicle and date of issuance is 20.02.2001 and its validity till 27th March, 2021. No any driving licence is produced or proved by the owner/driver of the vehicle to show that he was having a licence for motorcycle with gear. Therefore, the Tribunal has rightly exonerated insurance on the ground of breach of policy.

10. It is not disputed by the parties that at the time of accident the vehicle in question was duly insured. The deceased persons were third party in this case. Suman Toppo, owner and driver of the vehicle is a Tribal villager residing in district Surajpur. As per the claimants, except Rs.25,000/- for filing this appeal, nothing has been deposited by the owner in discharge of the liability fastened upon him by the Tribunal and this fact has also not been disputed by the parties. Thus, considering the over all facts and circumstances of the case, in particular the socio-economic status of the owner, the fact that the deceased persons were the third party, the vehicle in question was duly insured with the Insurance Company at the relevant time, that the accident occurred on 04.12.14 and despite passing of the award on 29.01.2016 till date no amount has been received by the claimants as compensation, keeping in view the benevolent provisions of the Motor Vehicle Act in the light of the decisions of the Hon'ble Supreme Court in Manuara Khatun (supra) and ***Manager, National Insurance Company Limited Vs. Saju***

P. Paul and another (2013) 2 SCC 41, this Court is of the opinion that the ends of justice would be served if the Insurance Company is directed to pay the entire amount of compensation to the claimants and then recover the same from the driver-owner of the vehicle in question in accordance with law.

11. In the result, both the appeals are disposed of with modification in the impugned awards to the extent that it is non-applicant no.1/Insurance Company i.e. respondent no.1 which shall first pay the entire amount of compensation to the respective claimants and then recover the same from the non-applicant no.2 i.e. appellant/owner-cum-driver of the vehicle in accordance with law. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
Gautam Chourdiya
Judge

Akhilesh