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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1126 of 2014

- Bajaj Allianz General Insurance Company Limited Branch Office Ambikapur Distt. Sarguja Thourgh Its Authorized Officer Bajaj Allianz General Insurance Company Limited Shiv Mohan Bhawan Vidhansabha Road Pandri Raipur Distt. Raipur, Chhattisgarh

---- Appellant/insurer

Versus

1. Rajpati W/o Late Brijeshwar Aged About 28 Years
2. Fhuleshwari W/o Late Jokhan Aged About 60 Years
3. Pritsagar S/o Late Brijeshwar Aged About 10 Years
4. Surysagar S/o Late Brijeshwar Aged About 7 Years

   Respondent No. 3 and 4 are minor, they are through their natural guardian mother Rajpati, W/o Late Brijeshwar, aged 28 years, (respondent No.1).

   R/o All respondents are R/o Village Silouta, P.S. Pratappur, Distt. Surajpur (CG)
5. Shambhusharan Gupta S/o Balmukund Aged About 36 Years, Caste Sondik, R/o Village Silouta Post Semrakala PS Pratappur Distt. Surajpur Chhattisgarh.
6. Vijay Kumar Gupta S/o Harigovind Aged About 40 Years, Caste-Sondik, R/o Village Chawgai Post Semarkala PS Chalgali Distt. Surguja, Chhattisgarh

---- Respondents

For Appellant	: Shri G. Patel, Advocate.
For Respondent Nos. 1 to 4	: Shri Anand Kesharwani, Advocate.
For Respondent Nos. 5 & 6	: Shri Sunil Tripathi, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

27/02/2019:

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 31.7.2014 passed by Additional Motor Accident Claims Tribunal, Pratappur, Distt. Surajpur (CG) in Claim Case No. 36/2012 awarding total compensation of Rs.13 lacs with interest @ 7.5% per annum from the date of application till realization, fastening liability on non-applicant No.1 jointly and severally along with non-applicants No. 2 & 3/owner & driver.

02. As per claim petition, on 14.4.2010 deceased Brijeshwar Gond, 38

years of age, earning Rs.1.50 lacs from agriculture and dairy farm, was travelling in the vehicle Pickup bearing No. UP 62 T 2824, owned by non-applicant No.2 and insured with non-applicant No.1, which was being driven by non-applicant No.3 Vijay Kumar in a rash and negligent manner, as a result of which the said vehicle turned turtle, Brijeshwar Gond suffered grievous injuries and ultimately succumbed to the same in the hospital.

03. On claim petition being filed by the claimants, wife, mother and children of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellant/insurance company submits that as per Certificate of Registration of the offending vehicle (Ex.D/1), its unladen weight is 1690 kg and gross weight is 2880 kg. The offending vehicle was a goods vehicle and from the evidence on record including the evidence of AW-2, it is clear that on the date of accident, the driver was carrying about 25-26 persons in the said vehicle whereas the insurance policy does not cover the risk of such persons because no premium was taken for them by the insurance company. The deceased was neither the owner of the goods nor authorized representative of the goods being carried in the said vehicle. Therefore, the Tribunal has wrongly fastened liability on the insurance company of paying compensation to the claimants.

05. On the other hand, learned counsel for the respondents/owner & driver supports the impugned award.

06. Learned counsel for the respondents/claimants submits that the Tribunal considering all the relevant aspects of the matter has rightly fastened liability on the insurance company. Alternatively he submits that if this Court comes to the conclusion that the insurance company is liable to be exonerated of its liability, then considering the facts and circumstances of the case and the decisions of the Hon'ble Supreme Court in ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796*** and ***Shivawwa and another Vs. Branch***

Manager, National India Insurance Company Limited and another, (2018) 5 SCC 762, the order of pay and recover may be passed in this case.

He further submits that the claimants have also filed cross-objection in this case, thereby seeking enhancement of compensation on the ground that the Tribunal has wrongly made 1/3rd deduction towards personal and living expenses of the deceased whereas considering the number of dependents, it should have been 1/4th. Further, 40% addition should also have been granted towards future prospect which has not been considered by the Tribunal. This apart, the amount awarded under the conventional heads being on the lower side needs 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.***

07. Learned counsel for the insurance company opposes the cross-objection of the claimants and submits that the Tribunal considering all the aspects of the matter has awarded just and proper compensation which needs no interference by this Court.

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

09. As regards the issue of liability, considering the facts and circumstances of the case, the evidence of AW-2 Balbind Singh that on the date of accident, 25-26 persons were being carried in the offending vehicle, fact the offending vehicle was admittedly a goods carrying vehicle, the insurance company has not taken any premium for covering the risk of passengers being carried in the said vehicle, there is nothing on record to show that the deceased was either owner of the goods being carried in the vehicle or authorized representative of such goods, this Court is of the opinion that the Tribunal was not justified in fastening liability on the insurance company. Therefore, on account of

there being breach of policy conditions, the insurance company is exonerated of its liability. However, considering the fact that at the time of accident the offending vehicle was duly insured with the insurance company, in view of principles of law laid down by the Hon'ble Supreme Court in ***Manuara Khatun and others*** and ***Shivawwa and another*** (supra), this Court feels it proper to order for “pay and recover” in this case, meaning thereby that the insurance company shall first pay the amount of compensation to the claimants and then recover the same from non-applicants/owner & driver in accordance with law.

10. As regards the cross-appeal filed by the claimants, considering the number of dependents i.e. 4, age of the deceased i.e. 38 years, the nature of his job, keeping in view 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.10,000/- per month (as assessed by Tribunal.)	1,20,000/- per annum
02.	40% of (i) above to be added towards future prospects.	1,20,000 + 48,000 = 1,68,000/-
03.	1/4th deduction towards personal and living expenses of the deceased	1,68,000 – 42,000 = 1,26,000/-
04.	Multiplier of 15 to be applied	18,90,000/-
05.	Towards loss of estate, loss of consortium and funeral expenses	70,000/-
	Total compensation	**19,60,000/-**

Since the Tribunal has already awarded Rs.13 lacs, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.6,60,000/- with interest @ 7.5% per annum from the date of application till realization. As observed above, the insurance company shall pay the entire amount of compensation to the claimants and thereafter, recover the same from the owner and driver of the offending vehicle in accordance with law.

11. In the result, the appeal of the insurance company and the cross-objection by the claimants are allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge

Khan