NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1260 of 2015

1. Suraj Kumar Dahariya S/o Shri Bharatdas Dahariya, aged about 50 years, Occupation Vehicle Transport, R/o Village Amlidih Khurd, House No.: 96, Ward No. 15, Tahsil : Khairagarh, District-Rajnandgaon (C.G.).

---- Appellant/Owner

Versus

1. Cholamandlam MS General Insurance Company, Through General Manager, Ward No. 25, Guru Govind Singh Ward, Second Floor, Simran Towers, Pnadri Road, In front of LIC Building Raipur, Tahsil & District- Raipur (C.G.).
2. Kekti Bai Wd/o Keshav Ram Yadu aged about 40 years,
3. Ku. Pratima D/o Late Keshav Ram, aged about 19 years,
4. Prem Narayan S/o Late Keshav Ram, aged about 17 years,
5. Ku. Ameshwari D/o Late Keshav Ram, aged about 14 years,
6. Ku. Hemkumari D/o Late Keshav Ram, aged about 11 years,
7. Akhilesh S/o Late Keshav Ram, aged about 08 years,

   Number 4 to 7 minor through guardian mother Kekti bai Wd/o Keshav Ram

   (Respondents No. 2 to 7 are claimants)

   All resident of village Turipar, Sub- Tahsil: Ghumka, Tahsil & District- Rajnandgaon (C.G.).

---- Respondents

For Appellant : Shri C. K. Kesherwani, Advocate.
For Respondent/Claimants : Shri Gautam Khetrapal, Advocate.
For Respondent/Insurance Company: Shri Rohitashav Singh, Advocate.

And

MAC No. 1519 of 2015

1. Kekti Bai Widow of Keshav Ram Yadu, aged about 40 years,

2. Kumari pratima daughter of late Keshav Ram Yadu, aged about 19 years,

3. Premnarayan son of late Keshav Ram Yadu, aged about 17 years,

4. Kumari Ameshwari daughter of late Keshav Ram Yadu, aged about 14 years,

5. Kumari Hemkumari D/o late Keshav Ram Yadu, aged about 11 years,

6. Akhilesh Kumar son of late Keshav Ram Yadu, aged about 09 years,

   Appellants No. 3 to 6 are minor, through mother Kekti Bai wife of late Keshav Ram Yadu,

   All are resident of Turipar, Up- Tahsil-Ghumka, Tahsil and District- Rajnandgaon (C.G.).

---- Appellants/claimants

Versus

1. Suraj Kumar Dahariya son of Bharat Das Dahariya, resident of Village- Amlidih Khurd, House No. 96, Ward No. 15, Tahsil- Khairagarh, District- Rajandgaon (C.G.).

2. Chola Mandalam General Insurance Company Limited, through Branch Manager, ward No. 25, Guru Govind Singh Ward, Second /floor, Simran Towers Pandri Road, in front of L.I.C. Building, Raipur, Tahsil and District- Raipur (C.G.).

---- Respondents

For Appellants : Shri Gautam Khetrapal, Advocate.
For Respondent/owner : Shri C. K. Kesherwani, Advocate.
For Respondent/Insurance Company: Shri Rohitashav Singh, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

19.02.2019

1. Since both the appeals filed under Section 173 of the Motor Vehicle Act arise out of the award dated 14.08.2015 passed by Motor Accident Claims Tribunal, Rajnandgaon in Claim Case No. 51/2013 both cases arises from the same accident, therefore, they are heard together and are being disposed of by this common judgment.

2. As per averments made in the claim petition, when on 02.03.2013, Keshav Ram (since deceased) was going with one another person Makhan to village Thelkadheeh on his bicycle near village-dumardheehkala, Birbal Das Suryavanshi (driver of the offending vehicle) (since died on 26.07.2014) while driving the offending vehicle Swaraj Majda bearing registration No. C.G.08L/1324 rashly and negligently, dashed the bicycle, as a result thereof deceased- Keshav Ram sustained grievous injuries and succumbed to these injuries. At the time of accident, the offending vehicle was owned by non-applicant No. 1 and insured with Non-applicant No. 2.

03. On claim petition being filed by the claimants/wife & children of the deceased- Keshav Ram under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs, 32,000,00/- under various heads, the Tribunal considering the evidence led by both the parties, awarded a total compensation of Rs. 7,46000/- with interest @ 6% per annum from the date of filing of claim petition till its actual payment. The learned Tribunal exonerated the Insurance Company from its liability to pay compensation to the claimants on the ground of breach of policy

conditions and fastened the liability to pay compensation upon owner of the offending vehicle. Aggrieved by the award for fastening the liability upon the owner he filed an appeal (MAC No. 1260/2015) whereas for seeking enhancement the claimants/wife & children of the deceased-Keshav Ram filed an appeal (MAC No. 1519/2015).

04. It is submitted by learned counsel for both the parties that no counter appeal is filed by the insurance Company.

<u>In MAC No. 1260</u>

05 Learned counsel for the appellant/owner in MAC No. 1260/2015 would submit that the Tribunal has wrongly fastened liability upon the owner on the ground that the driver was having licence for LMV whereas he was driving the offending vehicle i.e. Tata Swaraj Mazda, which is a transport vehicle on the date of accident without there being any endorsement to this effect in his driving licence. In support of his pleadings, placing reliance of the decision of Hon'ble Supreme Court in the matter of ***Mukund Dewangan Vs. Oriental Insurance Company Ltd.***, reported in ***(2017) 14 SCC 663***, and submits that the driver of the offending vehicle was having a valid and effective driving licence and the Tribunal was not justifying in exonerating the Insurance Company on the ground of the driver not having a valid and effective driving licence.

06. MAC No. 1519/2015 also filed by the claimants/wife & children seeking enhancement of the compensation.

07. Learned counsel for the claimants submits that he is assailing the award only on the ground that the deceased was salaried person but the Tribunal did not award any amount towards future prospect considering

the age of the deceased i.e. 42 years & nature of job, 25% future prospect should have been granted by the Tribunal.

In support of above contention, reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

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

09. As regards the issue of competence of the driver for driving the offending vehicle, as per seizure memo Ex. D/1 the driving licence was seized by the police which are valid and effective from 11.05.2005 to 09.01.2020. True it is that the driver was having a licence for light Motor Vehicle and the offending vehicle was a transport vehicle, however, keeping in view of the decision of Hon'ble Supreme Court judgment in the matter of ***Mukund Dewangan Vs. (supra)*** the driver was competent to drive the offending vehicle and the Tribunal was not justified in exonerating the Insurance Company on the aforesaid ground. In the Matter of ***Mukund Dewangan Vs.*** (Supra) the Hon'ble Supreme Court while considering the issue whether a driver who is having a licence to drive the light motor vehicle is competent to drive the transport vehicle of that class in absence of such endorsement observed 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 licence 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)"

10. It is true and not disputed by both the parties that the offending vehicle was light transport vehicle and the driver of the offending vehicle was having a valid and effective driving licence on the date of accident to drive the offending vehicle and there is no breach of policy conditions on the part of the owner of the offending vehicle, therefore, the non-applicant No. 2/Insurance Company held liable jointly and severely alongwith owner of the offending vehicle are liable for paying compensation to the claimants.

11. So far as the enhancement is concerned in MAC No. 1519/2015, as regards income of the deceased, Rs. 5,000/- per month considered by the learned Tribunal is just and proper as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 42 years, 25% towards future prospect would be added into the income of the deceased further considering the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in ***Sarla Verma***, ***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.5,000/- per month.	Rs. 5,000x 12= Rs. 60,000/- per annum
02.	25% of (1) above to be added towards future prospects.	Rs. 60,000+ 15,000= Rs. 75,000/-
03.	After 1/4th deduction towards personal and living expenses of the deceased	Rs. 75,000 -18750= Rs.56,250/-
04.	Multiplier of 14 to be applied	Rs. 56250x14= Rs. 7,87,500/-
05.	Towards loss of funeral expenses, loss of Estate, & consortium	Rs. 70,000/-
06.	Towards love & affection (as awarded by the Tribunal)	Rs. 50,000
07.	**Total Compensation**	**Rs. 907,500/-**

Since the Tribunal has already awarded Rs.7,46,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.1,61,500/-with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

12. In the result, the both appeals are allowed in part with modification in the impugned award to the above extent.

Sd/-

(Gautam Chourdiya)
Judge

Amita