NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1260 of 2012

1. Janki, W/o Late Baikuntho, Aged About 26 Years.

2. Minor Tekchand S/o Late Baikuntho Aged About 6 Years

3. Minor Venu S/o Late Baikuntho Aged About 4 Years.

   S. No.2 and 3 through natural guardian their mother Janki.

4. Jairam S/o Vidhyadhar Aged About 50 Years.

5. Kumari W/o Jairam Aged About 45 Years

   All R/o village Bhakurra, Post- Gahira, P.S. and Tahsil Lailunga, Distt. Raigarh (CG)

---- Appellants

Versus

1. Mohd.Gulam Khan, S/o Rojan Khan Aged About 29 Years, driver of the vehilce, R/o village Jhagarpur, P.S. & Tahsil Lailunga, Distt. Raigarh (CG)

2. Jai Prakash Agrawal S/o Late Ramchandra Agrawal, Occupation-owner of vehicle, R/o Ward No.19, Raigarh Road Lailunga, P.S. & Tahsil Lailunga, Distt. Raigarh (CG)

3. The Ifko Tokio General Insurance Company Limitd, through Branch Manager, 3rd Floor, Shop No.345-347, Lalganga Shopping Mall, G.E. Road, Raipur, Distt. Raipur (CG).

---- Respondents

MAC No. 72 of 2013

1. Mohammad Gulam Khan, S/o Rojan Khan Aged About 29 Years R/o Jhagarpur, P.S. & Tah. Lailunga, Distt. Raigarh C.G. (Driver)

2. Jaiprakash Agrawal S/o Late Shriram Chandra Agrawal, aged about ... yeras, R/o Ward No. 19, Raigarh Road, Lailunga, P.S. and Tah. Lailunga, Distt. Raigarh C.G. (Owner)

---- Appellants

Versus

1. Janki Bai, W/o Late Baikunto Aged About 26 Years.

2. Minor Tekchand S/o Late Baikunto Aged About 6 Years

3. Minor Venu D/o Late Baikunto Aged About 4 Years

   For respondent No.2 & 3 through their mother Janki.

4. Jairam S/o Vidyadhar Aged About 50 Years

5. Kumari W/o Jairam Aged About 45 Years

   All r/o Bhakura, Post- Gahira, P.S. And Tah. Lailunga, Distt. Raigarh C.G., District : Raigarh, Chhattisgarh (Claimants)

6. IFFCO Tokio General Insu. Co. Ltd. W/o through The Branch Manager, Branch Office- 3rd Floor, Shop No. 345-347, Lalganga Shopping Mall, G.E. Road, Raipur, Distt. Raipur (CG) (Insurer of CG13-D-5912)

---- Respondents

MAC No.1260 of 2012

For Appellants	:	Shri M.K. Sinha, Advocate.
For Respondents No.1 & 2	:	None.
For Respondent No.3	:	Shri Amrito Das, Advocate

MAC No.72 of 2013

For Appellants	:	None.
For Respondents No.1 to 5	:	Shri M.K. Sinha, Advocate.
For Respondent No.6	:	Shri Amrito Das, Advocate

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

16.01.2019

1. As the above two appeals arise out of the common award dated 12.10.2010 passed by the Motor Accident Claims Tribunal, Raigarh (for short 'the Claims Tribunal') in Claim Case No.46/2012, the same are being disposed off by this common order.

2. The claimants/appellants in MAC No.1260/2012 are seeking enhancement of compensation and also challenging the finding of exoneration of insurance company from its liability to pay the amount of award, whereas the owner & driver of offending vehicle have filed MAC No.72/2013 challenging the quantum of compensation and their liability to pay the amount of compensation awarded.

3. For the sake of convenience, in this order the parties are referred to as per their status in the claim application before the Claims Tribunal.

4. Facts of the case, in brief, are that on 13.9.2010 deceased Baikunthram was returning from the market to village Sohanpur on his motorcycle and when he reached near village Jhagarpur, one pick-up vehicle bearing registration number CG13-D-5912, which was coming from the opposite direction and being driven by respondent No.1 in a rash and negligent manner, dashed against the motorcycle of the deceased as a result of which he sustained grievous injuries on various parts of his body. He was admitted in the District Hospital, Raigarh where he succumbed to his injuries during the course of treatment. Report of the accident was made to the police based on which offence under Crime No.639/2010 was registered against the driver of offending vehicle (pick-up) and after completion of investigation, charge sheet under Sections 279, 337, 304A of IPC has been filed against him in the competent Court. The claimants, who are widow, children & parents of the deceased, have filed a claim application claiming compensation to the tune of Rs.48,65,000/- under various heads on the ground that all of them were dependent on the earning of the deceased and due to his untimely death, they have been deprived of the dependency. They have further pleaded that on the date of accident, the deceased was 30 years old, he was earning Rs.7,000/- per month from his business and agriculture work. Therefore, they are entitled to get compensation as claimed by them from the non-applicants, jointly and severally.

5. Non-applicant Nos.1 & 2, owner & driver of offending vehicle, filed their reply to the claim application denying the averments made therein including the monthly income of the deceased, as pleaded by the claimants. It has further been pleaded that on the date of accident the offending vehicle was fully insured and therefore non-applicant No.3-

insurance company is liable to pay the compensation, if any, awarded by the Claims Tribunal.

6. Non-applicant No.3 Insurance Company filed its separate reply and denied the claim of claimants. The insurance company has denied the monthly income of the deceased. It has been further pleaded that there was head-on collusion between two vehicles and therefore the owner and insurer of the motorcycle were necessary parties, but they have not been impleaded and due to non-joinder of necessary parties, the claim application is liable to be dismissed as such. Insurance Company has also taken a technical plea with respect to violation of condition of insurance policy that on the date of accident the driver was not having valid and effective license to drive the offending vehicle (pick-up). On the aforesaid grounds, it has been pleaded that the insurance company is not liable for making payment of compensation, if any, to the claimants.

7. The Claims Tribunal after considering the pleadings and evidence placed on record (oral and documentary both) by the respective parties has partly allowed the claim of the claimants, awarded compensation of Rs.2,92,000/- with interest @ 6% per annum, exonerated the insurance company on the ground that there is violation of conditions of insurance policy and saddled the liability to satisfy the award on the driver and owner of the offending vehicle by holding that on the date of accident the driver of offending vehicle was possessing license to drive 'motorcycle with gear & LMV', whereas the vehicle involved in the accident was a 'light commercial vehicle'.

8. Learned counsel appearing on behalf of the claimants submits that the Claims Tribunal erred in assessing the monthly income of the deceased at

Rs.3,000/- ignoring the nature of work which he was doing on the date of incident for earning livelihood. He further submits that as the number of dependent members of the family of the deceased is 5, the Claims Tribunal has erred in deducting 1/3rd instead of 1/4th towards personal expenditure of the deceased for the purpose of assessing the compensation. The Claims Tribunal further erred in applying the multiplier of 12 instead of 17 ignoring age of the deceased on the date of accident i.e. 30 years. He further submits that the Claims Tribunal has also not awarded any amounts towards future prospectus of the deceased. He further submits that the driver of offending vehicle was having valid and effective driving license to drive 'light motor vehicles' and the offending vehicle was a pick-up vehicle which comes under the category of 'light motor vehicle' because its unladen weight is less than 7500 kilogram and thus the driver of offending vehicle was authorized to drive the offending vehicle on the date of accident.

He further argued that the driving license placed on record as Ex.P-14 clearly authorizes the driver to drive light motor vehicle. He refers to the details mentioned in the insurance policy (Ex.D-1) and argued that type of body is 'Bolero Pick-up' and gross vehicle weight is less than 7,500 kilogram i.e. 2880 kilogram as mentioned in the certificate of registration of the offending vehicle (Ex.P-12), which makes it clear that the offending vehicle Bolero Pick-up comes within the category of light motor vehicle. He further submits that looking to the category of vehicle and its gross vehicle weight, it cannot be said the driver of offending vehicle, who was having valid & effective driving license to drive 'light motor vehicle', is not competent to drive the offending vehicle. Hence, there was no violation or breach of any of the conditions of insurance policy and the Claims

Tribunal has erred in fastening the liability of making payment of compensation on the owner and driver of offending vehicle.

9. Learned counsel appearing on behalf of the Insurance Company supported the impugned award. He has submitted that there is difference between 'light motor vehicles' & 'light commercial vehicles'. On the date of accident the driver of offending vehicle was having license to drive 'light motor vehicles' only and not authorized to drive 'light commercial vehicles' and thus there was breach of condition of the insurance policy. Therefore, the Claims Tribunal has rightly exonerated the insurance company.

10. So far as the argument advanced by learned counsel for the claimants regarding exoneration of insurance company from its liability to pay compensation on the ground of breach of condition of insurance policy is concerned, there is no dispute that the driver of offending vehicle was having a valid and effective driving license to drive 'motorcycle with gear and light motor vehicle' and that the offending vehicle was fully insured on the date of accident, which is also evident from the insurance policy (Ex.D-1) which was valid from 11.3.2010 to 10.3.2011. The only point which requires consideration is whether the offending vehicle comes within the category of 'light motor vehicle' or not?

11. Section 2 (21) of the Act, 1988 defines 'light motor vehicle" as follows:-

> (21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms"

A bare reading of above definition clause makes it clear that any motor vehicle unladen weight of which does not exceed 7,500 kilogram comes within the category of 'light motor vehicle'. From perusal of the registration certificate of the offending vehicle available on record as Ex.P-12 it is clear that unladen weight of the offending vehicle is 1690 kilogram, whereas its gross weight is 2880 kilogram. Thus, there is no doubt that the offending vehicles comes within the definition of 'light motor vehicle' because its laden weight is less than 7500 Kilogram.

12. True it is that in the registration certificate (Ex.P-12) the type of vehicle has been shown as 'light goods vehicle' and the driver had a license to drive light motor vehicle only and there is no endorsement of light transport vehicle. Similar issue came up for consideration before the Hon'ble Supreme Court in the case of **Mukund Dewangan vs. Oriental Insurance Company Ltd.** reported in **(2017) 14 SCC 663** where the Hon'ble Supreme Court has held thus;-

> "25. Form 6 provides for 'light motor vehicle' and 'transport vehicle' separately. Though the form contains separate validity period for a motor vehicle other than transport vehicles, the aforesaid form and period of validity have to be understood in the light of the aforesaid discussion made by us of the light motor vehicle and transport vehicle. The form cannot govern the interpretation of the provision of Sections 10(2)(d) and 10(2)(e) otherwise also form has to be interpreted harmoniously with the Act and cannot be in conflict with the statutory provisions. The provision of the Light motor vehicle has to be given full effect and it is enjoined upon the authorities to issue the licence in terms of the discussion made by us in the order and validity period has to be construed accordingly. The validity period of transport vehicle of light motor vehicle licence which means the vehicle as defined in Section 2(21), has to be the same as that of other light motor vehicle of non-transport category and there cannot be any distinction made with respect to the validity period of the **class** of light motor vehicle. The separate prescription for the validity of transport vehicle in Form 6 is only to take care of the provisions inserted in Section 10(2)(e) by deleting

> the provisions of Sections 10(2)(e) to (h). It would apply to those categories.
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> 28. The aforesaid Rule 34 also makes a distinction between light motor vehicle, medium passenger motor vehicle, medium goods vehicle, heavy passenger motor vehicle and heavy goods vehicles. For all types of vehicles, it is necessary that prototype of every motor vehicle qualify a test by the Vehicle Research & Development Establishment of the Ministry of Defence of the Government of India or Automotive Research Association of India as provided in Rule 126. The vehicles must conform to the provisions of the Rules made under Section 110 of the Act. The relevant information has to be inserted as per Section 41 of the Act in the registration particulars as may be prescribed by the Central Government i.e. class of vehicle, gross vehicle weight, as well as unladen weight, are required to be mentioned in the registration particulars in Form 20.
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> 30. The State Government has to maintain a register of motor vehicles under Rule 75 as provided in Form 41 which includes gross vehicle weight, unladen weight etc. The Central Government has the power to frame rules under Section 27, inter alia, regarding minimum qualification, forms, and contents of the licences etc. Thus, we are of the considered opinion that the definition of "light motor vehicle" under Section 2(21) of the Act includes transport vehicle of the class and weight defined therein. The transport vehicle or omnibus would be light motor vehicle, gross vehicle weight of which, and also a motor car or tractor or road roller, unladen weight of which, does not exceed 7500 kg., and can be driven by holder of licence to drive light motor vehicle and no separate endorsement is required to drive such transport vehicle."

13. Keeping in mind the above law and the fact that the vehicle involved in the present case comes within the category of 'light motor vehicle' because its weight is less than 7500 kilogram, this Court is of the considered view that the driving license meant for 'light motor vehicle' is valid and effective for driving the vehicle in question also. Being so, this Court has no hesitation in holding that there was no breach of any of terms and conditions of the insurance policy in the present case because on the date of accident the driver of offending vehicle was having valid and effective driving license to

drive the offending vehicle. Hence, the Claims Tribunal has committed an error in exonerating the insurance company and saddling the liability on the owner & driver of offending vehicle to pay the amount of compensation to the claimants on the ground of breach of condition of insurance policy which is not sustainable and is hereby set aside.

14. Now this Court will consider as to whether the Claims Tribunal has awarded just compensation to the claimants in the facts and circumstances of the case?

15. The claimants in the claim application have pleaded that on the date of accident the deceased was engaged in the business of vegetables selling and thereby earning Rs.7,000/- per month which the Claims Tribunal disbelieved and calculated the compensation under the head of 'loss of dependency' by taking notional income of Rs.3,000/- per month. Though the claimants have not filed any documentary evidence in support of the income of the deceased, but it cannot be expected from the dependants of a poor deceased, who was engaged in the self-employment of selling vegetables, to produce his proof of income. Further, considering the fact that the accident took place on 13.9.2010 and keeping in view the cost of living and price index prevailing during the relevant period, the monthly income of deceased as assessed by the Claims Tribunal was on lower side and needs to be enhanced.

16. Further, the Claims Tribunal has not granted any compensation under the head of 'future prospects'. If a person is not in a permanent employment or self-employed or on a fixed salary then also there is every possibility of enhancement in his income due to one reason or the other and therefore while calculating compensation to be awarded to the claimants, the future

prospects are also to be added in the income of the deceased. The Hon'ble Apex Court has considered the issue of 'future prospects' in detail in the matter of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** and held thus:-

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

In the present case, the claimants have pleaded in the claim application that the deceased was self-employed, engaged in the business of selling vegetables and therefore, in view of the aforesaid decision, future prospects at the rate of 40% have to be taken into consideration.

17. It is well settled that where the number of dependent family members is 4 to 6, the deduction towards personal and living expenses of the deceased should be one-fourth. In the present case, though the number of dependent family members is 5, but the Claims Tribunal has deducted one-third towards personal expenditure of the deceased in place of one-fourth. Similarly, as the deceased was aged about 30 years on the date of incident, therefore, the Claims Tribunal ought to have applied the multiplier of 17 instead of 12, as has been prescribed by the Hon'ble Supreme Court in the matter of Sarla Verma vs. Delhi Transport Corporation and another reported in (2009) 6 SC 121.

18. In view of above discussions, this Court proposes to recalculate the compensation amount payable to the claimants/appellants.

19. Considering the above facts and having regard to the date of accident, the monthly income of the deceased is assessed at Rs.4,000/- and by adding 40% towards future prospects, as held by the Hon'ble Supreme Court in the matter Pranay Sethi's case (supra), the monthly income of the deceased is assessed at Rs.5,600/- (4000+1600). After deducting one-fourth towards the personal expenditure of the deceased, the loss of dependency would come to Rs.4,200/- (5,600-1,400) per month. Annual loss of dependency is calculated at Rs.50,400/- (4,200x12) and after applying multiplier of 17 to it, the total loss of dependency is calculated at Rs.8,56,800/- (50,400x17). Besides this, a lump sum amount of Rs.70,000/- is also awarded towards other conventional heads. The claimants, thus, become entitled to receive a total sum of Rs.9,26,800/- (8,56,800+70,000) as compensation for the death of deceased Baikuntho in the motor accident. Now the appellants are entitled for a total sum of Rs.9,26,800/- as compensation instead of Rs.2,92,000/- as awarded by the Claims Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization.

20. In the result;-

- MAC No.1260/12 (Janki & ors vs. Mohd. Gulam Khan & ors) filed by the claimants is allowed in part. Impugned award dated 12.10.2012 is modified to the extent that now the claimants/appellants are entitled to a compensation of Rs.9,26,800/- instead of Rs.2,92,000/- as awarded by the Claims Tribunal. They are also entitled to interest on this amount at the rate of 6% p.a. from the date of filing of claim application. Rest of the conditions mentioned in the impugned award shall remain intact.

- MAC No.72/2013 (Mohd. Gulam & anr vs. Janki & ors) filed by the owner and driver of offending vehicle is allowed. The impugned award fixing the liability on the appellants i.e. owner and driver of offending vehicle, is set aside, they are exonerated from the liability to pay compensation to the claimants and the insurance company is directed to make payment of the entire amount to the claimants within a period of three months from today.

- Amount if any, deposited by the owner of offending vehicle will be refunded to him and in case any part/whole of the same has been paid to the claimants, the owner is held to be entitled to recover the same from the insurer on the strength of this order.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-