

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A(C) No.392 of 2010****Reserved on 25.02.2019****Pronounced on 11.03.2019**

1. Budhar Das Dahariya, aged 52 years S/o Budhardas Dahariya,r/o Village-Akoli, post-Khudmuda, ps-Berla,tahsil-Bemetara,distt.-Durg
2. Kumari Erlin, aged 16 years D/o Budhardas Dahariya,r/o Village-Akoli, post-Khudmuda, ps-Berla,tahsil-Bemetara,distt.-Durg
3. Hemraj Dahariya, aged 14 years, S/o Budhardas Dahariya,r/o Village-Akoli,post-Khudmuda,ps-Berla,tahsil-Bemetara,distt.-Durg

---- Appellants**Versus**

1. Rajesh Das Manikpuri, aged 22 years, S/o Vishaldas Manikpuri, Occupation Driver, R/o Vill. Muraithi, P.S Dharsinwa, Tahsil and Distt Raipur
2. Mayaram Yadu, aged 38 years, S/o Vishveshwar Yadu,r/o Village-Muraithi, Post Siltara, ps-Dharsinwa,Tahsil and distt.-Raipur
3. The Oriental Insurance Co.Ltd. Through Divisional Manager, Divisional Office No.1, kachhahari Chowk, jail Road, Raipur

----Respondents

For Appellants:	Shri Ahkilesh Mishra, Advocate.
Respondents No.1 & 2:	None, though served.
For Respondent No.3:	Smt Chitra Shrivastava, Advocate.

Single Bench:Hon'ble Shri Sanjay Agrawal, J**C A V Award**

1. The Claimants/Appellants have preferred this Appeal assailing the impugned award dated 27.03.2009 passed by the learned 9th Additional Motor Accident Claims Tribunal, Raipur (for short 'the Claims Tribunal') in Claim Case No.114/08, whereby the Claims Tribunal has partly allowed the Claim Petition while exonerating the Insurance Company from its liability.
2. Facts of the case, in brief, are that on 30.05.2008 deceased Smt. Kamla Bai, wife of Appellant No.1-Budhardas Dahariya was travelling on

Tata Pick-up DI bearing registration number CG04-J-9750 and going to her work place at Baldev Sponge Iron, Siltara from village Akoli. At about 7.45 a.m, when the said vehicle reached near Paper Mill Pond, Village Akoli, the offending vehicle Tata pick-up turned turtle due to rash and negligent driving of the driver. Deceased Kamla Bai received grievous injuries and later succumbed to those injuries. The Appellants, legal representatives of deceased Kamla Bai, filed Claim Petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation to the tune of Rs.12,85,000/- under various heads on the ground that at the time of accident, the deceased was earning Rs.128/- per day, however, on account of untimely demise of the deceased, a loss of income has occasioned to them and therefore, they are entitled to the compensation as claimed by them.

3. Respondent No.1, driver of offending vehicle, filed his reply to the Claim Petition and stated that at the time of accident, he was not driving the offending vehicle. Respondent No.2, owner of offending vehicle has pleaded that at the time of accident, the offending vehicle was insured with Respondent No.3-Insurance Company and the driver of the offending vehicle, was having valid and effective driving license on the date of accident.

4. Respondent No.3, Insurance Company filed its separate reply and denied the claim of the Claimants/Appellants. It has been pleaded that on the date of accident, 25-30 passengers were travelling in the offending vehicle, whereas the offending vehicle was registered as a 'goods vehicle'. The driver, at the time of accident, had a license to drive only motorcycle with gear and light motor vehicles, whereas the offending vehicle was a 'goods vehicle'. Further, the vehicle has been plied without there being

any valid permit, therefore, there was breach of conditions of insurance policy. As such, the Insurance Company is not liable to indemnify the insured.

5. 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 Appellants and awarded compensation of Rs.3,12,000/- with interest @ 6% per annum to the Claimant/Appellants. However, the Claims Tribunal deducted 50% of the amount of compensation on the ground that the Claimants/Appellants are partially dependent upon the deceased and accordingly awarded only to the tune of Rs.1,58,000/- in total including funeral expenses of Rs.2,000/-.

6. While partly allowing the Claim Petition, learned Claims Tribunal made Respondents No.1 & 2 liable to pay compensation to the Claimants/Appellants, jointly and severally and exonerated the Insurance Company of its liability to indemnify the insured on the grounds that on the date of accident, the offending vehicle was carrying about 35 labourers; the vehicle was a commercial goods carriage vehicle, but it was being driven without a valid permit and that the license issued to the driver of offending vehicle authorizes him only to drive motorcycle with gear and light motor vehicle and he was not authorized to drive the offending vehicle.

7. Learned counsel for the Claimants/Appellants vehemently argued that the Claims Tribunal has assessed the monthly income of the deceased on lower side. The deceased was not merely an earning member of the family working in one of the industries at Raipur, she also being a housewife, was doing all the household works for keeping

everything in house in order. The Claims Tribunal while assessing the compensation has not taken into consideration the overall facts. He further argued that the learned Claims Tribunal has illegally deducted 50% amount from the compensation calculated by it on the ground that Appellant No.1 himself was working as labourer, which is not permissible under the law. It has been argued further that learned Claims Tribunal has not awarded any amount towards future prospects and other conventional heads. Lastly, he submits that learned Claims Tribunal ought to have directed the Insurance Company to pay the amount of compensation and to recover the same from Respondents No.1 & 2.

8. On the other hand, learned Counsel for Respondent No.3/Insurance Company while supporting the award impugned contended that the learned Claims Tribunal has rightly deducted 50% amount from the compensation amount as calculated and therefore, it does not require to be interfered. It is contended further that once the Insurance Company has been exonerated from its liability as the deceased was travelling in the alleged offending vehicle, insured as a goods vehicle, in violation of the insurance policy, the principles of "pay and recover" could not be applied.

9. I have heard learned Counsel for the parties and perused the entire record carefully.

10. Perusal of FIR (Ex.P-2) would show that at the time of accident along with deceased several other persons were travelling on the offending vehicle and they have also sustained injuries. RC Book of the offending vehicle, fitness certificate (having validity upto 30.05.2008) and one driving license have been seized vide seizure memo (Ex.P-4). Permit was not produced by the respondent No.2. A glance of RC book would

show that it is a "light goods vehicle" having seating capacity of three persons. The document Ex.D-2C is the verification issued by the Regional Transport Officer, Raipur with respect to driving license of Respondent No.1 specifying that the license issued to Respondent No.1 is for motorcycle with gear & light motor vehicle (pvt.) only. Thus, from the aforesaid material on record, it is clear that the offending vehicle was being plied in breach of the conditions of the insurance policy and being so, the findings of the Claims Tribunal in this regard cannot be faulted with.

11. So far as the assessment of monthly income of the deceased is concerned, it is uncontroverted that the deceased was working as labour in Baldev Sponge Iron, Siltara and on the date of accident, she was going to her place of work. The accident is of 30.05.2008 and therefore, the wages, as pleaded by the Claimants/Appellants, cannot be said to be on higher side in view of the wage structure prevailing on the date of accident in the city of Raipur, which is not only a capital of Chhattisgarh but also an industrial city. This apart, the Claims Tribunal has not taken note of the fact that the deceased was not only an earning member but also a housewife, who was required to do various household works for keeping the house in order including cleaning of house, clothes & utensils, cooking etc. The value of service rendered by a housewife to her family members is very difficult to assess. Thus, the Claims Tribunal erred in assessing the monthly income of the deceased as Rs.3000/-, which needs to be enhanced.

12. Further, the Claims Tribunal has committed an error in deducting 50% from the total compensation assessed by it on the ground that the Claimants/Appellants were partially dependent upon the deceased. The

said finding of the Claims Tribunal is not sustainable in the eyes of law because the income, if any, by each of the family members is to be enjoyed by all the family members except the cost of personal expenditure which are to be incurred on himself/herself. Therefore, the aforesaid finding of the learned Claims Tribunal is set aside.

13. In view of above discussions, this Court propose to recalculate compensation amount payable to the Claimants/Appellants.

14. On the date of accident, the deceased was 48 years old. Apart from an earning member, she was also a housewife and required to do household works to keep the house in order. Thus, considering the aforesaid fact and keeping in mind the wage rate prevailing in the industrial city Raipur on the date of accident, the income of the deceased is assessed at Rs.4,000/- per month and by adding 25% towards future prospects, as held by the Hon'ble Supreme Court in the matter of National Insurance Company vs. Pranay Sethi & others reported in **AIR 2017 SC 5157**, the monthly income of the deceased is assessed at Rs.5,000/-. After deducting one-third towards the personal expenditure of the deceased, the loss of dependency would come to Rs.3,333/- (5000-1667) per month. Annual loss of dependency is calculated at Rs.39,996/- (3333x12) and after applying multiplier of 13 to it, the total loss of dependency is calculated at Rs.5,19,948/- (39996x13). Besides this, an amount of Rs.70,000/- is also awarded towards conventional heads. The Claimants/Appellants, thus become entitled to receive a total sum of Rs.5,89,948/- (519948+70000) as compensation for the death of deceased Smt. Kamla Bai in the motor accident. Now the Claimants/Appellants are entitled for a total sum of Rs.5,89,948/- as compensation instead of

Rs.1,58,000/- as held by the learned Claims Tribunal.

15. Now the question which arises for determination is as to whether the Appellants are entitled for an order against the insurer to pay the awarded sum to the Appellants and then to recover the same from the insured in the same proceeding on the principle of “pay and recover”.

16. The aforesaid question however, remains no more *res integra*. At this juncture, the principles laid down by the Supreme Court in the matter of Manager, National Insurance Company Limited vs. Saju P. Paul and Another reported in **(2013) 2 Supreme Court Cases 41** are to be noted where, at paragraphs 20 and 26, it has been observed as under:-

“20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).”

“26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur (National Insurance Co. Ltd. v. Baljit Kaur, (2004) 2 SCC 1 and Challa Upendra Rao (National Insurance Co. Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517 should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may

be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in Challa Upendra Rao.

17. By applying the aforesaid principles to the case in hand, it would be just and proper to issue a direction to Respondent No.3, the Oriental Insurance Company Ltd to first pay the awarded sum to the Appellants/Claimants and then to recover the paid awarded sum from the owner of the offending vehicle i.e. Respondent No.2 (Mayaram Yadu) in execution proceedings arising in this very case.

18. The Appeal is accordingly allowed by modifying the award impugned by directing Respondent No.3/The Oriental Insurance Company Ltd. to pay the aforesaid awarded sum i.e. Rs.5,89,948/- (Rupees Five Lakhs Eighty Nine Thousand Nine Hundred and Forty Eight only) with 6% interest per annum from the date of filing of Claim Petition till its realization to the Appellants/Claimants. Thereafter, Respondent No.3 would be entitled to recover the entire paid awarded sum from the owner (Respondent No.2-Mayaram Yadu) of the offending vehicle in this very proceedings by filing execution application against the said owner/insured. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE