AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 333 of 2014

1. Smt. Kanti Devi Singh, W/o Late Ramdhani Singh Aged About 43 Years
2. Ludhiana Singh D/o Late Ramdhani Singh Aged About 24 Years
3. Mahendra Singh S/o Late Ramdhani Singh Aged About 26 Years
4. Phoolmet W/o Roopan Aged About 79 Years
5. Savitri Singh D/o Late Ramdhani Singh Aged About 21 Years
6. Santoshi Singh D/o Late Ramdhani Singh Aged About 11 Years

Appellant No.6 Minor through her mother Smt. Kanti Devi Singh (Appellant No.1), All residents of Village Batra, Odadbahrapara, Chowki Karanji, PS Jayanagar, Distt. Surajpur (CG)

---- Appellants

Versus

1. Kunt Raj Khalkho S/o Sipriyan Khalkho Aged About 30 Years R/o New Mines, Bhatgaon, P.S. Bhatgaon, Tah. Surajpur, Distt. Surajpur C.G., Driver
2. Rukmani Jaiswal W/o Sarwajit Jaiswal Aged About 34 Years R/o New Mines, Shanitpara, Bhatgaon, P.S. Bhatgaon, Tah. And Distt. Surajpur C.G., Owner
3. Reliance General Insurance Co. Ltd. through Its Branch Manager, Shop No. 412, 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur, Tah. And Distt. Raipur C.G.

---- Respondents

For Appellants	:	Shri Praghalbh Sharma, Advocate on behalf of Shri Rishabh Garg, Advocate.
For Respondents No.1& 2	:	None.
For Respondent No.3	:	Shri Rohitashva Singh, Advocate

MAC No. 610 of 2014

- Branch Manager, Reliance General Insurance Co.Ltd. W/o Ravi

Bhawan, 4th Floor, Shop No. 412, Jaistambh Chowk, Raipur, At Present- 5th Floor, National Corporate Park, In Front Of RKC, G.E. Road, P.S. Saraswati Nagar, Tah. Raipur, Distt. Raipur C.G.

---- Appellant

Versus

1. Kanta Devi Singh W/o Late Ramdhani Singh Aged About 39 Years
2. Ludhiyana Singh D/o Late Ramdhani Singh Aged About 20 Years
3. Mahendra Singh S/o Late Ramdhani Singh Aged About 22 Years
4. Fulmet W/o Late Rupan Aged About 75 Years
5. Savitri Singh D/o Late Ramdhani Singh Aged About 17 Years Minor,
6. Santoshi Singh D/o Late Ramdhani Singh Aged About 7 Years Minor,

Minor resp. No. 5 & 6 through their mother Kanti Devi, All R/o Vill. Batra, Odar Bahra, Chowki Karanji, PS Jainagar, Distt. Surajpur, Civil and Revenue Distt. Surajpur (CG) Claimants

7. Kunt Raj Khalkko S/o Sipriyan Khalkko Aged About 26 Years R/o New Mines, Bhatgaon, P.S. Bhatgaon, Tah. Surajpur, Distt. Surajpur C.G. - Driver.
8. Rukmani Jaiswal W/o Sarvjeet Jaiswal Aged About 30 Years R/o New Mines, Bhatgaon, P.S. Bhatgaon, Tah. Surajpur, Distt. Surajpur C.G. - Owner.

---- Respondents

For Appellants	:	Shri Rohitashva Singh, Advocate.
For Respondents No.1 to 6	:	Shri Pragalbha Sharma, Advocate.
For Respondent No.7 & 8	:	None.

<u>Hon'ble Shri Gautam Chourdiya, J</u>

<u>Judgment On Board</u>

<u>10/01/2019</u>

As both these appeals arise out of the award dated 20.12.2013 passed by Motor Accidents Claims Tribunal, Surajpur in Claim Case No.99/2011, they are being disposed of by this common judgment.

02. As per averments made in the claim petition, on 31.3.2009 while Ramdhani Singh, aged 45 years, drawing salary of Rs.18,000/- per month from SECL, Bhatgaon, was going on his motorcycle, his vehicle was dashed by tractor bearing No. CG 15 A 5956 which was being driven in a rash and negligent manner by non-applicant No.1 Kunt Raj Khalkho. As a result thereof, Ramdhani Singh suffered grievous injuries and died on the spot itself. At the time of accident, the offending vehicle tractor was owned by non-applicant No.2 and insured with non-applicant No.3.

03. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act, the Tribunal considering the overall evidence on record by the impugned award granted a total compensation of Rs.14,49,072/- with interest @ 8% p.a. from the date of application till realization in favour of the claimants, fastening the liability on non-applicant No. 3, jointly and severely with non-applicants No. 1 & 2/driver and owner of the offending vehicle.

04. **MAC No.610/2014**: Learned counsel for the appellant/insurance company submits that the offending vehicle was not involved in the accident, it was seized five months after the accident and that no proper opportunity was granted to the insurance company to examine its investigator. He submits that on the date of accident the driver of the offending vehicle was not having a valid and effective driving licence as the vehicle in question was a transport vehicle whereas the driver was having licence for LMV (Non-Transport). As such, on account of there being breach of policy conditions, the Tribunal was not justified in fastening liability on the insurance company. Lastly he submits that compassionate appointment has already been granted to the legal heir of the deceased and as such, the claimants are not entitled for any compensation.

05. On the other hand, learned counsel for the claimants supports the impugned award insofar as it relates to fastening of liability on the insurance company.

06. So far as validity of the driving licence and competence of the

driver/non-applicant No.1 to drive the offending vehicle is concerned, as per finding recorded by the Tribunal, the driver was having a licence to drive LMV and its validity was from 22.1.2005 to 22.1.2025. The accident in this case occurred on 31.3.2009. As such, the driver was having a valid licence on the date of accident. From the certificate of registration of the offending vehicle (Ex.D/7), it is seen that unladen weight of the vehicle is 1815 kg. The issue involved in this case has already been considered by the Hon'ble Supreme Court in the matter of **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in ***(2017) 14 SCC 663*** whether a driver who is having a licence to drive the “light motor vehicle” is competent to drive “transport vehicle” of that class in absence of such an endorsement, and it was held therein 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)”

07. Applying the ratio of law laid down by the Supreme Court in the matter of **Mukund Dewangan (supra)**, it is apparent that the driver of the vehicle in question was holding a valid and effective driving licence and even in absence of any endorsement as such in his driving licence authorizing him to drive the said transport vehicle, it cannot be held that he was not possessing valid and effective driving licence at the relevant time.

08. As regards the contention of the appellant/insurance company that the offending vehicle was not involved in the accident, as per Ex.A/1, report was lodged against unknown person and vehicle number is not given therein. Thereafter, the investigating officer after

investigation filed charge sheet against non-applicant No.1 Kunt Raj Khalkho and criminal case No.633/09 was instituted against him. As per Ex.A/9 i.e. statement of eyewitness to the accident namely Ratnesh Yadav, the offending vehicle caused the accident.

09. Learned counsel for the insurance company contended that non-applicant No.1 had also complained to the Superintendent of Police regarding his false implication in the said accident matter and one application Ex.D/1 was also filed before the police authorities by owner of the offending vehicle non-applicant No.2 regarding false implication of her vehicle in the said case. Non-applicant No.1 had also filed an application before the Additional Chief Judicial Magistrate, Surajpur in this regard, which was rejected by the Magistrate vide order dated 14.6.2012 (Ex.D/9) for want of jurisdiction as the investigating officer had already filed charge sheet against non-applicant No.1. The said order of the Magistrate has not been challenged by the non-applicants anywhere.

10. Further, as per Ex.D/4 i.e. bills from B.L. Diesels regarding repairing of the offending vehicle, the said vehicle was ready after repairing on 30.3.2009 and the accident took place on 31.3.2009. Therefore, it cannot be said that the offending vehicle was under repair on the date of accident. This apart, owner of the B.L. Diesels has not been examined by the non-applicants.

11. Thus, considering the overall facts and circumstances of the case, the nature and quality of evidence adduced by the parties, this Court is of the opinion that it was offending vehicle which caused the accident and the insurance company has failed to prove that there was any breach of policy. Being so, the Tribunal was fully justified in fastening liability on the non-applicant No.3 jointly and severely along with non-applicants No. 1 & 2 of satisfying the impugned award. As regards grant of compassionate appointment to legal heirs of the deceased, it is settled law that it does not affect the entitlement of the claimants to seek compensation. Hence the appeal filed by the insurance company being without any substance is liable to be dismissed.

12. **<u>MAC No.333/2014</u>**: Learned counsel for the appellants/claimants submits that the Tribunal has wrongly applied multiplier of 13 whereas considering the age of the deceased i.e. 45 years, it ought to have applied multiplier of 14. The Tribunal wrongly deducted 1/3rd towards personal and living expenses of the deceased whereas considering the number of dependents in this case i.e. 6, it should have been 1/4th. Further, The Tribunal has also committed an error by not awarding any amount towards future prospect @ 30% as the deceased was in the age group of 40-50 years. Lastly he submits that the Tribunal has also granted meager amount under the conventional heads.

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***, ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, and ***Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal No.9581/2018 arising out of SLP (Civil) No.3192/2018.***

13. On the other hand, learned counsel for the respondent/insurance company submits that the Tribunal has rightly assessed compensation on the basis of evidence available on record and therefore, the same needs no interference by this Court.

14. Income of the deceased assessed by the Tribunal as Rs.13,693/- per month as per his salary slip of Ex.A/18 for October, 2008 is not in dispute and the same appears to be just and proper. However, considering the age of the deceased i.e. 45 years, the number of dependents i.e. six, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma*, *Pranay Sethi* and *Magma General Insurance Co. Ltd.* (supra), the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (In Rupee)**
01.	Income of the deceased @ Rs.13,693/- per month	1,64,316/- per annum

02.	30% of (i) above to be added towards future prospects	1,64,316 + 49,295 = 2,13,611/-
03.	1/4th deduction towards personal and living expenses of the deceased	2,13,611 – 53,402 = 1,60,209/-
04.	Multiplier of 14 to be applied	22,42,926/-
05.	Towards loss of estate, loss of spousal consortium and for funeral	70,000/-
06.	Towards loss of parental and filial consortium.	50,000/-
	Total:	**23,62,926/-**

Since the Tribunal has already awarded Rs.14,49,072/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.9,13,854/- with interest @ 8% per annum from the date of application till realization.

15. In the result:

- MAC No.610/2014 preferred by the appellant/insurance company being without any substance is hereby dismissed.

- MAC No.333/2014 preferred by the appellants/claimants is allowed in part. The impugned award is hereby modified to the extent that the claimants are held entitled for an additional compensation of Rs.9,13,854/- with interest @ 8% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge

Khan