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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 970 of 2012

1. Fagni Bai Wd/o Jhanglu Baiga Aged About 30 Years Mahlidhar, Post- Chilfi, P.S.Chilfi, Distt. Kabirdham C.G
2. Sudhar Singh S/o Late Jhanglu Baiga Aged About 8 Years
3. Gulab Singh S/o Late Jhanglu Baiga Aged About 6 Years
4. Milap Singh S/o Late Jhanglu Baiga Aged About 4 Years
5. Mila Bai D/o Late Jhanglu Baiga Aged About 2 Years

   Respondents 2 to 5 Minors, Thru- Natural Guardian Mother-Fagni Bai

   All R/o Mahlidhar, Post- Chilfi, P.S.Chilfi, District : Kawardha (Kabirdham), Chhattisgarh

---- Appellants

Versus

1. Sukhram Bhaskar, S/o Faguwa Ram Bhaskar Aged About 28 Years Mudiyapara, P.S. Bodla, Distt. Kabirdham, Chhattisgarh
2. Suresh Kumar S/o Shivcharan Kashyap Aged About 27 Years Bodla Near Santoshi Mandir, P.S. Bodla, District : Kawardha (Kabirdham), Chhattisgarh
3. The Oriental Insu. Com.Ltd. S/o Thru- Its Branch Manager, Branch Office- Dhamtari, Distt. Dhamtari, Divisional Office At Krishna Complex, 1st Floor, Kutcheri Chowk, Raipur C.G.

---- Respondents

For Appellant	:	Shri Anurag Verma, Advocate
For Respondents-1 and 2	:	None appears
For Respondent- 3 / Insurance Company	:	Smt Chitra Shrivastava, Advocate

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Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

16.01.2019

1. By this appeal, the appellants have assailed the impugned award dated 18.10.2011 passed by the learned Motor Accident Claims Tribunal, Kabirdham (Kawardha) (for short, 'the Tribunal') in Claim Case No.79 of 2009 wherein the Tribunal has partly allowed the claim application filed by the appellants/claimants and by exonerating the Insurance Company from

its liability to pay compensation, held respondents- 1 and 2 to beliable for satisfying the award.

2. Brief facts of the case are that on 11.06.2009 when Jhanglu Ram was travelling on a jeep bearing No.CGZT-0152 (wrongly mentioned as CGZJ) as a passenger along with other 3-4 passengers and going towards Chilfy Bazar, at the relevant time, due to rash and negligent driving of driver Jhanglu Ram fell down from the vehicle and sustained grievous injuries over his person. He was immediately taken to the Government Hospital, Kawardha but on his way to the hospital, succumbed to the injuries. The claimants herein are wife and children of the deceased filed claim application before competent Claims Tribunal seeking compensation of Rs.13,15,000/- in total from the non-applicants/respondents on the ground that on the date of accident deceased Jhanglu Ram was aged about 35 years and along with his agricultural income, he was also earning his income through labour work and the claimants herein were dependants on him.

3. Respondents- 1 and 2 have replied the claim application and denied the pleadings made in application and further stated that Jhanglu Ram himself jumped out from the offending vehicle due to which he sustained injuries and there is no negligence on the part of driver of the vehicle. It is further pleaded that, even on the date of accident, driver of the vehicle was having a valid and effective driving license to drive the offending vehicle and as on the date of accident the offending vehicle was insured with respondent- 3, Oriental Insurance Company, liability if any for payment of compensation would be on the Insurance Company.

4. The Insurance Company filed separate reply and denied the adverse pleadings and stated that as the driver of offending vehicle was not having a valid and effective driving license to drive the offending vehicle and further that on the date of accident the offending vehicle was not having life permit which is violative to the conditions to the Insurance Policy. Therefore, Insurance Company is not liable for payment of compensation if any, and prayed for its exoneration.

5. Learned claims Tribunal on the basis of pleadings, evidence and material available on record, partly allowed the claim application filed by the claimants and awarded Rs.4,00,000/- in total as compensation. While exonerating the Insurance Company from its liability of payment of compensation held respondents- 1 and 2 liable for payment of amount of compensation awarded by the Tribunal.

6. Learned counsel for the appellants submits that the impugned award passed by learned Claims Tribunal was not sustainable as the Tribunal wrongly arrived at a conclusion that there is violation of conditions of Insurance Policy. It is submitted that on the date of accident, driver of offending vehicle was having valid and effective driving license (Ex.NA/2) to drive the vehicle with authorisation to drive Light Motor Vehicle (LMV) and on the date of accident, vehicle which the driver drove comes under the definition of LMV as provided under Section 2(21) of the Motor Vehicle Act, 1988. He further submitted that as per details of registration of the offending vehicle with District Transport Office, Uttar Bastar, Kanker issued on 10.03.2010, it has been clearly mentioned that the vehicle comes under category of Taxi Cab. From the documents available on

record, it is evident that there was a permit for offending vehicle from 02.03.2009 to 01.06.2009 and within a short period of its expiry time, the accident took place on 11.06.2009. Therefore, in the facts and circumstances of the case, learned Claims Tribunal ought to have passed the award against the Insurance Company with a condition of pay and recovery. He further submits that the amount awarded by learned Claims Tribunal is on lower side and argued that it requires suitable enhancement.

7. Learned counsel for respondent- 3/Insurance Company supported the award and argued that as on the date of accident driver of the offending vehicle was having license and authorisation to drive LMV, but he was driving the offending vehicle which is registered as 'Taxi Cab' that comes under the category of 'Light Commercial Vehicle'. On the basis of license possessed by the driver, he was not supposed to drive a vehicle of other type than what is mentioned in his driving license. She further argued that on the date of accident, the vehicle was running without permit and it violates the conditions of the Insurance policy.

8. I have heard learned counsel for the parties and perused the records. So far as the findings recorded by learned Claims Tribunal with respect to violation of conditions of the Insurance Policy, I have perused document Ex.NA/2 which is verification report issued by the Office of District Transport Officer, Kabirdham, wherein it has been mentioned that respondent- 2 Suresh Kumar, driver of offending vehicle was possessing license authorising him to drive 'LMV only (NT)' and its validity was from 25.07.2003 to 25.07.2017. On perusal of document Ex.NA-3, it shows that

the offending vehicle bearing No.CG-19-ZT-0152 is registered as Taxi Cab, having sitting capacity of 6 +1. On the basis of these two documents (Ex.NA/2 and 3) it is clear that the offending vehicle comes within the category of LMV but it is being used as commercial vehicle as taxi.

9. The issue with respect to the person having a particular class of license authorizing to drive a particular category of vehicle, but on the date of accident found driving the vehicle other than the type of vehicle mentioned in the license, but of the same category, has been considered by the Hon'ble Supreme Court in the matter of **Mukund Dewangan v. Oriental Insurance Company Limited** reported in **(2017) 14 SCC 663** and held as under :-

> "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.

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.

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."

10. Reverting to the facts of the case, the driver of offending vehicle was possessing license to drive LMV and the offending vehicle is also LMV but registered as a different type of vehicle ie Light Commercial Vehicle. Therefore, in view of the law laid down by the Supreme Court in the case

of **Mukund Dewangan** (*supra*), respondent- 2 driver of the offending vehicle was having a valid and effective driving license to drive the vehicle. Learned Claims Tribunal committed an error in holding that respondent- 2, driver of the offending vehicle was not having valid and effective driving license and it has been taken as one ground for exonerating the Insurance Company from its liability, which is not sustainable under the law and the findings recorded by the Tribunal in this regards are hereby set aside.

11. So far as the ground of not having permit to run the vehicle on the particular road violating the conditions of Insurance Policy, Ex.NA/4 would show that there was a valid permit of the offending vehicle but it expired only on 01.06.2009, whereas, the accident took place on 11.06.2009, within a short period of time. It is not a case where no permit was obtained by the owner of the vehicle to drive the vehicle as Taxi Cab and it is also evident from document Ex.NA/5 that on the date of accident the offending vehicle was having a fitness certificate issued by the competent authority for plying the vehicle as taxi.

12. From the aforementioned documents (Ex.NA/4 and 5) it can clearly be ascertained that the owner of offending vehicle obtained valid permit and certificate to ply the vehicle but the said permit had expired only few days before the accident. Insurance company accepted the amount of premium and issued insurance policy of package policy of Zone 'C' for PCCV- 4 wheeler (for taxi purpose) Section 149 of Motor Vehicle Act provides for the duty of Insurance company to satisfy judgments and awards against person insured in respect of third party.

13. Recently, Hon'ble Supreme Court in the matter of **Amrit Paul Singh and another Vs Tata AIG General Insurance Company Limited and others** reported in **2018 ACJ 1768** has held thus:

> "23. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh 2004 ACJ 1 SC and Lakhmi Chand, 2016 ACJ 551 SC in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the Tribunal as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in

> consonance with the principles stated in *Swaran Singh (supra)* and other cases pertaining to pay and recover principle."

14. In light of the proposition laid down by Hon'ble Supreme Court if facts of the case are evaluated, admittedly in the case in hand the vehicle on the date of accident was being plied without permit and therefore, the liability cannot be extended on the Insurance Company. At the same time, it is also to be taken into consideration that there was a permit validity period of which expired on 01.06.2009, few days before accident and further it has to be seen that the insurer has obtained a policy from the Insurance Company and therefore, to achieve the object of the Motor Vehicle Act 1988 and looking to the facts of the present case that the wife and four children who were dependants of the deceased, it would be expedient in the interest of justice to direct that the Insurance Company to first satisfy the award and thereafter recover the same from the driver/owner of the offending vehicle.

15. Now this Court is proceeding to consider whether learned Claims Tribunal awarded just and reasonable compensation in the facts and circumstances of the present case.

16. Learned Claims Tribunal considered the income of the deceased on the date of accident as Rs.24,000/- per annum, particularly on the basis of pleadings made in the claim application. After deducting 1/3rd from the income of deceased as his personal expenses and applying multiplier of 16, learned Claims Tribunal assessed loss of dependency as Rs.3,84,000/-. In addition to this, learned Tribunal has awarded a lump sum amount of Rs.16,000/- under other conventional heads. Thus a total

compensation of Rs.4,00,000/- was awarded to the claimants. On considering calculation made by learned Claims Tribunal in the facts and circumstances, this Court is of the view that the Tribunal has not awarded just compensation, which is liable to be modified and enhanced suitably.

17. In view of above discussion, this Court proposes to recalculate the compensation to be awarded to the appellants/claimants.

18. Looking to the age of deceased, number of dependants ie wife and children as well as pleadings with respect to the income of the deceased and also considering the date of accident ie 11.06.2009, it will be justified to assess income of the deceased as Rs.3,000/- per month from all sources. Hon'ble Supreme Court in the matter of **National Insurance Company Limited Vs Pranay Sethi and others** reported in **2017 16 SCC 680** held that in case the deceased is below 40 years of age and is self employed or on a fixed salary, he would be entitled for addition of 40% of the established income for future prospects. Considering the dictum of Hon'ble Supreme Court in the matter of **Pranay Sethi** (*supra),* 40% is added in the income of deceased towards future prospects which makes the yearly income of the deceased as **Rs.50,400**/-. In view of law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt) and Others Vs Delhi Transport Corporation and Another** reported in **(2009) 6 Supreme Court Cases 121**, where the number of claimants exceeds to four or more, then, the deduction towards personal expenses would be $1/4^{th}$ of income of the deceased. While deducting $1/4^{th}$ income towards personal expenses, yearly dependency of the claimants would come to Rs.37,800/-. There is no documentary evidence with respect to age of the

deceased and therefore, the age of the deceased is being taken as mentioned in the post-mortem report as 40 years. Therefore, the multiplier of 15 will be applicable instead of 16. By multiplying 15 to the amount of loss of dependency, the total amount comes to Rs.5,67,000/-. By adding an amount of Rs.70,000/- towards other conventional heads, total compensation would come to Rs.6,37,000/- (Rupees six lakhs thirty seven thousand). This enhanced amount of compensation will carry interest @ 9% per annum from the date of filing of the claim application.

19. Accordingly, the claimants are entitled for total compensation of Rs.6,37,000/-. The amount of compensation is to be firstly deposited by respondent- 3 Insurance Company and thereafter, the Insurance Company will be at liberty to recover the said amount from respondent- 1, owner of the offending vehicle by taking recourse. Other conditions made in the award will remain intact.

20. In the result, appeal is partly allowed and impugned award passed by learned Claims Tribunal is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma