NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 1731 of 2017

1. Smt. Karuna Tiwari W/o Late Bhagirathi Tiwari, Aged About 45 Years R/o Village Rahaud, Tahsil Pamgarh, District Revenue And Civil Janjgir-Champa, Chhattisgarh.
2. Punendu Tiwari S/o Late Bhagirathi Tiwari, Aged About 21 Years R/o Village Rahaud, Tahsil Pamgarh, District Revenue And Civil Janjgir-Champa, Chhattisgarh.
3. Balendu Tiwari S/o Late Bhagirathi Tiwari, Aged About 19 Years R/o Village Rahaud, Tahsil Pamgarh, District Revenue And Civil Janjgir-Champa, Chhattisgarh ....Claimants

---- Appellants

Versus

1. (Deleted) Taran Das Manikpuri As Per Honble Court Order Dated 16-04-2019.
2. Abdul Khalid Khan S/o Abdul Sttar, Aged About 44 Years R/o Ganesh Nagar, Nayapara Torwa, Police Station Sirgitti, Tahsil And District Bilaspur, Chhattisgarh ....Owner Of Truck No. C.G.12 C 0688
3. National Insurance Company Limited, Through Branch Manager, Branch Office First Floor, B-01, Taha Complex, Ring Road No.02, Priyadarshani Nagar, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh ....Insurer Of Truck No. C.G.12 C 0688,
4. I.C.I.C.I. Lombard General Insurance Private Limited Company, Through Manager, House No. 414, Veersevak Marg, Near Siddhivinayak Temple, Prabhadevi, Mumbai 400025 ....Insurer Of Motor Bicycle No. C.G.11 C D 0745.
5. Sanjay Kumar Sharma S/o Radheshyam Sharma, R/o Ward No. 5, Naila, District Janjgeer- Champa Chhattisgarh.

---- Respondents

For Appellants:	Shri Vineet Kumar Pandey, Advocate.
For Respondent No.2:	Shri Deepak Gupta, Advocate.
For Respondent No. 3:	Shri G.V. K. Rao, Advocate.
For Respondent No.4:	Shri Sourabh Sharma along with Shri Tarkeshwar Nande, Advocate
For Respondent No.5:	None appears as notice upon him is dispensed with.

Single Bench:Hon'ble Shri Sanjay Agrawal, J

Award On Board

17.10.2019

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') questioning the legality and propriety of the award dated 24.11.2017 passed by the Third Additional Motor Accident Claims Tribunal, Bilaspur (hereinafter referred to as 'the Claims Tribunal') in Claim Case No. 129/2015 by which, the learned Claims Tribunal while allowing the claim in part, has awarded total amount of compensation to the tune of Rs. 5,28,000/- with 6% interest per annum from the date of filing of the claim petition till its realization. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 07.11.2014, deceased Bhaagirathi Tiwari was going by his motorcycle from village Rahaud to Pandaria via village Jarondha-Takhatpur and as soon as he reached near the village Khapari, it was dashed vehemently by the offending vehicle “Truck” bearing its registration Number C.G.-12-C-0688, which was owned by Non-applicant No.-2 Abdul Khalid Khan, insured with Non-applicant No. 3-National Insurance Private Limited Company. At the relevant time, the alleged vehicle was being driven rashly and negligently by its driver Tarandas Manikpuri. Owing to which, the alleged accident occurred, by which, deceased Bhaagirathi Tiwari sustained serious injuries and expired on the spot.

3. On account of the aforesaid accident, the Claimants being legal representatives of the deceased, instituted a claim petition enumerated

under Section 166 of the Act, 1988 by submitting *inter alia* that he used to earn Rs.5,00,000/- per annum from his different occupation and total amount of compensation to the tune of Rs. 1,09,01,076/- has been claimed under various heads.

4. The aforesaid claim has been contested by the Non-applicants. Non-applicant No.3, National Insurance Private Limited Company, the insurer of the alleged offending vehicle, contested the claim by submitting *inter alia* that the vehicle in question “Truck”, insured as a Goods vehicle, was being used without any valid permit on the date of the accident in violation of the insurance policy, therefore, no liability could be fastened upon it.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 07.11.2014 due to rashness and negligent driving of the driver of the offending vehicle “Truck”, resulting into the death of the deceased Bhaagirathi Tiwari. It held further that the vehicle in question, insured with Non-applicant No.3- National Insurance Private Limited Company as a Goods vehicle, was being used without any permit in violation of the insurance policy. As a consequence, while exonerating the Insurance Company from its liability, has awarded total amount of compensation as mentioned hereinabove.

6. Being aggrieved, the Claimants have preferred this appeal. Shri Pandey, learned counsel for the Appellants submits that the award impugned as passed by the Claims Tribunal exonerating the Insurance Company from its liability while awarding the meagre amount of compensation is apparently contrary to law. While inviting attention to the documentary evidence marked as Ex.A.17 to Ex.A.21 and Ex.A.27 to Ex.

A.32, it is contended that the alleged documents were not considered in its proper manner and thereby erred in assessing the notional income of the deceased to the tune of Rs.4500/- per month only. He submits further that the vehicle in question was being used with valid permit, and therefore, the Claims Tribunal ought not to have exonerated the Insurance Company on finding that it was being used without any permit in violation of the insurance policy.

7. On the other hand, learned counsel for the Respondents while supporting the award impugned submit that since it has been passed upon due and proper appreciation of the evidence led by the parties, therefore, does not require to be interfered.

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

9. From perusal of the record, it appears that while assessing the notional income of the deceased to the tune of Rs.4500/- per month, yearly Rs.54,000/- and that by deducting one-third of it towards his personal and living expenses, the Tribunal has awarded total amount of compensation to the tune of rs.5,28,000/- with 6% interest per annum from the date of filing of the claim petition till its realization. However, while considering the monthly income of the deceased as such, it appears that the Claims Tribunal has not considered the documentary evidence marked as Ex.A.17 to Ex.A.21 and Ex.A.27 to Ex.A.32 in its proper manner. A bare perusal of the documentary evidence i.e., the Receipts issued by the daily newspaper "*Hari Bhoomi*" marked as Ex.A.20 and Ex.A.21, it is evident that the deceased used to earn something while working as an agent of it as his name depicted at the bottom of those Receipts. Although, the name of the

deceased was not depicted from the other Receipts like Ex.A.17 to Ex.A.19 but it reveals that it was issued in the name of "*Tiwari News Agency"* like the said Receipts (Ex.A.20 & Ex.A.21). It is, therefore, evident that deceased Bhaaghirathi Tiwari used to earn as an agent of the said daily newspaper. Besides, the documentary evidence produced by the Claimants like revenue papers 'B-1' and *Khasra Panchsala*, which were marked as Ex.A.27 to Ex.A.32 showing specifically that he (deceased) owned some agricultural lands in three different villages, and used to incur from his agricultural lands as well. True, it is that the Claimants have failed to produce any documentary evident regarding income of the deceased, therefrom, but the alleged documentary evidence, as observed herein above, cannot be overlooked in order to provide just and proper compensation payable to the Claimants.

10. Considering the facts and circumstances of the case, I deem it proper to assess the monthly income of the deceased at Rs.7,000/-, yearly Rs.84,000/- and that by adding 30% of it, i.e., Rs.25,200/- (Rs.84,000 x 30%) in view of the principles laid down in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in **(2017) 16 SCC 680**, towards further prospects of his income, it would come to Rs.1,09,200/- (Rs.84,000/- + Rs.25,200/-). By deducting one-third of it, i.e., Rs.36,400/- (Rs.1,09,200 x 1/3), total annual dependency would arrive at Rs.72,800/- (Rs.1,09,200 – Rs.36,400). As the deceased was 48 years old, therefore, the proper multiplier would be 13 and while applying the same, total dependency would come as Rs.9,46,400/- (Rs.72,800 x 13). In addition to this, the Claimants are also entitled to obtain a sum of Rs.1,70,000/- towards conventional heads as under:-

(i) Loss of consortium to wife	-	Rs.40,000/-
(ii) Loss of love and affection to two children at Rs.50,000/- each	-	Rs.1,00,000/-
(iii) funeral expenses	-	Rs.15,000/-
(iv) Loss of estate	-	Rs.15,000/-
Total	**-**	**Rs.1,70,000/-**

11. The Claimants would, therefore, be entitled to a total sum of Rs.11,16,400/- with 6% per annum from the date of filing of the claim petition till its realization.

12. In so far as the exoneration of the Insurance Company is concerned, I do not find any infirmity in the same as the vehicle in question was being used without any valid permit as evidenced from the perusal of the record that the permit for the alleged offending vehicle marked as Ex.D.1(c) was issued with effect from 27.11.2014 upto 26.11.2019 and the fitness certificate of it, marked as Ex.D.2, would show that it came in force with effect from 25.11.2014 upto 24.11.2015. The vehicle in question was admittedly insured, as a Goods vehicle, as visualized from the insurance policy (Ex.D.4), therefore, it cannot be used without any permit. However, from perusal of the aforesaid documentary evidence, i.e., Ex.D.1(c) and Ex.D.2 would lead to an irresistible conclusion that it was issued after the occurrence of the alleged accident dated 07.11.2014. In consequence, the Claims Tribunal has not committed any illegality in holding that the vehicle in question was being used without any permit in violation of the insurance policy at the relevant time. Consequently, the finding so recorded in this regard deserves to be and is hereby affirmed.

13. Although, as observed hereinabove that the said Insurance Company, i.e., the insurer of the offending vehicle has been held to be

exonerated from its liability but the policy was found to be in existence at the relevant time. Therefore, in view of the principles laid down in the matter of ***National Insurance Company Limited*** v. ***Swaran Singh*** and ***Manager, National Insurance Company Limited*** v. ***Saju P. Paul and another*** reported in **AIR 2004 SC 1531** and **(2013) 2 SCC 41** respectively, it would be just and proper to apply the principles of pay and recover while directing Non-applicant No.3-National Insurance Private Limited Company to first pay the aforesaid amount of compensation, i.e., Rs.11,16,400/- with 6% interest per annum from the date of filing of the claim petition till its realization to the Claimants/Appellants and, then to recover the same from the owner of the vehicle in question, i.e., Non-applicant No.2-Abdul Khalid Khan, in the execution proceedings arising in this very case.

14. The appeal is, accordingly, allowed in part with the aforesaid observations and rest of the observations made by the Claims Tribunal shall remain intact. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE

Nikita