NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 376 of 2010

- Naresh Kumar Barley, aged 29 years, S/o Late Mahetram Barley, r/o Village-Akoli, post-Khudmuda, PS-Berla, tahsil-Bemetara, distt.-Durg

---- Appellant

Versus

1. Rajesh Das Manikpuri, aged 22 years, S/o Vishaldas Manikpuri, Occupation Driver, R/o village Muraithi, PS Dharsinwa, Tahsil and District Raipur (CG)
2. Mayaram Yadu, aged 38 years, s/o Vishveshwar Yadu, R/o village Muraithi, Post Siltara, PS Dharsinwa, Tahsil and District Raipur (CG)
3. The Oriental Insurance Co.Ltd. Through Divisional Manager, Divisional Office, No.1 Kachhahari Chowk, Jail Road, Raipur (CG) Policy No.9581 Policy year 2008 Development Officer Code 34

---- Respondents

For Appellant	:	Shri Akhilesh Mishra, 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

05.04.2019

1. The claimant has preferred this appeal assailing the impugned award dated 27.03.2009 passed by learned 9th Additional Motor Accident Claims Tribunal, Raipur (for short 'the Claims Tribunal') in Claim Case No.110 of 2008 whereby the Claims Tribunal has partly allowed the claim.

2. Facts of case, in brief, are that on 30.05.2008 Khorbahrin Bai along with other co-workers was travelling on Tata pick-up DI bearing registration number CG04-J-9750 (for short 'offending vehicle') to her work place Baldev Sponge Iron, Siltara from village Akoli. At about 7.45 am when the said vehicle reached near Paper Mill Pond, village Akoli, it turned turtle due to rash and negligent driving of its driver. Khorbahrin Bai received

grievous injuries and died on the spot. Accident was reported to Police. The appellant, son of deceased Khorbahrin Bai filed claim application seeking compensation to the tune of Rs.8,25,000/- under various heads on the grounds that at the time of accident, deceased was healthy, aged about 50 years; she was earning Rs.128/- per day and she used to spent this amount on him; and on account of her untimely death, loss of income occasioned, therefore, he is entitled for compensation.

3. Respondent- 1, driver of offending vehicle filed his reply to the claim application and stated that at the time of accident, he was not driving the offending vehicle. Respondent- 2, owner of offending vehicle pleaded that at the time of accident offending vehicle was insured with respondent- 3 Insurance Company and driver of offending vehicle was having valid and effective driving license.

4. Respondent- 3 Insurance Company filed its reply separately and denied the claim of appellant. It has been pleaded that on the date of accident 25-30 passengers were travelling on the offending vehicle, which 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 offending vehicle was a 'light goods vehicle'. Further, the vehicle has been plied without there being any valid permit. Thus, there was breach of conditions of Insurance Policy and therefore, the Insurance Company is not liable for making payment of compensation, if any, to the claimant.

5. Learned Claims Tribunal after considering the pleadings and evidence placed on record (oral and documentary) by the respective parties partly allowed the claim application and awarded compensation of Rs.1,34,000/- with interest @ 6% per annum to the claimant.

6. While partly allowing the claim application, learned Claims Tribunal made respondents- 1 and 2 liable to pay compensation to the claimant jointly and severally and exonerated the Insurance Company of its liability of satisfying the award on the grounds that on the date of accident offending vehicle was carrying about 35 labourers, though it was a commercial goods carriage vehicle; it was being driven without a valid permit; and that the license issued to driver of offending vehicle authorizes him to drive only motorcycle with gear & light motor vehicle and he was not authorized to drive the offending vehicle.

7. Learned counsel for the appellant argued that learned Claims Tribunal committed an error in assessing income of deceased on lower side; no amount has been awarded towards future prospects even when the deceased was aged about 50 years at the time of accident; and very meagre amount has been awarded towards other conventional heads. He further argued that claimant is very poor and on the date of accident, vehicle was insured with respondent- 3 Insurance Company therefore, even if there is violation of conditions of Insurance Policy, an order of pay and recover could have been passed.

8. Per contra, learned counsel appearing for respondent- 3 Insurance Company supported the impugned award and argued that as on the date

of accident, goods vehicle was carrying passengers and therefore, there is violation of conditions of Insurance Policy. Further, learned Claims Tribunal also held that on the date of accident, driver of offending vehicle was not possessing valid and effective driving license because, he was having license authorising him to drive motorcycle with gear and light motor vehicle, whereas, offending vehicle was having its registration certificate as 'light goods vehicle'.

9. I have heard learned counsel for the parties and perused the record.

10. So far as the assessment of amount of compensation by learned Claims Tribunal is concerned, it has assessed monthly income of deceased as Rs.3,000/- per month. Pleadings before learned Claims Tribunal were that deceased was working in Sponze Iron Siltara as labour and on the date of accident, she was going to her work place along with other co-workers. It is not a case of respondents that deceased was not doing any work, rather it is amply clear from records that on the date of accident deceased was going to workplace to assume her work. As it was pleaded, deceased was working in a factory as labour. Therefore, her income on the date of accident is to be assessed on the basis of minimum wages prevailing. Looking to the date of accident, wage rate prevailing in the State, particularly in Raipur industrial city and also looking to nature of her work as pleaded before Claims Tribunal, her income can be assessed as Rs.3,500/- per month on notional basis.

11. Apart from the above monthly income, appellant is also entitled for an addition of 10% of assessed monthly income towards future prospects,

as it was not awarded by learned Claims Tribunal. Hon'ble Supreme Court in the matter of **National Insurance Company Vs Pranay Sethi** reported in **AIR 2017 SC 5157**, held that wherein the deceased persons aged between 50-60 years and not engaged in any permanent job are held to be entitled for additional sum of 10% of income towards future prospects.

12. In the present case, though it has been pleaded that deceased was aged about 50 years but learned Claims Tribunal assessed age of deceased as 55 years as per postmortem report Ex.P/5.

13. By adding 10% of income to monthly income of deceased, total monthly income comes to Rs.3,850/- (3,500 x 10/100 = 350) (3500 + 350= 3850) per month. There is only one claimant on the date of accident therefore, half of the amount is to be deducted towards personal expenses of deceased as per law laid down in the matter of **Sarla Verma (Smt.) and others Vs Delhi Transport Corporation and another** reported in (2009) 6 SCC 121. After deducting half of her monthly income towards personal expenses, monthly dependency would come to Rs.1,925/- (3850/2 – 1925=1925) and yearly dependency would be Rs.23,100/- (1925 x 12=23100). Deceased was aged about 55 years on the date of accident, therefore, multiplier of 11 would be applicable. By applying multiplier of 11 to the yearly dependency of appellant, total dependency would come to Rs.2,54,100/- (23100 X 11 = 254100).

14. As the claimant is major son of deceased, he may not be fully dependant upon his mother therefore, considering this aspect, learned

Claims Tribunal further deducted half of total dependency of appellant. In this regard, there is no evidence on record that the appellant and his mother were residing separately. In this view that there is no evidence of their residing separately, it is to be treated that deceased was residing with her son, appellant herein. Parents who are residing with their children definitely do some financial help to them in one way or the other. Therefore, in the opinion of this Court, learned Claims Tribunal committed an error in further deducting half amount of compensation towards dependency. The appellant definitely deprived of financial help which he was getting from his mother through her earnings from doing labour work prior to the date of accident.

15. In the aforementioned amount of dependency, a sum of Rs.30,000/- towards other conventional heads is required to be added, which makes the total compensation as Rs.2,84,100/- (254100 + 30000 = 284100).

16. Now the appellant will be entitled for Rs.2,84,100/- (Rupees two lakh eighty four thousand one hundred) instead of Rs.1,34,000/- as awarded by learned Claims Tribunal.

17. The next question arises for consideration is whether there is violation of conditions of Insurance Policy, as argued by learned counsel for respondent- 3 Insurance Company.

18. Learned Claims Tribunal held that there is violation of conditions of Insurance Policy on two grounds, first ground being that driver of offending vehicle was not possessing valid and effective driving license to drive the vehicle and further that on the date of accident, offending vehicle was

registered as 'goods vehicle' but it was carrying passengers and deceased was one of those passengers.

19. So far as the ground of violation of conditions of Insurance Policy on account of not having valid and effective driving license, this issue has been considered by Hon'ble Supreme Court in the matter of **Mukund Dewangan Vs Oriental Insurance Company Limited** reported in 2017 14 SCC 663.

20. In the instant case, driver of offending vehicle was possessing driving license to drive Motorcycle with gear and Light Motor Vehicle, whereas offending vehicle is registered as 'Light Goods Vehicle', which comes within the category of LMV as its GVW is 2950 kgs, ie less than 7,500 kgs. Even the same fact has been mentioned in Insurance Policy, Ex.D/3C.

21. Hon'ble Supreme Court in the matter of **Mukund Dewangan** (supra) while considering the issue whether the person holding license with an endorsement of LMV can be held to be authorised to drive any other type of vehicle ie any light transport vehicle, held as under:

> “60. Thus we answer the questions which are referred to us thus:
> 60.1 ‘Light motor vehicle’ as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.
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> 60.2 A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, ‘unladen weight’ of which does not exceed 7500 kg. and holder of a driving licence to drive class of “light

motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

60.3 The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and "heavy passenger motor vehicle" in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.

60.4 The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the 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 as it was and has not been changed and there is 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."

22. In light of aforementioned law laid down by Hon'ble Supreme Court if we consider the present case, the driver was having an authorisation in his license to drive LMV. The Policy that was issued was also for a vehicle having GVW less than 7500 kg and further from perusal of document available on record with respect to permit of the offending vehicle, which specifically mentions the unladen weight of the vehicle to be 2950 kg, which is less than 7500 kg. Therefore, in facts of case and

law laid down by Hon'ble Supreme Court, on the date of accident driver of the offending vehicle was having valid and effective driving license to drive the vehicle which comes under the category of LMV.

23. Undisputedly, on the date of accident, offending vehicle which was registered as 'goods vehicle', was carrying passengers. Carrying passengers in goods vehicle is not permitted in law because there is no space for sitting of persons/passengers in goods vehicle. The vehicle was being used in contravention of purpose for which it was registered with Road Transport Office and insured by Insurance Company. Therefore, there is violation of conditions of Insurance Policy. Learned Claims Tribunal has not committed any error in arriving at a finding that there is violation of conditions of Insurance Policy. In view of the above, Insurance Company has rightly been exonerated from its liability.

24. Now, this brings me to consider the prayer made by learned counsel for the appellants/claimants that in the facts and circumstances of the case, learned Claims Tribunal committed an error by not passing an order of pay and recover when offending vehicle is insured with Insurance Company.

25. Hon'ble Supreme Court in the matter of **National Insurance Company Ltd Vs Challa Bharathamma and others** reported in AIR 2004 (8) SCC 517 held as under:--

> "13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of

recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the Executing Court concerned as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the Regional Transport Authority concerned. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case, considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

26. Hon'ble Supreme Court in the matter of **Manager, National Insurance Company Limited Vs Saju P Paul and another** reported in 2013 2 SCC 41, held 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 no. 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 **National Insurance Co. Ltd. v. Balijit Kaur**, (2004) 2 SCC 1 and **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, 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 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 01.08.2011 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 No. 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 No. 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."

27. Recently in the matter of **Manuara Khatun & others; Mamoni Saikia Mohanty & others Vs Rajesh Kumar Singh and others with Mamoni Saikia Mohanty and others Vs Rajesh Kumar Singh and others** reported in 2017 (4) SCC 796, Hon'ble Supreme Court has held as under:

> "18. The learned counsel for respondent No.3 (United India Insurance Company Ltd.), however, contended that the facts of the case at hand are not identical to the one involved in the case of Saju P Paul and hence the law laid down therein cannot be applied to the facts of the case at hand. Learned counsel pointed out that firstly, the awarded compensation in this case is quite substantial and secondly, it is not yet paid to the claimants. Learned counsel also submitted that since the question involved herein is referred to a larger Bench and hence this Court should not give such directions, as prayed by the appellants, against the Insurance Company.
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> 19. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this

case and the one involved in Saju P Paul's case. Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in Saju P Paul's Case, it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in Saju P Paul's case. That apart, learned counsel for the appellants stated at the Bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.

20. It is for all these reasons, we find no good ground to take a different view than the one consistently being taken by this Court in all previous decisions, which are referred supra, in this regard.

21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company Limited (respondent No.3) – they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company Limited- respondent No.3) 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 (Tata Sumo) respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P Paul's case quoted supra."

28. Recently, in the matter of **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others** reported in 2018 (7) SCC 558**,** Hon'ble Supreme Court while dealing with the similar issue has held thus:-

"24.xxxxxxxxxx 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 (supra) and Lakhmi Chand (supra) 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 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."

29. In view of aforementioned law laid down by Hon'ble Supreme Court considering above matters and further considering other connected appeal bearing MAC No.392/2010, in which co-ordinate Bench of this Court has passed an award of pay and recover and also keeping in mind the object of Motor Vehicle Act, 1988, claimant belong to poor labour category, I deem it proper to direct the Insurance Company first to pay the amount of compensation to the claimant and thereafter, to recover the same from the owner of offending vehicle in the manner as provided in matter of **Oriental Insurance Co. Ltd vs Shri Nanjappan And Ors** reported in AIR 2004 SC 1630.

30. The appellant will now be entitled for a total sum of compensation of Rs.2,84,100/- (Rupees two lakh eighty four thousand one hundred) with interest @ 6% from date of application till its realisation.

Respondent- 3/Insurance Company is not having any liability for payment of compensation under law but, shall make payment of amount of compensation to the appellant first and then recover the said amount from owner of offending vehicle ie respondent- 2. Other conditions imposed by learned Claims Tribunal will remain intact.

31. The appeal is allowed in part and impugned award is modified accordingly.

32. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma