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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1131 of 2014**

1. Jagdish Prasad Soni, son of Late Shri Ramsahay Soni, aged about 90 years, resident of Village Aachoti, Police Station Nandani, Civil and revenue District Durg (C.G.) (Owner of Vehicle Tractor No. CG 07/NA0427)

---- Appellant/Owner**Versus**

1. Smt. Nirmala Sahu, aged about 50 years, Widow of Late Shri Malluram Sahu,
2. Kumari Kuleshwari Sahu, aged about 21 years, daughter of Late Shri Malluram Sahu,
3. Kumari Bindu Sahu, aged about 20 years, daughter of Late Shri Malluram Sahu,
4. Kumari Tejeshwari Sahu, aged about 19 years, daughter of Late Shri Malluram Sahu,
5. Kamlesh Kumar Sahu, aged about 17 years, son of Late Shri Malluram Sahu

Respondent No. 5 is minor through natural guardian mother Smt. Nirmala Sahu

All are resident of Village Aachoti, Police Station Nandani, Civil and Revenue District- Durg (C.G.)

6. Ashish Kumar Soni, aged about 20 years, son of Laxmi Narayan Soni, resident of Village Aachoti, Police Station Nandani, District- Durg (C.G.)(Vehicle Tractor No. CG 07 NA 0427 Driver)
7. Bajaj Alliance General Insurance Company Limited, Branch Manager Shiv Mohan Bhawan Vidhan Sabha Marg Pandari, Raipur, Tehsil and District- Raipur (C.G.) (Vehicle Tractor No. CG 07/NA 0427 Insurer).

---- Respondents

For Appellant	: Shri Sunil Otwani, Advocate.
For Respondent/Claimants	: Shri A. L. Singroul, Advocate.
For Respondent/Insurance Company:	Shri Rohitashav Singh, Advocate.

And

MAC No. 1068 of 2014

1. Smt. Nirmla Sahu aged about 50 years W/o late Mallu Ram Sahu,
2. Ku. Kuleshwari Sahu aged about 21 years D/o late Mallu Ram Sahu,
3. Kumari Bindu Sahu aged about 20 years. D/o Late Mallu Ram Sahu
4. Ku. Tijeshwari Sahu aged about 19 years. D/o Late Mallu Ram Sahu
5. Kamlesh Kumar Sahu aged about 17 years S/o late Mallu Ram Sahu,

Appellant No. 5 being Minor represented through mother Smt. Nirmla Sahu Before Learned Claims Tribunal now major.

All R/o of Achhoti, Thana- Nandani, Distt.- Durg (C.G.).

Both are R/o Village Rehunta, P.S. & Tahsil Pandariya, District- Kabirdham, Chhattisgarh.

---- Appellants/claimants

Versus

1. Ashish Kumar Soni aged about 20 years, S/o Laxmi Narayan Soni R/o of Achhoti, Thana- Nandani, Distt.- Durg (C.G.) (Driver of Offending Vehicle Tractor C.G.07 N.A./0427,
2. Jagdish Prasad Soni, S/o Ram Sahay Laxmi Soni R/o Village of Achhoti, Thana- Nandani, District- Durg (C.G.), (Owner of Offending Vehicle Tractor C.G.-07-N.A./0427,
3. Bajaj Alliance General Insurance Company Limited Through- Branch Manager, Address Shiv Mohan Bhawan Vidhan Sabha Marg Pandri Raipur, Tahsil and Distt.- Raipur (C.G.) (Insurer of Offending Vehicle Tractor C.G.-07-N.A./0427.

---- Respondents

For Appellants	: Shri A. L. Singroul, Advocate.
For Respondent/owner	: Shri Sunil Otswani, Advocate.
For Respondent/Insurance Company:	Shri Rohitashav Singh, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****29.04.2019**

1. Since M.A. (C) No. 1131 of 2014 filed by the owner and M.A. (C) No. 1068 of 2014 filed by the claimants, under Section 173 of the Motor Vehicle Act arise out of the award dated 28.08.2014, passed by Chief Motor Accident Claims Tribunal, Raipur in Claim Case No. 253/2011, therefore, they are heard together and are being disposed of by this common judgment.

2. As per averments made in the claim petition, when on 20.06.2011, Malluram Sahu (since deceased) aged about 52 years working at Bhilai Steel Plant earning Rs. 19,000/-per month was going to plough his field, near village- Bichiyakhar, Dharsa road, Non-applicant No. 1- Aashish Kumar Soni driver of the offending vehicle bearing registration No. C.G.07NA/0427 by driving the said vehicle in a rash & negligent manner, turned turtle due to which Mallu Ram sustained grievous injuries and succumbed to these injuries. At the time of accident, the offending vehicle was owned by non-applicant No. 2- Jagdish Prasad Soni and insured with Non-applicant No. 3- Insurance Company.

03. On claim petition being filed under Section 166 of the Motor Vehicle Act, 1988 by the claimants, who are unfortunate wife & children of deceased- Malluram Sahu, the Tribunal considering the evidence led by both the parties, awarded a total compensation of Rs. 10,35,000/- along with interest @ 9% per annum from the date of filing of claim petition till its actual payment. Further, the Claims Tribunal exonerated the Insurance Company from its liability to pay compensation to the

claimants on the ground of breach of policy conditions and fastened the liability to pay compensation upon the driver & owner of the offending vehicle.

04. Being aggrieved and dissatisfied with the liability part of the impugned award, the owner of the offending vehicle had filed MAC No. 1131 of 2014 whereas claimants, who are unfortunate wife & children of the deceased – Malluram filed MAC No. 1068 of 2014 for seeking enhancement of the amount of compensation under award.

05. It is submitted by learned counsel for both the parties that no counter appeal is filed by the insurance Company.

In MAC No. 1131/14

06 Learned counsel appearing for the appellant/owner would submit that the learned Tribunal has erred in recording a finding that at the time of accident, the deceased was sitting in the tractor whereas sitting capacity of tractor is only one, therefore, Insurance Company is not liable to pay compensation to the claimants as there is breach of policy conditions. He also submits that when deceased was going to his field as pedestrian in right side of the road, non-applicant No. 1, while driving the offending vehicle Tractor bearing registration No. CG.-07 / N.A. 0427 rashly and negligently, dashed the deceased, as a result of which he sustained multiple injuries and succumbed to these injuries. He submits that at the time of accident, the deceased was not sitting in the tractor but he was going to his field as pedestrian, therefore, learned Claims Tribunal is absolutely unjustified in exonerating the Insurance Company from its liability to pay compensation and fastening the liability upon the

owner of the offending vehicle. He also submits that as per uncontroverted statement of Vishnu Sahu (AW-2), deceased was going towards his field as pedestrian and he was not sitting on the tractor therefore, it is prayed that the finding recorded by the learned Tribunal to pay compensation to the claimants by the owner be set aside.

07. Shri A. L. Singroul learned counsel appearing for the claimant would support the contention made by learned counsel for the appellant/owner.

08. On the other hand, learned counsel for the insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter and the evidence adduced by the parties, has rightly exonerated the insurance company and fastened liability on the owner/appellant. He also submits that as per document produced before the learned Tribunal i.e. chargsheet (Ex.P/1) filed against the driver of the offending vehicle; FIR vide (Ex. P/2) and the postmortem report (Ex. P/3), and other documents i.e. D/2 to D/6, this fact is proved that the deceased was sitting in the tractor, therefore, there is no substance in the appeal filed by the owner of the offending vehicle.

In MAC No. 1068/14

09. Instant appeal filed by the claimants/wife & children of the deceased- Malluram Sahu seeking enhancement of the compensation.

10. Learned counsel for the claimants submits that he is assailing the award only on the ground that in this case the number of claimants are 5, therefore, learned Claims Tribunal should have deducted 1/4th of the

income of the deceased towards personal expenses of the deceased whereas the Tribunal has deducted 50% of the income of the deceased towards his personal expenses. He also submits that no amount towards future prospect has been granted to the claimants.

In support of above contentions, reliance has been placed on the decision of the Hon'ble Supreme Court in the matter 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.***

11. Learned counsel for the claimants further submits that till now no amount of compensation is received by the claimants, therefore, he prays for order of pay & recover in this case in the event the Insurance Company is exonerated of its liability. Reliance has been placed on the decision of Hon'ble Supreme Court in the matter of ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796.***

12. Learned counsel for the Insurance Company & owner opposed the contention made by learned counsel for the claimants.

13. Heard learned counsel for the parties and perused the material available on record.

14. First I consider the appeal (in MAC No. 1131/2014) filed by the owner of the offending vehicle. It is not disputed by both the parties that the deceased sustained injuries and died due to accident occurred by the offending vehicle (tractor). Only the issue before this Court is that whether at the time of accident, the deceased was sitting in the tractor or not. A careful perusal of the documents filed by the claimants before the

Claims Tribunal i.e. charge sheet (Ex. P/1), FIR (Ex. P/2), application for PM (Ex. P/3), D/1 to D/6, it reveals that the deceased was sitting on mudguard of the tractor and other persons were sitting in the tractor and the aforesaid documents were proved by the claimant/wife herself.

15. Looking to the aforestated facts & circumstances of the case, the aforesaid documents were proved by the claimant, it is established that at the time of accident, the deceased was sitting in the tractor. Only one witness i.e. Vishnu Sahu, examined on behalf of the claimants, stated in paragraph 2 of his examination in-chief that the deceased was going toward his field as pedestrian & the driver of the offending vehicle by driving the offending vehicle (tractor) rashly & negligently dashed the deceased but in paragraph 5 of his cross-examination, he stated that when he was going to his field he heard some crying sound from his backside then he reached the spot, it clearly shows that the said witness came to spot after the accident so it is proved that he is not an eyewitness, therefore, learned Claims Tribunal has rightly considered the documentary evidence adduced by the claimant and finding recorded that at the time of accident, the deceased was sitting in the tractor and there is no sitting capacity in the tractor and no risk covered under the insurance policy taken by the owner for the passenger sitting in the tractor and fastened liability upon the owner of the offending vehicle. As per the Supreme Court Judgment in the matter of **Shivaraj Vs. Rajendra and Anr.** reported in **(2018) 10 SCC 432** it is held that **Breach of policy terms- Tractor ensured only for agricultural purposes and not for carrying goods- Hence, held, appellant who travelled on tractor as a passenger, even though tractor could accommodate only one person, namely, driver and hence, Insurance Company (R-2) was not**

liable for loss or injuries suffered by appellant or to indemnify owner of tractor.

The above cited judgment is applicable in the instant case, as the offending vehicle in this case also was ensured for the agriculture purpose and not for carrying goods or passenger, therefore, the learned Tribunal has rightly exonerated the Insurance Company from its liability to pay compensation, consequently, the appeal, filed by the owner challenging the liability part of award, being devoid of merit is liable to be and is hereby dismissed.

16. So far as MAC No. 1068/2014 filed by the claimants seeking enhancement of the compensation amount under award is concerned, learned Tribunal rightly considered the income of deceased as Rs. 19,000/-pm as per his last salary slip Ex. P/6-C. Considering the age of the deceased, the multiplier of 11 is considered by the learned Tribunal, is just & proper. So far as the deduction part toward living & personal expenses is concerned, the number of dependent persons are five and as per law led down in the Apex Court Judgment in the matter of **Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121**, 50% deduction towards personal expenses of the deceased has wrongly assessed by the learned Claims Tribunal, therefore, it should be 1/4th in place of 1/2. Further, considering the age of the deceased i.e. 50 years, 15% towards future prospect would be added into the income of the deceased further considering the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in **Sarla Verma, Pranay Sethi**, (supra), the claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.19,000/- per month.	Rs. 19,000x 12= Rs. 2,28,000/- per annum
02.	15% of (1) above to be added towards future prospects.	Rs.228000+34200= Rs. 2,62,200/-
03.	After 1/4th deduction towards personal and living expenses of the deceased	Rs. 262200 -65,550= Rs.196650/-
04.	Multiplier of 11 to be applied	Rs. 196650x11= Rs. 21,63,150/-
05.	Towards loss of funeral expenses, loss of Estate,	Rs. 70,000/-
06	Towards love & affection Rs. 50,000/-each (to respondent Nos. 2 to 4)	Rs. 1,50,000/-as awarded by the Tribunal
07.	Towards love & affection Rs. 1,00000/- (to respondent No. 5)	Rs. 1,00000/- as awarded by the Tribunal
06.	Total Compensation	Rs. 24,83,150/-

Since the Tribunal has already awarded Rs.10,35,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.14,48,150/-with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

17. However, considering the facts & circumstances of the case, the fact that on the date of accident, the vehicle in question was duly insured with non-applicant No. 3 keeping in view of the Hon'ble Court decision in the matter of Manuara Khatun (Supra) Insurance Company is directed to first pay the entire amount of compensation to the claimants and then recover the same from Non- applicant Nos. 1 & 2 in accordance with law.

18. In the result, the appeal (in MAC No. 1131/2014) filed by the owner is dismissed and the appeal (in MAC No. 1068/2014) filed by the

claimant is allowed in part with modification in the impugned award to the above extent.

**Sd/-
(Gautam Chourdiya)
Judge**

Amita