

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 881 of 2013

1. Smt. Sumitra Bai Sahu W/o Ramgopal Sahu Aged About 32 Years
2. Ku. Jalvati Sahu D/o Late Ramgopal Sahu Aged About 12 Years Minor
3. Rohit Kumar Sahu S/o Late Ramgopal Sahu Aged About 10 Years Minor
4. Roshan Kumar Sahu S/o Late Ramgopal Sahu Aged About 7 Years Minor
5. Smt. Bundeliya Bai Sahu W/o Budhram Sahu Aged About 58 Years
6. Budhram Sahu S/o Late Foswa Sahu Aged About 60 Years

Appellnts 2 to 4 are minors through legal guardian mother Smt Sumitra Bai Sahu, widow of Ramgopal Sahu

All are R/o Village-Kharkena, P.S. Hirri, Tah. Takhatpur, Distt. Bilaspur C.G

---- Appellants

Versus

1. Chandraparakash @ Chandrakumar S/o C.R. Sahu Aged About 40 Years R/o Kharkena, P.S. Hirri, Tah. Takhatpur, Distt. Bilaspur C.G
2. Branch Manager Oriental Insu.Co.Ltd., Branch Office At Rama Trade Centre, 1st Floor, In Front Of Rajeev Plaza, Bus Stand Road, Bilaspur, P.S. City Kotwali, Distt. Bilaspur C.G

---- Respondents

For Appellants	: Shri Vijay Kumar Sahu, Advocate
For Respondent-1	: Shri Vivek Bhakta, Advocate
For Respondent- 2	: Shri Tarun Dansena, Advocate on behalf of Shri TK Tiwari, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

08.02.2019

1. Appellants/Claimants have challenged the impugned award dated 28.01.2013 passed by the First Additional Motor Accident Claims Tribunal, Bilaspur (for short, 'Claims Tribunal') in Claim Case No.54 of 2009,

whereby learned Claims Tribunal while partly allowing the application, awarded a total sum of Rs.4,52,000/- as compensation and held respondent- 1, the owner-cum-driver of the offending vehicle to be responsible for the accident.

2. Brief facts for disposal of this case are that on 22.04.2008 at about 3 pm respondent- 1 Chandra Prakash @ Chandra Kumar was driving Swaraj Mazda No.CG 10-A 2899 (for short 'offending vehicle') and going to Kharkena from village Aamne with gift articles of marriage. At that relevant time, the offending vehicle met with an accident and turned turtle. In the said accident, Ramgopal Sahu and Mangal Kaushik, who were travelling in the offending vehicle sustained severe injuries and during the course of treatment, both of them succumbed to the injuries sustained by them. The claimants are legal heirs of one of deceased Ramgopal Sahu. They filed claim application claiming compensation of Rs.18,55,000/- on the ground that on the date of accident, deceased Ramgopal Sahu was working as Mason and thereby earning Rs.4,500/- per month and due to his untimely death, they have suffered loss of dependency and also financial loss.

3. Respondent- 1, driver of the offending vehicle submitted reply to the claim application stating that on the date of accident the vehicle has been engaged for transporting gift articles of marriage and at that relevant time Ramgopal Sahu and Mangal Kaushik were travelling in the said vehicle. While sitting in the cabin of that vehicle, they obstructed the steering of the vehicle due to which accident took place and both of them died. Respondent- 1 also stated that the claimants are not entitled for any

compensation as claimed by them and also pleaded that the compensation claimed in the application is on higher side.

4. Respondent- 3 Insurance Company submitted its separate reply in which it has been specifically pleaded that the offending vehicle was registered as goods vehicle but on the date of accident it was being used for transporting the passengers (*baratis*) of marriage. It was also pleaded that though the vehicle was insured as goods vehicle and extra premium covering risk of driver and 3 laborers was paid, but since at the time of accident other passengers were also travelling as *baratis* along with the deceased, ie *baratis*, hence, there was violation of conditions of Insurance Policy and therefore, Insurance Company cannot be held liable. It has also been pleaded that on the date of accident the driver of the offending vehicle was not having valid and effective driving license to drive the offending vehicle.

5. Learned Claims Tribunal on the basis of pleadings and evidence available on record, held that on the date of accident the offending vehicle was being used in violation of Insurance Policy as it was registered as goods vehicle but on the date of accident it was being used for carrying *baratis*. It has also been held that on the date of accident, driver of offending vehicle was not possessing valid and effective driving license to drive the offending vehicle. On the date of accident driver was having license with an endorsement to drive only light motor vehicle (LMV) and not the transport vehicle. Therefore, learned Claims Tribunal exonerated the Insurance Company from its liability to pay the amount of compensation. While calculating the amount of compensation, learned

Claims Tribunal held that deceased- Ramgopal Sahu was earning Rs.3,000/- per month and after making deduction towards personal expenses of the deceased and by applying multiplier of 16, awarded a total sum of Rs.4,52,000/- on all heads.

6. Learned counsel for the appellants submits that learned Claims Tribunal committed an error in exonerating the Insurance Company from its liability on the first place. Learned Claims Tribunal has further committed error in awarding meagre amount of Rs.4,52,000/- only, by assessing income of the deceased on lower side, ignoring his occupation. He further argues that learned Claims Tribunal has not awarded any amount towards future prospects and the amount awarded on other conventional heads is also on lower side.

7. Per contra, learned counsel for respondent- 1 submits that on the date of accident driver was holding valid and effective driving license to drive the offending vehicle and further that the vehicle was being used to carry gift articles of marriage. The persons travelling in the offending vehicle were for the safety and security of gift articles that were being transported in the offending vehicle. He also submits that on the date of accident the vehicle was insured with respondent- 2 Insurance Company and extra premium was paid for driver, cleaner as well as for two laborers. He also submits that as the gross unladen weight of the offending vehicle is less than 7500 kg ie 6140 kg only, it will come under the category of 'LMV' as per definition given in Section 2(21) of the Act and as such, the driver having license to drive LMV is competent to drive the offending

vehicle too. Therefore, Claims Tribunal erred in exonerating the Insurance Company from its liability.

8. Learned counsel for the Insurance Company supported the findings recorded by learned Claims Tribunal and argued that the Claims Tribunal on the basis of material and evidence available on record, had rightly come to the conclusion that there is violation of conditions of Insurance Policy as on the date of accident, as per documents of criminal case, more than two persons were travelling in the offending vehicle. Further more, the driver of offending vehicle was not having a license with an endorsement to drive the transport vehicle and therefore, the driver was not authorised to drive the offending vehicle under the law.

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

10. So far as the argument with respect to exoneration of Insurance Company from its liability is concerned, on account of two violations, first being that on the date of accident, driver of offending vehicle was not having valid and effective driving license and the second is offending vehicle being registered as goods carrying vehicle but on the date of accident, number of persons were travelling in that vehicle. In my view it is good to deal both parts separately.

11. So far as the question with respect to valid and effective driving license of respondent- 1 is concerned, perused the document- Ex.D-2C which is the particulars of license issued in the name of Chandra Kumar Sahu, s/o Chedi Ram Sahu, respondent- 1. A bare perusal of this document shows that there is an endorsement authorising its holder to

drive LMV (only) and Motorcycle with gear. It has been mentioned therein that it is for 'Non Transport Vehicle'. I have also perused copy of Insurance Policy which has been marked as Ex.D/1. It was issued for the offending vehicle for the period 08.12.2007 to 07.12.2008 midnight, which would show that the policy has been issued for vehicle not exceeding 7,500 kgs.

12. Section 2(21) Motor Vehicle Act, 1988 defines 'LMV', which reads as under:

"2(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road roller the unladen weight of any of which, does not exceed 7,500 kilograms."

13. The permit issued by the transport authority with respect to the use of vehicle as 'goods carrying vehicle' is also on record and from perusal of the same it reveals that the vehicle has been registered as 'Light Goods Vehicle' having its unladen weight of 2570 kg. From the definition of LMV as provided under the Act and on perusal of Insurance Policy, as well as the permit wherein unladen weight of vehicle has been mentioned as 2570 kg, it is clear that the Insurance Policy has been issued in respect of vehicle whose gross weight is less than 7500 kg.

14. Hon'ble Supreme Court in the matter of **Mukund Dewangan Vs Oriental Insurance Company Limited** reported in 2017 14 SCC 663 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 transport vehicle, held as under:

"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 roadroller, 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."

15. 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 the license to drive LMV. The Policy that was issued and effective was also for the vehicle, which is less than 7500 kg and further from perusal of document available on record with respect to permit of the offending vehicle, which also specifically mentions the unladen weight of the vehicle to be 2570 kg, which is less than 7500 kg. Therefore, in the opinion of this Court, on the date of accident respondent- 1, driver of the offending vehicle was having valid and effective driving license to drive the vehicle which comes under the category of LMV.

16. In view of above findings of learned Claims Tribunal to the effect that on the date of accident driver was not possessing valid and effective driving license is not sustainable and is hereby set aside.

17. As regards the finding of the learned Claims Tribunal exonerating the Insurance Company on the ground that on the date of accident the offending vehicle was being used for transporting passengers, whereas it was registered as 'goods carrying vehicle' is concerned, I have perused Ex.P/1 which is FIR and also the evidence of AW-2 Lakhn Lal Kaushik.

He in his evidence has categorically stated that on the date of accident the vehicle was hired for bringing gift articles of marriage and at the time of accident deceased persons were travelling as care takers of those articles. Perusal of statement also shows that those two persons were travelling in the cabin of offending vehicle. From the material available on record it is clear that the deceased was travelling as gratuitous passenger for safety of goods which is in violation of conditions of Insurance Policy. The record also shows that the deceased was returning from marriage with gift articles in the offending vehicle as care taker and not as labourer. In view of the above, Insurance Company cannot be made liable to indemnify the insured. Claims Tribunal committed no error in exonerating the Insurance Company.

18. Next point arises for consideration of this Court is whether learned Claims Tribunal has awarded reasonable amount of compensation or not ?

19. A perusal of record would show that deceased- Ramgopal Sahu was working as a Mason but no proof of income or evidence has been led by the claimants showing that the deceased on the date of accident was working as Mason. Learned Claims Tribunal dis-believed the statement of claimants in this aspect and assessed the income taking notional income of Rs.3,000/- per month. Taking into consideration the year of accident ie 2008 and also even after accepting that on the date of accident the deceased might be working as labour, the income assessed by the Tribunal is on lower side. Therefore, I deem it proper to assess the income of deceased as Rs.3,500/- per month.

20. In the facts and circumstances of the case where there is no specific proof with respect to income or occupation of the deceased and the same has not been proved by the claimants; on the date of accident deceased was aged about 34 years as held by the Tribunal and is a self employed person; he will also be entitled for an addition in his monthly income for future prospects. This issue was dealt with by Hon'ble Supreme Court in the matter of **National Insurance Company Limited Vs Pranay Sethi and others** reported in (2017) 16 SCC 680 wherein it was held that the person who is below 40 years of age and is self employed, is entitled for an addition of 40% of his salary towards future prospects. Herein the present case, the learned Claims Tribunal has not awarded any amount towards future prospects. Therefore, the appellants are entitled for it.

21. Further point for consideration is that learned Claims Tribunal erred in awarding meagre amount of Rs.4,52,000/-. The learned Claims Tribunal have applied deduction of $\frac{1}{5}^{\text{th}}$ towards the personal expenses of the deceased which is contrary to the law laid down by the Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others Vs Delhi Transport Corporation and another** reported in (2009) 6 SCC 121, wherein it has been specifically held that in case number of dependants are 4 to 6, deduction would be $\frac{1}{4}$. In view of this, the impugned award passed by learned Claims Tribunal requires re-calculation and modification.

22. This Court takes the income of deceased as Rs.3,500/- per month and by adding 40% of it towards future prospects, total income of the deceased would be Rs.4,900/- per month $\{3500 + [3500 \times 40/100]\}$. By

deducting $\frac{1}{4}^{\text{th}}$ towards personal expenses, loss of dependency per month would be Rs.3,675/- $\{4900 - [4900 \times \frac{1}{4}]\}$. Claimants' dependency per annum would be Rs.44,100/-. Looking to the age of deceased to be 36 years, multiplier of 15 would be applicable in this case, which makes the total loss of dependency as Rs.6,61,500/- (44100×15) . Apart from this, claimants are also entitled for a sum of Rs.70,000/- on other conventional heads. Now the claimants will be entitled for a total sum of Rs.7,31,500/- $(661500+70000)$ instead of Rs.4,19,000/- from respondent No.1. This amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. Amount of compensation, if any, already received by the appellants shall be adjusted.

23. Appeal is partly allowed with the above modification in the award impugned.

Sd/-
(Parth Prateem Sahu)
JUDGE