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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 526 of 2017

1. Smt. Uma Agrawal W/o Ramesh Kumar Agrawal, Aged About 50 Years Occupation House Wife,

2. Ramesh Kumar Agrawal S/o Lakhichand Agrawal, Aged About 52 Years,

3. Shivansh Agrawal S/o Late Neeraj Agrawal, Aged About 6 Years,

(Appellant No. 3 being Minor on behalf of Through Legal Guardian Grand Father Appellant No.2, Ramesh Kumar Agrawal)

All are R/o Ramsagarpara, Raipur, Post Office Raipur, Police Station Azad Chowk, Raipur, Tahsil And District Raipur, Chhattisgarh (**Claimants**)

---- Appellants/Claimants

Versus

1. Mohammad Tousif Khan Wrongly Mentioned The Name Of The Respondent No.1 As Toufis Khan In The Impugned Judgment S/o Mohd. Arif Khan, Caste Musalman, Aged About 25 Years, R/o Jarhabhata, Post Office Bilaspur, Police Station Civil Line, Tahsil And District Bilaspur, Chhattisgarh (Wrongly Mentioned The Entire Address Of The Respondent No. 1 In The Impugned Judgment/ Award .... (**Driver** Of Vehicle Car Bearing Registration No. C.G.04 H A 6333)

2. Radhacharan Tiwari S/o Ravishankar Tiwari, R/o Ram Satta Chowk, Bhatapara, Post Office Bhatapara, Police Station Bhatapara, District Balodabazar-Bhatapara, Chhattisgarh .... (Registered **Owner** Of Vehicle Car Bearing Registration No. C.G.04-H A-6333)

3. Suhash Nayak S/o Janmeyjai Nayak, Aged About 22 Years Caste Aghariya, R/o Prem Apartment, Flat No. 103, Mungeli Naka, Bilaspur, District Bilaspur, Chhattisgarh .... (The **Legally Possessor** Of Vehicle Car Bearing Registration No. C.G.04-H A-6333)

4. The Royal Sundaram Alliance Insurance Company Limited, Through The Branch Manager, Branch Office, Chawla Complex, Devendra Nagar Road, Sai Nagar, Post Office Raipur, Police Station Devendra Nagar, Raipur, District Raipur, Chhattisgarh .... (**Insurer** Of Vehicle Car Bearing Registration No. C.G.04-H A-6333)

5. Smt. Poonam Agrawal, At Present The W/o Natwar Agrawal, Aged About 25 Years, Occupation Housewife, R/o Balaji Automobiles, Magarpara Road, Bilaspur, Post Office Bilaspur, Police Station Civil Lines, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh (**Wife Of The Deceased** Neeraj Agrawal)

---- Respondents

For Appellant : Shri Shivendu Pandya, Advocate.
For Respondent No. 5 : Shri R.S. Patel, Advocate.

MAC No. 13 of 2017

1. Royal Sundaram Alliance Insurance Co. Ltd. Through Branch Manager Branch Office, Chawla Complex, Sai Nagar, Devendra Nagar Road, Raipur, Chhattisgarh, At Present- Near Over Bridge, Vidhan Sabha Road, Police Station Pandri, District Raipur, Chhattisgarh .... (**Insurer** Of Vehicle No. C.G.04-H A-6333)

---- Appellant

Versus

1. Smt. Uma Agrawal W/o Ramesh Kumar Agrawal, Aged About 50 Years Profession- House Wife,

2. Ramesh Kumar Agrawal S/o Lakhichand Agrawal, Aged About 52 Years,

3. Shivansh Agrawal S/o Late Niraj Agrawal, Aged About 6 Years Minor Through Grand Father Respondent No. 2 Ramesh Kumar Agrawal,

   All are R/o Ramsagarpara, Raipur Tahsil And Distt. Raipur, Chhattisgarh ....(**Claimants**)

4. Mohd. Tausif Khan S/o Mohd. Arif Khan, Aged About 25 Years R/o Jarhabhatha, Civil Line, Tahsil And Distt. Bilaspur, Chhattisgarh .... (**Driver** Of Vehicle No. C.G.04-H A-6333)

5. Radhacharan Tiwari S/o Ravishankar Tiwari, R/o Ramsatta Chawck, Bhatapara Distt. Balodabazar, Chhattisgarh .... (Registered **Owner** Of Vehicle No. C.G.04-H A-6333)

6. Subhash Nayak Aged About 22 Years Janmey Nayak, R/o Prem Apartment, Flat No. 103, Mungeli Naka, Bilaspur, Chhattisgarh .... **Possession** (**Owner** Of Vehicle No. C.G.04-H A-6333)

7. Smt. Punam Agrawal W/o Natwar Agrawal, Aged About 25 Years Profession House Wife, R/o Balaji Automobiles, Magarpara Road, Bilaspur, Chhattisgarh.

For Appellant : Shri Rohitashva Singh, Advocate.
For Respondent Nos. 1 to 3 : Shri Shivendu Pandya, Advocate.
For Respondent No. 7 : Shri R.S. Patel, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

15/05/2019

1) As both these appeals filed under section 173 of Motor Vehicles Act, 1988 by the Insurance Company and the claimants arises out of the common award dated 08/11/2016 passed by Additional Motor Accident Claims Tribunal Raipur, District Raipur (C.G.) in Claim Case No. 98/2012, they are heard together and are being disposed of by this common judgment.

2) Appellant/Insurance company has filed the appeal being **MAC No. 13/2017** challenging the liability fastened upon it on the ground that the driver of the offending vehicle did not have valid and effective driving license at the time of accident as also the quantum is on higher side whereas claimants, who are parents and son of the deceased, have filed the appeal being **MAC No. 526/2017** seeking enhancement of the amount of compensation under the award.

3) On a claim petition being field by the claimants, who are unfortunate parents and Son of the deceased, under section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award to the tune of Rs. 25,51,004/- alongwith interest @ 7.5% per annum from the date of application till realization, fastening liability upon Royal Sundaram Alliance Insurance Company Ltd./non-applicant no. 4.

4) As per averments in the claim petition, on 17/08/2011 at around 11:45 p.m. deceased Neeraj Agrawal aged about 27 years, earning Rs. 300000/- per annum from his Business, was riding Moped bearing No. CG04 CZ 6223 alongwith his two friends Satya Mahavar and Yogesh Kumar Gour who were siting as pillion rider. However, on the way near Agrawal Dal Mill, Mowa non-applicant No. 1 by driving the offending vehicle Car bearing No. CG04 HA 6333 rashly and negligently dashed the deceased. As a result of this accident Neeraj Agrawal suffered grievous injury and died. At the time of accident the offending vehicle was

owned by non-applicant No. 3 and insured with non-applicant No. 4.

5) Learned counsel for the appellant/Insurance Company in **<u>MAC No. 13/2017</u>** submits that at the time of accident respondent No. 1/driver of the offending vehicle did not have valid and effective driving licence to drive the offending vehicle. He further submits that Licence Clerk of RTO Office, Raipur namely Rajesh Kumar Bhargav, has stated in para 2 of his statement that document produced by the RTO i.e. driving licence (Ex. D-1) was issued in the name of one Manish Nabhulkar thereafter, licence Clerk of the RTO has also stated in Para-09 that the another document produced by the RTO i.e. driving licence (Ex. P-13 which is as Ex. P-8) was issued in favour of non-applicant No.1 Mohd. Tausif Khan, therefore, the two driving licences were issued by the RTO department in favour of two different persons. He submits that one driving licence is fake licence as Rajesh Kumar Bhargave (NAW-1) has admitted the fact in paragraph 12 of the award that particulars of driving licence (Ex. P-13) is maintained by the RTO Department in the computer and when he has been asked about the driving licence, he has stated that driving licence of same number (Ex. P-13) was also issued in favour of Non-applicant No. 1- Mohammad Tousif Khan, which was valid from the period from 05.07.2005 to 04.07.2025. In these circumstances, the Company itself proved two driving licence were issued by the RTO department in the name of two different persons namely Manish Nabhulkar and Non-applicant No. 1 – Mohammed Taushif and in these circumstances Insurance Company is not liable to pay compensation to the claimants directly or indirectly and, Tribunal has wrongly fastened the liability upon the Insurance Company to pay compensation to the claimant and, thus, the finding recorded by the Tribunal that the Appellant/Insurance Company in MAC No. 13/2017 is liable to pay compensation to the claimants is liable to be set aside. Learned counsel for the Insurance Company also opposes the contention made by learned counsel for the claimant regarding

enhancement of compensation.

6) Shri Shivendu Pandya, learned counsel appearing for the claimants in **MAC No. 526/2017** submits that amount of compensation awarded by the Tribunal to the claimants is on lower side, which deserves to be suitably enhance. He submits that deceased was engaged in the business of Lakhichand Ramesh Kumar and running the dealership of J.P. Cement at Raipur but learned Tribunal has not awarded any amount towards future prospect. Looking to the age of deceased at the time of accident i.e. 27 years 50% future prospect should be added to the income of the deceased.

7) Heard both the parties and perused the material available on record and the award impugned.

8) So far as the appeal preferred by the Royal Sundaram Insurance Company Limited is concerned, the same is devoid of merit as Rajesh Kumar Bhargave (NAW-1), Licence Clerk of the RTO Department has admitted the fact in paragraph 12 of the award that particulars of driving licence (Ex. P-13) is maintained by the RTO Department in the computer and when he was asked about the said driving licence, he has stated that driving licence (Ex. P-13) was issued in favour of respondent No. 1- Mohammad Tausif Khan, which was valid from 05.07.2005 to 4.7.2025 and he was having valid and effective driving license at the time of accident and therefore, it cannot be said that Tribunal has committed any error in fastening the liability upon the insurance company to pay compensation to the claimants.

9) So far as the appeal i.e. MAC No. 13/2017 filed by the Insurance Company challenging the liability is concerned, this Court vide judgment dated 04/02/2019 passed in MAC No. 734/2017 and MAC 392/2017 which arises out of same accident, as already decided the issued of liability of the Insurance Company and therefore, the present appeal filed by the Insurance Company in so far as it relates to the liability part, the same stands dismissed

in terms of the judgment dated 04/02/2019 passed by this Court in MAC No. 734/2017 and MAC No. 392/2017.

10) So far as the appeal i.e. **MAC No. 13/2017** filed by the Insurance Company relates to quantum part, since the claimants have also filed a separate appeal **MAC No. 526/2017** challenging the quantum of compensation and seeking enhancement of the same, the said issued is being decided together for the sake of convenience.

11) The Tribunal considering the oral and documentary evidence adduced by the parties has give to the conclusion that at the time of accident deceased was 27 years of age earning Rs. 1,96,549/- per annum after deducting Income Tax Rs. 2,984/- from Gross Total Income i.e Rs. 1,99,533/- as per Ex. P-8. However, the Tribunal has not awarded any amount towards future prospect. Therefore, considering the age of the deceased the dependency, the nature of his job and judgment of the Hon'ble Supreme Court in ***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 and Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal No.9581/2018 arising out of SLP (Civil) No.3192/2018*** the claimants are held entitled for compensation in the following manner:-

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs. 1,96,549/- per annum after deducting Income Tax	Rs. 1,96,549/- per annum (as per award of Tribunal)
02.	40 % of (i) above to be added towards future prospects.	(Rs. 196549 + 78620) = Rs. 275169 /-
03.	1/4 deduction towards personal and living expenses of the deceased	(Rs. 275169 - 68792) = Rs. 206377/-
04.	Multiplier of 17 to be applied	(Rs. 206377 x 17) = Rs. 35,08,409/-
05.	Towards parental consortium	Rs. 25000/-
06.	Towards filial consortium	Rs. 20,000/-

Sl. No.	Heads	Calculation (in rupees)
07.	Towards loss of estate and funeral expenses	Rs. 70,000/-
	Total compensation	**Rs. 36,23,409/-**

12) Since the Tribunal has already awarded Rs.25,51,004/- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.10,72,405/- along with interest @ 7.5% per annum from the date of application till realization. Considering the facts and circumstances of the case and above enhancement in the compensation, non-applicant No. 5 Smt. Poonam Agrawal is held entitled for total compensation Rs. 2,00,000/- in place of Rs. 1,00,000/- as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

13) In the result:

(i) **MAC No. 13/2017** preferred by the insurance company being without any substance is hereby dismissed.

(ii) **MAC No. 526/2017** filed by the claimants are allowed in part.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant