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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1384 of 2014

- The Oriental Insurance Company Ltd. Through Divisional Manager, Oriental Insurance Company, Jail Road Raipur, C.G., (Insurer)

---- Appellant

Versus

1. Smt.Raniya Bai, W/o Panchram Sonit Aged About 42 Years R/o Village And Post Maro, P.S. Maro, District Bemetra, C.G.,
2. Ku. Jagriti, D/o Panch Ram Sonit Aged About 19 Years R/o Village And Post Maro, P.S. Maro, District Bemetra, C.G., District : Bemetara, (Claimants)
3. Tapan Das Koshley S/o Banmani Lal Koshley R/o Village - Baikoni, P.S. Simga, District- Balodabazar, C.G., (Driver)
4. Amar Lal Gandre S/o Chandiram Gendre R/o Village - Baikoni, P.S. Simga, District- Balodabazar, C.G., (Owner)

---- Respondents

For Appellant	:	Shri Abhishek Sinha along with Shri Vaibhaiv Maheshwari, Advocate
For Respondents 1 & 2	:	Shri Amiya Kant Tiwari, Advocate.
For Respondents 3 & 4	:	None, though served.

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

08.08.2019

1. This Miscellaneous Appeal has been preferred by Non-applicant No.3/the Oriental Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the legality and propriety of the Award dated 30.09.2014 passed by the 3rd Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.16/2013, by which, the Claims Tribunal, while allowing the claim in part, has awarded a total sum of Rs.4,38,500/- with 6%

interest per annum from the date of filing of claim petition till its realisation while fastening the liability upon the insurance company. 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 on16.09.2012 at 12.30 PM the deceased Rahul Somit was returning by offending vehicle (Magic Car) bearing its registration No. C.G.04-T.A./0552, which was being driven rashly and negligently by its driver Tapandas Kosle (non-applicant No.1), owned by non-applicant No.2 and which was insured with non-applicant No.3/the Oriental Insurance Company Limited. Owing to rashness and negligent driving of the driver of the offending vehicle, it was dashed nearby tree at village Tarpongi, as a result of which, the deceased received serious injuries and expired on the spot. On account of the alleged accident, a claim enumerated under Section 163-A of the Act of 1988 has been made by the claimants by alleging inter alia that the deceased, who was 17 years old, was a labourer and used to earn Rs.3,000/- per month, and therefore, a total amount of compensation to the tune of Rs.9,24,000/- has been claimed.

3. The aforesaid claim has been contested by non-applicants No. 1 & 2 by saying that the vehicle in question was being driven slowly and cautiously by its driver, who was holding the valid and effective driving licence and pleaded further that since the vehicle in question was insured with non-applicant No.3/insurance company, therefore, in case of any liability being fastened, the same could be indemnified by the said insurance company.

4. While disputing the monthly income of the deceased and involvement of

the vehicle in question in relation to the alleged accident, Non-applicant No.3/insurance company contested the claim by saying that the amount of compensation as claimed by the claimants is extremely on higher side. It is contested further on the ground that since the vehicle in question was being used without permit and was being driven by a driver, who was not possessing the effective and valid driving licence to drive the vehicle in question, which was a passenger carrying vehicle, therefore, the insurance company cannot be held liable in relation to the accident occurred on 16.09.2012.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that due to rashness and negligent driving of the driver of the offending vehicle, namely, Tapandas Kosle, the alleged accident occurred, resulting into sad demise of Rahul Somit. It held further that the driver of the offending vehicle was holding effective and valid driving licence to drive the offending vehicle and that by assessing the monthly income of the deceased to the tune of Rs.3,000/-, yearly Rs.36,000/- and that by deducting 1/3rd of it and by applying the multiplier of 16, awarded total amount of compensation to the tune of Rs.4,38,500/- by including a sum of Rs.54,500/- towards conventional heads.

6. Being aggrieved, Non-applicant No.3 has preferred this appeal. Shri Abhishek Sinha along with Shri Vaibhav Maheshwari, learned counsel for Non-applicant No.3 submits that the amount of compensation as awarded by the Claims Tribunal is extremely on higher side. According to him, the Claims Tribunal, while awarding the amount of compensation, ought to have seen that the deceased was unmarried, and therefore, half of the income of the deceased was required to be deducted instead of one-third and submitted further that the claimants

are entitled to only a sum of Rs.30,000/- towards conventional heads. However, a sum of Rs.54,500/- has been awarded in this regard. He submits further that the vehicle in question was a passenger carrying vehicle and as such, the driver of the offending vehicle, who was authorised to drive the light motor vehicle, was not authorised to drive the alleged vehicle. Without considering the said fact in its proper manner, the Claims Tribunal has committed an illegality in fastening the liability upon the insurance company by awarding the amount of compensation of Rs.4,38,500/-, which is extremely on higher side. The award impugned is, therefore, liable to be set aside and / or modified.

7. I have heard learned counsel for the appellant and perused the entire record carefully.

8. It appears from the perusal of the record that the driver of the offending vehicle was entitled to drive the “Motorcycle with gear and light motor vehicle” as evidenced by the information (Ex.D.1) submitted by the Additional Regional Transport Office, Durg as well as the driving licence (Ex.D-2C) of the said driver. According to the learned counsel for Non-applicant No.3 (Appellant), in absence of endorsement made in the driving licence of the driver authorising him to drive the alleged offending vehicle, which was a passenger carrying vehicle, it cannot be said that he was authorised to drive the same. It is true that there is no endorsement made in the alleged driving licence (Ex.D-2C) of the driver authorising him to drive the alleged passenger carrying vehicle, but merely on this ground and particularly in absence of proof of the fact that the vehicle in question was a “heavy transport vehicle” or unladen weight of it is more than 7500 kilograms, it cannot be said that the driver of it was not entitled to drive the same.

9. At this juncture, the principles laid down in the matter of ***Mukund Dewangan*** vs. ***Oriental Insurance Company Limited*** reported in **(2017) 14 SCC 663**, are to be seen where the question involved herein as to whether a driver who is having a licence to drive the “light motor vehicle” and who is driving the “transport vehicle” of that class in absence of such an endorsement was considered and it was held therein at paragraphs 60.1, 60.2 and 60.4 as under:-

> **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 Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 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 roadroller, “unladen weight” of which does not exceed 7500 kg and holder of a driving license 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 roadroller, the “unladen weight” of which does not exceed 7500 kg. That is to say, no separate endorsement on the license is required to drive a transport vehicle of light motor vehicle class as enumerated above. A license issued under Section 10(2)(d) continues to be valid after Amendment Act 54 of 1994 and 28-3-2001 in the form.
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> **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 license 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 license to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.

10. Based upon the aforesaid principles laid down by the Supreme Court, I do not find any infirmity in the award impugned in so far as fastening the liability upon the insurance company is concerned. The said finding of the Claims Tribunal, thus, deserves to be and is hereby affirmed.

11. As far as the quantum of compensation as awarded by the Claims Tribunal is concerned, it appears that it is on higher side. It appears from the perusal of the record that the deceased was unmarried, therefore, instead of deducting one-half of monthly income of the deceased towards his personal expenses, the Claims Tribunal has deducted one-third of it, which cannot be held to be sustainable. Besides, the Claims Tribunal has awarded a sum of Rs.50,000/- towards love and affection to the mother of the deceased, Rs.2000/- towards funeral expenses and Rs.2,500/- towards loss of estate, totalling Rs.54,500/- towards conventional heads, however, it ought not to have been more than Rs.30,000/-, in view of the principles laid down by the Supreme Court in the matter of ***National Insurance Company Limited*** vs. ***Pranay Sethi*** reported in **AIR 2017 SC 5157.** Therefore, the Claims Tribunal has, thus, committed an illegality in awarding a sum of Rs.54,500/- instead of Rs.30,000/-. The finding of the Claims Tribunal in this regard deserves to be and is hereby modified.

12. Considering the aforesaid facts and circumstances of the case, I deem it appropriate to deduct half of the deceased's monthly income of Rs.3,000/-, yearly Rs.36,000/- towards his personal expenses, i.e., Rs.18,000/- (Rs.36,000/- x ½) and that by applying the multiplier of 16 on it, looking to the age of the deceased, as held by the Claims Tribunal, total dependency would be worked out as Rs.2,88,000/- (Rs.18,000 x 16). In addition to it, the claimants would be entitled to a sum of Rs.30,000/- instead of Rs.54,500/-, as observed herein above, towards conventional heads. Thus, the claimants would be entitled to a total sum of Rs.3,18,000/- (2,88,000 + Rs.30,000) with 6% interest per annum from the date of filing of claim petition till its realisation. Rest of

the findings of the Claims Tribunal shall remain intact.

13. In view of the foregoing discussions, the appeal is allowed in part and the award impugned is modified accordingly to the extent indicated herein above. No order as to costs.

Sd/-

(**Sanjay Agrawal)**
Judge

Anjani