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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 734 of 2017

- Royal Sundaram Alliance Insurance Co. Ltd. Through Branch Manager, Branch Office, Chawla Complex, Devendra Nagar Road, Sai Nagar Raipur (C.G.) At Present- Near Over Bridge, Vidhan Sabha Road, Police Station Pandri, Dist. Raipur (C.G.) (Policy No. VPC0353947000100 period dated 15.08.2011 to 14.08.2012)

  (Insurer of Vehicle No. CG-04-HA-6333)

---- Appellant

Versus

1. Smt. Sheela Gaur age 50 years, W/o Arun Gaur. Profession-House Wife.

2. Arun Kumar Gaur age 55 years, S/o Bharat Singh Gaur,

   Both R/o Bajrang Nagar, Samta Colony, Raipur, Tahsil and Dist. Raipur (C.G.).

   (claimants/applicant No. 1 & 2)

3. Mohammed Tausif Khan age 25 years, S/o Mohammed Arif Khan, R/o Jarhabhatha, Thana Civil Line, Raipur Tahsil and Dist. Raipur. At present Location is situated at- Jarhabhatha Tashil and Dist. Bilaspur (C.G.) (driver of Vehicle No. CG-04-HA-6333/N.A. No. 1).

4. Radhacharan Tiwari S/o Ravishankar Tiwari, R/o Ramsatta Chawk, Bhatapara, Dist. Balodabazar (C.G.) (Registered owner of Vehicle No. CG-04-HA-6333/N.A. No. 2).

5. Sukhash Nayak age 22 years, Janmey Nayak, R/o Prem Apartment, Flat No. 103, Mungeli Naka, Bilaspur (C.G.) (Possession owner of Vehicle No. CG-04-HA-6333/N.A. No. 3).

---- Respondents

For Appellant	: Shri Rohitashav Singh, Advocate.
For Respondent No.1 & 2.	:Shri Shivendu Pandya, Advocate
For Respondent No. 5	: None

MAC No. 392 of 2017

1. Smt. Sheela Gaur, W/o Arun Kumar Gaur, aged about 50 years, Occupation- House Wfie,

2. Arun Kumar Gaur, S/o Bharat Singh Gaur, age about 55 years,

Both R/o- Bajrang Nagar, Samta Colony, Post Office- Raipur, Police Station- Azad Chowk, Raipur, Tahsil & District- Raipur (C.G.).

---- Appellants

Versus

1. Mohammad Tousif Khan, S/o Mohammad Arif Khan, Caste- Musalman, aged about 25 years, R/o- Jarhabhata, Boriyakala, Post Office- Bilaspur, Police Station- Civil Line, Tahsil & District- Bilaspur (C.G.) (wrongly mentioned the entire address of the respondent No. 1 in the impugned judgment/award)

   (Driver of Vehicle car bearing registration No. CG/04/HA/6333)

2. Radhacharan Tiwari, S/o Ravishankar Tiwari, R/o- Ram Satta Chowk, Bhatapara, Post Office- Bhatapara, Police Station- Bhatapara, District- Balodabazar- Bhatapara (C.G.).

   (Registered owner of Vehicle car bearing registration No. CG/04/HA/6333)).

3. Suhash Nayak, S/o Janmeyjai Nayak, Caste- Aghariya, aged about 22 years R/o- prem Apartment, Flat No. 103, Mungeli Naka, Bilaspur, District- Bilaspur (C.G.)

   (The legally possessor of Vehicle car bearing registration No. CG/04/HA/6333)

4. Royal Sundaram Alliance Insurance Co. Ltd. Through Branch Manager, Branch Office, Chawla Complex, Devendra Nagar Road, Sai Nagar Raipur (C.G.) At Present- Near Over Bridge, Vidhan Sabha Road, Police Station Pandri, Dist. Raipur (C.G.) (Policy No. VPC0353947000100 period dated 15.08.2011 to 14.08.2012)

   (Insurer of Vehicle No. CG-04-HA-6333)

---- Respondents

For Appellants	: Shri Shivendu Pandya, Advocate
For Respondent No. 1 & 2	: None
For Respondent No.4	:Shri Rohitashav Singh, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

04/02/2019

1. As both these appeals filed under Section 173 of the Motor Vehicles Act by the Insurance Company & the claimants arise out of the common award dated 23.02.2017 passed by the 1st Additional Presiding Officer to the Court of 1st Additional Motor Accident Claims Tribunal, Raipur (C.G.) in claim case No. 03/2012, they are heard together and are being disposed of by this common judgment.

2. Appellant/Insurance Company has filed the appeal being MAC No. 734/2017 challenging the liability fastened upon it on the ground that the driver of the offending vehicle did not have valid and effective driving licence at the time of accident *whereas* claimants, who are parents of the deceased, have filed the appeal being MAC No. 392/2017 seeking enhancement of the amount of compensation under the award.

3. On a claim petition being filed by the claimants, who are unfortunate parents 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. 35,38,820/-

alongwith interest @ 7.5% per annum from the date of filing of claim petition till its actual payment in favour of the claimants fastening liability of payment of compensation upon the Appellant/Insurance Company as it could not establish the violation of policy conditions.

4. As per claim petition, on 17.08.2011, when deceased namely Yogesh Kumar Gaur along with his friends namely Satya Mahawar & Neeraj Agrawal were coming to his home from Saddu Mowa to Ramsagarpara, on his own Aviator Moped bearing registration No. CG-04-6223 and when they reached near the Agrawal Dal Mill, Mowa, Raipur, Non-applicant No. 1/driver-Mohammad Tausif Khan, by driving the offending vehicle Swift Car bearing registration No. CG-04-H.A.6333 in a rash and negligent manner, dashed the Aviator Moped, as a result thereof, deceased Yogesh Kumar Gaur and one another friend namely Neeraj Agrawal sustained multiple injuries and died on the spot.

5. Learned counsel for the appellant/Insurance Company in MAC No. 734/2017 submits that at the time of accident respondent No. 1/driver of the offending vehicle did not have valid and effective driving lience 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 lience (Ex. D 1/c) was issued in the name of one Manish Nabhulkar thereafter, licence

clerk of the RTO has stated that the another document produced by the RTO i.e. driving licence (Ex. P-8/c) was issued in favour of Non-applicant No. 1- Mohammad Taushif khan, therefore, the two driving licence were issued by the RTO department in favour of two different persons. He submits that one driving licene is fake lience as Rajesh Kumar Bhargave (NAW-1) has admitted the fact in paragraph 12 of the award that particulars of driving licence (Ex. P8/c) 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-8c) 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. 734/2017 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. 392/2017 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 a permanent salary paid employee but learned Tribunal has not awarded any amount towards future prospect. Looking to the age of deceased at the time of accident i.e. 28 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. P8/c) 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-8c) 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 licence 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. A bare perusal of the evidence adduced in the case would reveal: before the accident, deceased was working as Deputy Manager in the Max Newyork Life Insurance Company Limited and was earning Rs.36,733/- per month. But the Tribunal, after deducting the usual amount towards conveyance allowance i.e. Rs.800, Lunch allowance i.e. Rs.515/- and towards income Tax i.e. Rs.1,508/- has assessed the income of the deceased as Rs. 33,910/- which is just and proper as per pay slip. Further looking to the age of the deceased i.e. 28 years, job and dependency In view of the judgments of the 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***, I consider it appropriate to award 50% towards future prospect in the yearly income of the deceased. On the basis of above, I propose to re-compute the amount of compensation as under :-

Sl. No.	Heads	Calculation
01.	Income of the deceased	Rs.33,910x12= Rs.4,06,920/- per annum
02.	50% of above to be added towards future prospects	Rs.4,06,920 +Rs.2,03,460/-= Rs.6,10,380/-
03.	1/2th deduction towards personal and living expenses of	Rs.3,05,190/-

	the deceased	
04.	Multiplier of 17 to be applied	Rs.51,88,230/-
05	Total compensation towards loss of dependency	Rs. 51, 88,230/-
06.	Towards loss of estate, funeral expenses	Rs.30,000/-
07.	Towards love & affection (as awarded by the Tribunal)	Rs.50,000/-
09	**Total compensation**	Rs. 52,68,230/-

Since the Tribunal has already awarded Rs.35,38,820/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.17,29,410/- along with interest @ 7.5% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

10. In the result:

- MAC No. **734 of 2017** preferred by the insurance company being without any substance is hereby dismissed.
- **MAC No. 392/2017** filed by the claimant is allowed in part.

Sd/-

(Gautam Chourdiya)
Judge

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