**AFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

## Miscellaneous Appeal (Civil) No. 189 of 2014

- The New India Assurance Company Limited, Through**-** Divisional Manager, Divisional Office- In front of Rajiv Plaza, Bus Stand, Bilaspur, District Bilaspur (C.G.)

**---- Appellant/non-applicant No.3/Insurer**

**Versus**

1. Smt. Lata Chauhan Wd/o Late Manoj Chauhan, Aged 30 years
2. Ku. Samiksha Chauhan D/o Late Manoj Chauhan, Aged 9 years
3. Ku. Misti Chauhan, D/o Late Manoj Chauhan, Aged 6 years
4. Aniket Chauhan, S/o Late Manoj Chauhan, Aged 4 years

   No.2 to 4 minor through natural guardian mother Smt. Lata Chauhan Wd/o Late Manoj Chauhan, Aged 30 years, All are R/o Phirangi Para, Kargi Road, Kota, P.S. - Kota, District- Bilaspur (C.G.)

   **(Claimants)**

5. Raj Kumar @ Raju S/o Late Parmanand Geta, R/o Dak Bangla Road, Kota, P.S. - Kota, District- Bilaspur (C.G.)
   **(Driver/Non-applicant No.1)**

6. Smt. Gayatri Gupta W/o Shri Raj Shekar Gupta, R/o Ward No. 6, Chanta Para, P.S. Civil Line, Tahsil & District- Bilaspur (C.G.)
   **(Owner/Non-applicant No.2)**

**---- Respondents**

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| For Appellant | : | Shri Raj Awasthi, Advocate |
| For Respondent No.5 | : | Shri Vaibhav Singh, Advocate |

**Hon'ble Shri Justice Gautam Chourdiya, J**

**Judgment on Board**

**18.02.2019**

**1.** This appeal has been preferred by the Appellant/non-applicant No.3 under Section 173 of the Motor Vehicles Act, 1988 against the award dated 13.10.2013 passed by Fourth Additional Member, Bilaspur to the Court of the First Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in Claim Case No. 48 of 2013.

**2.** The Claimants/Appellants, unfortunate wife and children of deceased- Manoj Chauhan, claimed compensation of Rs.19,50,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act for death of Manoj Chauhan in the motor accident.

**3.** Facts of the case, in brief, are that on 01.12.2009, deceased- Manoj Chauhan along with one Ramphal was going by motorcycle which was being ridden by Manoj Chauhan towards Village Medhpar, when they reached main-road at Amali-turn, non-applicant No.1- Raj Kumar @ Raju, driver of the offending vehicle- Tata-Magic bearing registration No. CG-10/C/2831, which was owned by non-applicant No.2 and was insured with Appellant/non-applicant No.3, driving the said Tata-Magic in a rash and negligent manner, dashed the motorcycle of Manoj Chauhan, as a result thereof, Ramphal fell down on the road and Manoj Chauhan sustained grievous injury and died on the spot.

**4.** The learned Tribunal, in the impugned award has awarded a compensation of Rs.6,63,000/- in favour of the Appellants/Claimants with interest @ 6% per annum from the date of application till its realization and has fastened the liability upon the Insurance Company/Appellant along with non-applicants No. 1 & 2 jointly and severally to pay compensation to the Claimants. The Tribunal has also directed that if the compensation amount has not been paid within a month from the date of award, the said amount shall carry interest @ 09% per annum.

**5.** Learned counsel for the Appellant/Insurance Company submits that non-applicant No.1 – Raj Kumar @ Raju, driver of the offending vehicle, has not been examined before the Tribunal. He also submits that the Insurance Company had filed an application under Order 11 Rule 12 CPC read with Section 134 of the Motor Vehicles Act before the Tribunal and effort has been made by the Insurance Company to bring on record the driving licence of the driver before the Tribunal and also other documents of the offending vehicle. But, as per order of the Tribunal dated 27.11.2012, non-applicants 1 and 2 have not filed any documents relating to the offending vehicle and the Tribunal had rejected the application. Before passing order by the Tribunal on 27.11.2012, counsel for the non-applicant No.1 was directed for producing documents mentioned in the application under Order 11 Rule 12 CPC, but those documents were not submitted during trial before the Tribunal. He further submits that as per seizure memo Ex.-P/1, no any document seized regarding driving licence, therefore, the driver of the offending vehicle was not having a valid and effective driving licence at the time of accident.

**6.** Learned counsel for Respondent No.6 opposes the contention made by learned counsel for the Appellant/Insurance Company.

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

**8.** In the facts and circumstances of the case, it is found that specific effort has been made by the Insurance Company/non-applicant No.3 to produce the documents of the offending vehicle before the Tribunal, but the owner/non-applicant No.2 and driver/non-applicant No.1 have failed to produce the driving licence of the driver and other relevant documents of the offending vehicle. Therefore, it can be presumed that the driver of the offending vehicle was not having a valid and effective driving licence at the time of accident which occurred on 01.12.2009 and there is specific breach of policy conditions. As per policy Ex.-D/1, insurance policy, driving licence is mandatory condition for driving the vehicle under Section 3 of the Motor Vehicles Act. In view of the above, there is specific breach of policy condition proved by the Insurance Company/Appellant that the non-appplicant No.1, driver of the offending vehicle, was not having a valid and effective driving licence at the time of accident.

**9.** Insurance Company/non-applicant No.3 examined V. Tirki as NAW-1, Administrative Officer who specifically stated in paras 1 & 2 that non-applicant No.1, driver of the offending vehicle, was not having a valid and effective driving licence at the time of accident and Insurance Company has proved this fact that there is a breach of policy condition. No evidence to the contrary has been adduced by non-applicants No. 1 & 2/driver and owner.

**10.** Considering the facts and circumstances of the case and particularly the fact that it was proved by the Insurance Company that on the date of accident, the driver of the offending vehicle was not having a valid and effective driving licence and the owner of the offending vehicle has not produced any document relating to the offending vehicle which was required by the Insurance Company under Order 11 Rule 12 CPC. The finding of the Tribunal regarding fastening of liability on the Appellant/non-applicant No.3 along with non-applicants No. 1 & 2 jointly and severally is hereby set aside and driver & owner/non-applicants No. 1 & 2 are held jointly and severally liable to pay compensation to the Claimants.

**11.** It was also argued by learned counsel for Appellant/Insurance Company that penal interest @ 9% per annum imposed by the Tribunal is against the settled principle of law and therefore, it is liable to be set aside.

**12.** Regarding penal interest, the Hon'ble Supreme Court has observed in para 13 in the matter of ***National Insurance Co. Ltd.*** Vs. ***Keshav Bahadur and Others, (2004) 2 SCC 370*** as under:-

> "**13.** Though Section 110-CC of the Act (corresponding to Section 171 of the new Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110-CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal."

In view of the above decision in *Keshav Bahadur* (supra), this Court is of the opinion that the Tribunal was justified in imposing interest @ 6% per annum on the awarded amount from the date of claim petition till realization, but has committed illegality imposing penal interest @ 9% per annum on the awarded amount, if compensation is not deposited within a period of one month before the Tribunal from the date of award. Therefore, the order of the Tribunal regarding penal interest is liable to be set aside and is accordingly set aside.

**13.** In the matter of ***Manuara Khatun and others*** Vs. ***Rajesh Kumar Singh and others, (2017) 4 SCC 796***, the Supreme Court held as under:

> "13. The only question, which arises for consideration in these appeals, is whether the appellants are entitled for an order against the Insurer of the offending vehicle, i.e., (respondent No.3) to pay the awarded sum to the appellants and then to recover the said amount from the insured (owner of the offending vehicle-Tata Sumo)-respondent No.1 in the same proceedings.
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> 14. The aforesaid question, in our opinion, remains no more res integra. As we notice, it was subject matter of several decisions of this Court rendered by three Judge Bench and two Judge Bench in past, viz., National Insurance Co. Ltd. vs. Baljit Kaur & Ors., (2004) 2 SCC 1, National Insurance Co. Ltd. vs. Challa Upendra Rao & Ors., (2004) 8 SCC 517, National Insurance Co. Ltd. vs. Kaushalaya Devi & Ors., (2008) 8 SCC 246, National Insurance Co. Ltd. vs. Roshan Lal, (2017) 4 SCC 803 and National Insurance Co. Ltd. vs. Parvathneni & Anr., (2009) 8 SCC 785.
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> 15. This question also fell for consideration recently in Manager, National Insurance Company Limited vs. Saju P. Paul & Anr., (2013) 2 SCC 41 wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".
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> 16. R.M. Lodha, J. (as His Lordship then was and later became CJI) speaking for the Bench held in paras- 20 and 26 as under: (Saju P. Paul

Case)"

> "20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).
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> 26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur, (2004) 2 SCC 1 and Challa Upendra Rao, (2004) 8 SCC 517 should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 (National Insurance Co. Ltd. vs. Saju P. Paul) and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent No.1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in Challa Upendra Rao (supra)."

19. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in Saju P. Paul's Case (supra). Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in Saju P. Paul's Case (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the

reference to a larger Bench as would be clear from Para 26 of the judgment in Saju P. Paul's case (supra). That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.

20. It is for all these reasons, we find no good ground to take a different view that the one consistently being taken by this Court in all previous decisions, which are referred supra, in this regard.

21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No.3) – they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra."

**14.** Keeping in view of the decisions of the Hon'ble Supreme Court in the matter of *Manuara Khatun* (supra), the fact that as per Ex.-D/1, insurance policy, the offending vehicle was duly insured with non-applicant No.3 and deceased was a third party, this Court feels it proper to order for pay and recover in this case. Hence, the Appellant/The New India Assurance Company Limited is directed to pay the awarded sum to the Claimants and then recover the same from the driver and owner (Raj Kumar @ Raju & Smt. Gayatri Gupta) of the offending vehicle as per law laid down in Manager, National Insurance Company Limited Vs. Saju P. Paul & Anr., (2013) 2 SCC 41.

**15.** In the result, the appeal is allowed in part. The award is modified to the above extent. Rest of the conditions of the award shall remain intact.

**16.** No order as to costs.

Sd/-

**(Gautam Chourdiya)**
Judge

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