NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 526 of 2013

Future General Insurance Company Limited (Future Generali India Insurance Company, Ltd), Through Branch, 3rd Floor Maruti, Business Park, Near Dhuppad, Petrol Pump, GE Road, Raipur, C.G. PS. Saraswati Nagar (P.S not mentioned by claimants).

---- Appellant

Versus

1. Omprakash Gada S/o Late Pusauram Aged About 40 Years.
2. Smt. Geeta Bai W/o Omprakash Aged About 38 Years.
3. Ku. Tejin @ Tejeswari D/o Omprakash Aged About 13 Years Minor, Thru-Father Mr. Omprakash.
   All are R/o. Boriya, P.S. Tikrapara, Raipur, Distt. Raipur C.G.
4. Lalit Sahu S/o Umendram Sahu Aged About 40 Years. R/o Belar, P.S. Fingeshwar, Distt. Raipur C.G., Now Distt. Gariyabandh C.G.

---- Respondents

MAC No. 610 of 2013

1. Omprakash Gada S/o Late Pusauram Gada Aged About 40 Years.
2. Smt. Geetabai Gada W/o Omprakash Gada Aged About 46 Years.
3. Ku. Tejeen @ Tejeshwari Gada D/o Omprakash Gada Aged About 13. appellant No.3 being Minor, Thru- Father Omprakash Gada.
   All are R/o Boria, P.O. Boria, P.S. Tikrapara, Raipur, Distt. Raipur C.G.

---- Appellants

Versus

1. Lalit Sahu S/o Umendram Sahu Aged About 40 Years, R/o Belar, P.O. Belar, P.S. Fingeshwar, Distt. Raipur C.G.
2. The Future General Insurance Co. Ltd. The Branch Manager, Thru-Branch Manager, Branch Off. 3rd Floor, Maruti Business Park, Near Dhuppad Petrol Pump, G.E. Road, Raipur, PO- Raipur, PS- Azad Chouk, Distt. Raipur C.G.

---- Respondents

MAC No. 526 of 2013

For Appellant	:	Shri Rohitashava Sigh,Advocate.
For Respondent No.1 to 3	:	Shri Shivendu Pandya, Advocate.
For Respondent No.4	:	None.

MAC No. 610 of 2013

For Appellants	:	Shri Shivendu Pandya, Advocate.
For Respondents No. 1	:	None.
For Respondent No. 2	:	Shri Rohitashava Sigh, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

20/06/2019

1 As above two appeals arise out of same accident, therefore, they are being disposed off by this common order.

2 Challenge in above two appeals is to the award dated 13/02/2013 passed by learned 3rd Additional Motor Accident Claims Tribunal, Raipur, District Raipur (C.G.) (hereinafter referred to as 'the Tribunal') in Claim Case Nos.30/2012 whereby the Tribunal allowed claim application in part, awarded total compensation of **Rs.2,20,000/-** with interest @ 6% p.a. and fastened liability upon Insurance Company to pay amount of compensation.

3 Appellant/insurance company has filed **MAC No.526/2013** challenging impugned award on the ground that on the date of accident deceased Komalram Gada was traveling as unauthorized passenger on Tractor & Trolley bearing registration Nos.CG04-ZQ-5676 & CG04-ZQ-5677 respectively (hereinafter shall be referred to as “offending vehicle”), because registration certificate of offending vehicle shows that seating capacity is only one i.e. driver, and thus there was violation of condition of insurance policy. Insurance company has also challenged quantum of compensation on the ground that the Tribunal committed error in awarding excessive amount of compensation under other conventional heads ignoring the fact that claim application has been filed under Section 163 (A) of the Act of 1988.

4 By filing **MAC No.610/2013** claimants/appellants have sought enhancement of amount of compensation on the ground that the Tribunal

not only applied wrong multiplier but also made incorrect deduction towards personal & living expenses of deceased, which is contrary to Scheduled-II appended to Section 163 (A) of the Act of 1988.

5 Brief facts necessary for disposal of this appeal are that on 13.02.2011, Komalram Gada (deceased) was traveling on offending vehicle as Coolie (Labour) in which stone ballast was being transported from Village-Barbhata to Bailer for the purpose of construction of well in agriculture field. On the way near village-Gautra, due to rash and negligent driving by driver of offending vehicle, deceased fell down and came under wheel of offending vehicle as a result of which he suffered multiple grievous injuries and succumbed to those injuries. Matter was reported to Police Station – Fingeshwar, Distt. Raipur based on which Crime bearing No.16/2012 under Section 304-A of the Indian Penal Code was registered against driver of offending vehicle.

6 On account of death of Komalram Gada in aforesaid accident, claimants who are parents & sister of deceased, filed claim application under Section 163 (A) of the Act of 1988 before competent Claims Tribunal claiming **Rs.11,50,000/-** as compensation on account of death of their son and brother respectively.

7 Non-applicant No.1-owner-cum-driver of offending vehicle submitted reply to claim application and denied all adverse averments made therein. He denied that on the date of accident deceased was working as Coolie (labour) on his tractor. Deceased was a student of Class 8th and studying in Government Higher Secondary School, Bailer. Lastly he pleaded that his vehicle was not involved in any manner in alleged

accident and if accident is proved by claimants then liability to pay amount of compensation will be upon non-applicant No.2-insurance company as on the date of accident offending vehicle was insured with it.

8 Non-applicant no.2-Insurance Company/appellant submitted reply to claim application and denied all adverse pleadings made in claim application. It was also pleaded that at the time of accident, offending vehicle was not insured with insurance company. Deceased was minor on the date of accident and claimants were not dependent upon him. It was further pleaded that, no sitting space was available on offending vehicle even then deceased was permitted to travel on it and on the date of accident driver of offending vehicle was not possessing valid and effective driving license and thus there was violation of conditions of insurance policy.

9 Learned Claims Tribunal while appreciating pleadings and evidence available on record, allowed claim application in part, awarded a total sum of **Rs.2,20,000/-** as compensation and fastened liability on insurance company on the ground that there was no violation of any of the conditions of insurance policy. While recording above finding the Tribunal held that accident took place due to rash and negligent driving of driver of offending vehicle.

10 Learned counsel for the appellant-insurance company in **MAC No.526/13** submits that seating capacity of the offending vehicle was only one including driver and on the date of accident deceased was traveling on offending vehicle alongwith driver, which was not permissible in law. He further submits that offending vehicle was insured

under 'Farmer Package Policy', but at the time of accident it was being used for commercial purpose i.e. for transporting ‘stone ballast'.

11 Learned counsel appearing for respondents/claimants submits that on the basis of evidence available on record and after considering various judgments, the Tribunal arrived at a correct finding and rightly passed the impugned award holding that there is no violation of condition of insurance policy. He further argues that appeal preferred by the insurance company has no substance and the same is liable to be dismissed.

12 I have heard the counsels for the parties and perused the records.

13 Claimants have examined one Sanjay as AW-2, who in his statement stated that on the date of accident deceased was traveling on offending vehicle as Coolie (labour) and due to rash and negligent driving of driver of offending vehicle, deceased fell down, came under wheel of offending vehicle, suffered multiple injuries and succumbed to those injuries. AW-2 proved the fact of accident in his statement.

14 In FIR (Ex.P-3) lodged after few hours of accident it has been specifically mentioned that at the time of accident stones ballast (fursi gitti) was loaded in offending vehicle. Copy of insurance policy has been filed as Ex.D-1 and perusal of which shows that it was a 'Farmer Package Policy'.

15 In the instant case, owner-cum-driver of offending vehicle did not enter into witness box to prove his pleadings that offending vehicle was carrying 'ballast stones' for the purpose of construction of well in

agriculture field and therefore the defence taken by him cannot be accepted that on the date of accident his vehicle was being used for agriculture purpose. No document is produced showing construction of well.

16 It is evident from the material available on record as well as considering the fact that claimants themselves have pleaded that on the date of accident deceased was traveling on offending vehicle as Coolie (labour), there was no sitting capacity on tractor except driver and even on trolly when it is loaded with goods. No premium for labour or passenger was paid. In facts and circumstances of the case, there is violation of condition of insurance policy. Thus, finding recorded by the Tribunal that there was no violation of condition of insurance policy is not sustainable and is hereby set aside.

17 In view of aforementioned discussion and finding recorded by this Court that there was violation of condition of insurance policy and, therefore, appellant/insurance company in **MAC No.526/13** will not be liable to satisfy the amount of compensation awarded by the Tribunal. The liability for payment of amount of compensation would be on non-applicant no.1/respondent No.4 (owner-cum-driver of offending vehicle) in **MAC No.526/13.**

18 Counsel appearing for appellants/claimants In **MAC No.610/13** submits that the Tribunal committed error in applying multiplier of 10 ignoring the fact that on the date of accident deceased was aged about 16 years. The Tribunal has also not awarded any amount towards future prospects and

the amount awarded under other conventional head is also on lower side.

19 Perusal of records, particularly post-mortem report (Ex.P-4) would show that age of deceased is mentioned as 16 years, whereas claimants pleaded in their pleadings that on the date of accident deceased was aged about 15 years. In such a situation, age of deceased taken by the Tribunal as 16 cannot be faulted with.

20 The Tribunal has applied multiplier of 10 on the basis of judgment passed by Hon'ble Supreme Court in the matter of **Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Anr** reported in **2003 (8) SCC 731**. However, subsequently the Hon'ble Supreme Court in the matter of **Sube Singh v. Shyam Singh** reported in **(2018) 3 SCC 18** has specifically dealt with issue of application of multiplier in cases where deceased was bachelor and held as under :-

> ""4. On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of **Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and Anr** reported in **2015 2 SCC 180** held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more *res integra*. In the case of **Munna Lal Jain and Anr. v. Vipin Kumar Sharma and Ors** reported in **2015 6 SCC 347** decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and

> not on the age of the dependants.
>
> 5. Considering the aforementioned principle expounded in **Sarla Verma Vs DTC** reported in **2009 (6) SCC 121,** which has been affirmed by the Constitution Bench of this Court in **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**, the appellants are justified in insisting for applying multiplier 18."

21 Hon'ble Supreme Court after considering its earlier judgments has held that in cases where the deceased was bachelor, multiplier is to be applied on the basis of age of deceased and not of his parents. In view of law laid down by the Hon'ble Supreme Court, appropriate multiplier as per Schedule-II of the Act of 1988, will be 18, because application for grant of compensation has been filed under Section 163 (A) of the Act of 1988.

22 Coming to next ground raised by learned counsel for the appellants that the Tribunal committed error in not awarding any amount towards future prospects and that the amount awarded under other conventional head is also on lower side. In the case at hand, claim application itself has been filed under Section 163 (A) of the Act of 1988 and being so, compensation is to be calculated strictly in accordance with clauses mentioned in Schedule (II) appended to Section 163 (A) of the Act of 1988 and there is no provision in Schedule-II with respect to award of amount under the head of 'future prospects' and further restricted amount of compensation on other heads to the tune of **Rs.9,500/-** in total on all heads.

23 In view of above, award passed by the Tribunal requires recalculation and reconsideration,

24 Accordingly, monthly income of deceased is taken as **Rs.3,000/-** as assessed by Tribunal i.e. **Rs. 36,000/-** p.a. **(3000x12)** and as per Schedule-II appended to Section 163 (A) of the Act of 1988, one-third is to be deducted towards personal and living expenses of deceased instead of half as done by the Tribunal. After deducting one-third towards personal & living expenses of the deceased, loss of yearly dependency would come to **Rs.24,000/-** per annum. As on the date of accident deceased was aged about 16 years of age, therefore, multiplier of 18 would be applicable. After applying multiplier of 18, total loss of dependency is assessed at **Rs.4,32,000/- (24000x18).** Besides this, the claimants will be entitled for a lump sum amount of **Rs.9,500/-** towards other conventional heads, as provided in Schedule-II of the Act of 1988.

25 In view of above discussion, claimants are held entitled for total compensation of **Rs.4,41,500/-**, instead of **Rs.2,20,000/-** as awarded by the Tribunal. The amount of compensation shall carry interest @ 6% per annum from the date of filing of the claim application till its realization. Other conditions imposed by the learned Claims Tribunal shall remain intact.

26 As held in preceding paragraph there is no legal liability of insurance company to pay amount of compensation to claimants but the question arises that whether the direction of pay and recover can be issued or not. This issue of pay and recover was considered by the Hon'ble Supreme Court in the matter of **Shivaraj v. Rajendra & Anr** reported **in 2018 4 TAC 1 SC,** relevant portion of which reads as under :-

> “10.At the same time, however, in the facts of the present case the High Court ought to have directed the Insurance Company to pay the compensation amount to the claimant (appellant) with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by this Court in **National Insurance Co. Ltd. Vs. Swarna Singh & Ors[1], Mangla Ram Vs. Oriental Insurance Co. Ltd[2], Rani & Ors. Vs. National Insurance Co. Ltd. & Ors[3], and including Manuara Khatun and Others Vs. Rajesh Kumar Singh And Ors[4],** In other words, the High Court should have partly allowed the appeal preferred by the respondent No.2. The appellant may, therefore, succeed in getting relief of direction to respondent No.2 Insurance Company to pay the compensation amount to the 1 (2004) 3 SCC 297 appellant with liberty to recover the same from the tractor owner (respondent No.1). "

27 In the case of **Shivaraj** (supra) also, the appellant was travelling on tractor which was insured for agricultural purpose and not for carrying goods and no additional premium was taken therein. Said tractor met with an accident and the appellant therein suffered grievous injuries. The tribunal allowed claim application and by holding that as the insurance policy of the tractor on which the claimant was travelling as 'Coolie' was admittedly valid on the date of accident, fastened the liability on insurance company. Insurance Company filed an appeal before the

1(2004) 3 SCC 297
2(2018) 5 SCC 656
3 (2018) 9 SCALE 310
4(2017) 4 SCC 796

High Court challenging the award of tribunal and the same was allowed by the High Court and the insurance company was exonerated from its liability. The order of High Court was challenged by the owner of offending vehicle before the Supreme Court and the Supreme Court affirmed the findings recorded by the High Court so far as it relates to violation of conditions of insurance policy, however, issued a direction against the insurance company to first pay the amount of compensation to claimant and then recover the same from the registered owner of the offending vehicle i.e. tractor.

28 In the case at hand also, the deceased was travelling on tractor and succumbed to the injuries suffered in motor accident while travelling on tractor. The policy issued in this case was a 'Farmer Package Policy' and, therefore, in the considered opinion of this Court, the facts of the case are almost identical to the facts of the case of **Shivaraj** (supra)

29 In view of above verdict of the Hon'ble Supreme Court and in the given facts and circumstances of the case, this Court also deems fit and proper to direct that the insurance company to first pay the amount of compensation to claimant and then to recover the same from owner-cum-driver of offending vehicle i.e. non-applicant No.1 (Lalit Sahu).

30 In the result :-

(a) Appeal filed by Insurance Company bearing **MAC No.526/2013** is allowed in part and appellant-insurance company is exonerated from the liability of payment of amount of compensation.

(b) Appeal filed by claimants/appellants bearing **MAC No.610/2013** is allowed in part and the impugned awarded is modified to the extent that appellants/claimants will be entitled for an amount of

Rs.4,41,500/- as compensation, instead of **Rs.2,20,000/-** as awarded by the Claims Tribunal. Rest of the conditions imposed by the Claims Tribunal shall remain intact. Amount, if any, already deposited before the Tribunal shall be adjusted.

(c) In the light of aforementioned judgement, though insurance company is not having legal liability to pay amount of compensation to claimant, but insurance company is directed to first deposit the entire amount of compensation with the Tribunal for payment of same to the claimants and thereafter to recover said amount from owner-cum-driver of offending vehicle i.e. non-applicant No.1 (Lalit Sahu). Insurance company will at liberty to recover the amount in the manner as provided in the matter of **Oriental Insurance Company Limited v. Nanjappan** reported in **AIR 2004 SC 1631.**

31 Both the appeals are allowed in part and the impugned award stands modified to the extent as indicated above.

Sd /-

(Parth Prateem Sahu)
Judge

Jamal