NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1158 of 2013

1. Om Prakash Pandey son of Shri Ganesh Pandey aged about 38 years resident of village Lasatola Maharajpara Distt.- Kabirdham (Kawardha) C.G.

---- Appellant/Owner

Versus

1. Siyaram Ogare, son of late Shyamlal, aged about 38 years,

2. Smt. Chandrika Ogare, wife of Siyaram Ogare, aged about 38 years,

   Both are resident of Village Jevdan Kala, P.S., tahsil and District- Kabirdham (Kawardha) C.G.

3. Baliram Dhruv (Markam) son of Rama Dhurve (Markam) aged about 26 year Village Lasatola Post- Maharajpara Dist.- Kabirdham C.G.

4. The Oriental Insurance Company Limited Through- Branch Manager Branch Office L.I.C. Office near railway station- Rajnandgaon C.G.

---- Respondents

For Appellant : Shri Ajit Singh, Advocate.
For Respondent/Claimants : Shri Dheeraj Kumar Wankhede, Advocate.
For Respondent/Insurance Company: Shri H. S. Patel, Advocate.

And

MAC No. 630 of 2013

1. Siyaram Ogre S/o Late Shyamlal, aged about 36 years,

2. Smt. Chandrika Ogre, aged about 36 years,

Both are R/o Village Jevadankala, P.S., Tahsil and District- Kabirdham, Chhattisgarh.

---- Appellants/claimants

Versus

1. Baliram Dhruv (Markam) S/o Rama Dhurv (Markam) S/o Rama Dhurv(Markam) aged about 24 years, Caste Gond, R/o Lasatola, Post Maharajpara, District- Kabirdham, Chhattisgarh (Driver)

2. Om Prakash Pandey S/o Ganesh Pandey aged about 35 years, R/o Lasatola Mahrajpara, District- Kabirdham, Chhattisgarh (Owner).

3. The Oriental Insurance Company Limited Through: The Manager, Divisional Officer in side L.I.C. Office, near Railway Station, Rajnandgaon, Chhattisgarh.

---- Respondents

For Appellants : Shri, Dheeraj Kumar Wankhede, Advocate.
For Respondent/owner : Shri Ajit Singh, Advocate.
For Respondent/Insurance Company: Shri H. S. Patel, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

08.04.2019

1. Since both the appeals filed under Section 173 of the Motor Vehicle Act arise out of the award dated 26.04.2013, passed by Motor Accident Claims Tribunal, Kabirdham (Kawardha) in Claim Case No. 89/2011 both cases arises from the same accident, therefore, they are heard together and are being disposed of by this common judgment.

2. As per averments made in the claim petition, when on 06.10.2011, Horilal (since deceased) aged about 18 years working as mason earning Rs. 3,00/-per day i.e. Rs. 9,000/- pm was going with his friend Naresh to his village-Jevdankala after seeing Dashahra (festival) on the way when they are waiting to other person namely- Charandas besides the road, at that point of time, Non-applicant No. 1- Baliram Dhruv driver of the

offending vehicle bearing registration No. C.G.04ZP/4092 drive the vehicle in a rash & negligent manner, dashed the Naresh & Horilal, as a result thereof deceased- Horilal sustained grievous injuries and succumbed to these injuries. At the time of accident, the offending vehicle was owned by non-applicant No. 2- Om Prakash Pandey and insured with Non-applicant No. 3- The Oriental Insurance Company Limited.

03. On claim petition being filed under Section 166 of the Motor Vehicle Act, 1965 by the claimants/parents of the deceased- Horilal considering the evidence led by both the parties, awarded a total compensation of Rs. 3,80,000/- with interest @ 7% per annum from the date of filing of claim petition till its actual payment. The learned Tribunal exonerated the Insurance Company from its liability to pay compensation to the claimants on the ground of breach of policy conditions and fastened the liability to pay compensation upon owner of the offending vehicle. Aggrieved by the award for fastening the liability upon the owner he filed an appeal (MAC No. 1158 of 2013) whereas for seeking enhancement the claimants/parents of the deceased- Naresh filed an appeal (MAC No. 630 of 2013).

04. It is submitted by learned counsel for both the parties that no counter appeal is filed by the insurance Company.

<u>In MAC No. 1158/13</u>

05 Learned counsel for the appellant/owner in MAC No. 1158/2013 would submit that the Tribunal has wrongly fastened liability upon the owner on the ground that the driver was having licence for LMV whereas

he was driving the offending vehicle, which is a transport vehicle on the date of accident without there being any endorsement to this effect in his driving licence. In support of his submission, placing reliance of the decision of Hon'ble Supreme Court in the matter of ***Mukund Dewangan Vs. Oriental Insurance Company Ltd.***, reported in ***(2017) 14 SCC 663***, and submits that the driver of the offending vehicle was having a valid and effective driving licence and the Tribunal was not justifying in exonerating the Insurance Company on the ground of the driver not having a valid and effective driving licence.

06. On the other hand, learned counsel for the insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter and the evidence adduced by the parties, has rightly exonerated the insurance company and fastened liability on the owner/appellant.

06. MAC No. 630/2013 filed by the claimants/parents of the deceased- Horilal seeking enhancement of the compensation.

07. Learned counsel for the claimants submits that he is assailing the award only on the ground that at the time of accident the deceased was aged about 18 years but the Tribunal has wrongly applied the multiplier of 10 whereas it should have been 18 instead of 10. He also submits that no amount towards future prospect has been granted to the claimants. He further submits that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

In support of above contentions, reliance has been placed on the decision of the Hon'ble 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.***

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

09. As regards the issue of competence of the driver for driving the offending vehicle, as per Ex. NA-2, the driving licence particular was seized by the police which are valid and effective from 25.11.2010 to 24.11.2030. True it is that the driver was having a licence for light Motor Vehicle and the offending vehicle was a transport vehicle, however, keeping in view of the decision of Hon'ble Supreme Court judgment in the matter of ***Mukund Dewangan Vs. (supra)*** the driver was competent to drive the offending vehicle and the Tribunal was not justified in exonerating the Insurance Company on the aforesaid ground. In the Matter of ***Mukund Dewangan Vs.*** (Supra) the Hon'ble Supreme Court while considering the issue whether a driver who is having a licence to drive the light motor vehicle is competent to drive the transport vehicle of that class in absence of such endorsement observed as under:

> **"Held, the effect of amendment of Form 4 by insertion of "transport vehicle" related only to categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same – There was no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect –**

> **Further held, even otherwise the Form could not control the substantive provisions carved out in Ss. 10(2)(d) and 10(2)(e) and the interpretation of the Form has also to be in tune with the Statement of Objects & Reasons and the provisions of the Act inserted by virtue of the amendment – Interpretation of Statutes – Basic Rules – Harmonious Construction – Subordinate/Delegated Legislation/Rules Under the Act – Central Motor Vehicles Rules, 1989, Form 4 and R.14 (before and after 28.03.2001)"**

10. It is true and not disputed by both the parties that the offending vehicle was light transport vehicle and the driver of the offending vehicle was having a valid and effective driving licence on the date of accident to drive the offending vehicle and there is no breach of policy conditions on the part of the owner of the offending vehicle, therefore, the non-applicant No. 3/Insurance Company held liable jointly and severely alongwith owner of the offending vehicle are liable for paying compensation to the claimants.

11. So far as the enhancement is concerned in MAC No. 630/13, as regards income of the deceased, Rs. 6,000/- per month considered by the learned Tribunal is just and proper as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 18 years, multiplier of 18 would be applicable instead of 10 and 40% towards future prospect would be added into the income of the deceased further considering the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in ***Sarla Verma***, ***Pranay Sethi,*** (supra), the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**

01.	Income of the deceased @ Rs.6,000/- per month.	Rs. 6,000x 12= Rs. 72,000/- per annum
02.	40% of (1) above to be added towards future prospects.	Rs. 72,000+ 28,800= Rs. 100,800/-
03.	After 1/2th deduction towards personal and living expenses of the deceased	Rs. 100800 -50400= Rs.50,400/-
04.	Multiplier of 18 to be applied	Rs. 50400x18= Rs. 9,07,200/-
05.	Towards loss of funeral expenses, loss of Estate,	Rs. 30,000/-
06.	Total Compensation	Rs. 937200/-

Since the Tribunal has already awarded Rs.3,80,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.5,57,200/-with interest @ 7% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

12. In the result, the both appeals are allowed in part with modification in the impugned award to the above extent.

Sd/-

(Gautam Chourdiya)
Judge

Amita