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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 67 of 2013

1. Gorelal (wrongly mentioned as Gorlal in the impugned award), S/o Kartik Ram Sahu, Aged About 37 Years, registered owner of tractor no.CG10-D-4850

2. Jaleshwar @ Lala, S/o Kartik Ram Sahu, Aged About 26 Years, Driver of Tractor No. CG10-D-4850

   Both R/o Village- Golhapara, P.O. And Chowki- Chilfi, P.S. And Tahsil Lormi, District Bilaspur C.G.

----Appellants/Owner and Driver

Versus

1. Ganeshram @ Dhuni Sahu S/o Manglu Sahu, Aged About 45 Years

2. Smt. Dulara Bai W/o Ganeshram @ Dhuni Sahu, Aged About 40 Years

   Both R/o Village- Golhapara, P.O. And Chowki- Chilfi, P.S. And Tah. Lormi, Distt. Bilaspur C.G.

3. National Insurance Co. Ltd. Registered Office- 3 Midiltan Street, Po.Va.Sa. 9229, Kolkata- 700071.

---- Respondents

For Appellants	Shri M.K. Bhaduri, Advocate.
For Respondent Nos. 1 & 2	Shri Keshav Dewangan, Advocate.
For Respondent No.3	Shri R.N. Pusty, Advocate.

MAC No. 79 of 2013

- Ganesh Ram @ Dhuni Sahu S/o Manglu Sahu, Aged About 45 Years

- Smt. Dulara Bai W/o Ganesh Ram @ Dhuni Sahu Aged About 40 Years

  Both R/o Village- Golhapara, Post and O.P. Chilphi, P.S. and Tahsil Lormi, District Bilaspur C.G.

----Appellants/claimants

Versus

1. Gorlal S/o Kartik Ram Sahu, Aged About 37 Years

2. Jaleshwar @ Lala S/o Kartik Ram Sahu Aged About 26 Years

Both R/o Village- Golhapara, Post and O.P. Chilphi, P.S. and Tah. Lormi, Distt. Bilaspur C.G.

3. National Insurance Company Ltd. Thru- Branch Manager, 3 Middleton Street, P. Box No. 9229, Post And P.S. Kolkata 700071.

---- Respondents

For Appellants	Shri Keshav Dewangan, Advocate.
For Respondents No. 1 & 2	Shri Malay Kumar Bhaduri, Advocate.
For Respondent No.3	Shri R.N. Pusty, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

29/04/2019

1. As both these appeal arise out of the award dated 11.10.2012 passed by the Additional Motor Accident Claims Tribunal, Mungeli, District Bilaspur, C.G. in Claim Case No.03/11, whereby the Tribunal in a death case has awarded a total sum of Rs.2,67,000/- with interest at the rate of 6% per annum from the date of application till its realization, fastening the liability on the non-applicants no. 1 & 2 Driver and Owner, while exonerating the non-applicant no.3/Insurance company on the ground of breach of policy conditions, they are being disposed of by this common judgment.

2. As per averments in the claim petition, on 05.12.2009 the deceased Moolchand, aged about 22 years, earning Rs.10,000/- per month by doing the work of sale and purchase of food grains, suffered grievous injuries in the motor vehicular accident caused due to rash and negligent driving of Tractor bearing no.CG10-D-4850 by non-applicant No.1 in which he was sitting and during treatment he died. At the time of

accident, the offending vehicle owned by non-applicant no.2 and insured with non-applicant no.3.

3. On claim petition being filed by the claimants i.e. parents of the deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.17,32,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

4. **MAC No.67 of 2013**:- Learned counsel for the appellants submits that the offending vehicle was insured by non-applicant no.3/Insurance Company under a comprehensive policy and non-applicant no.1 driver was having a valid and effective licence to drive the offending vehicle on the date of accident. However, the Tribunal wrongly exonerated the Insurance Company of its liability on the ground that at the time of accident deceased was sitting on the engine of the tractor in breach of policy conditions. He submits that the offending vehicle met with an accident due to mechanical break down, there was no breach of policy conditions on the part of the non-applicant nos. 1 & 2 and, therefore, the Tribunal ought to have fastened liability upon Insurance Company/non-applicant no.3.

5. Learned counsel for the respondent nos. 1 & 2 supports the contention made by the appellants counsel insofar as it relates to liability only.

6. Learned counsel for the respondent/insurance company supports

the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation and fastened liability on non-applicant nos. 1 & 2 which needs no interference by this Court.

7. **MAC No. 79 of 2013** - Learned counsel for the appellants/claimants submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds:-

(i) that income of the deceased has wrongly been considered by the Tribunal as Rs.3,000/- per month whereas it should have been Rs.10,000/- per month.

(ii) that multiplier of 14 has wrongly been applied and considering the age of the deceased, it should have been 18, looking to the age of the deceased.

(iii) that no amount towards future prospect has been granted to the claimants.

(iv) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters 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.***

Learned counsel for the claimants/appellants further submits that if this Court finally comes to the conclusion that the liability has rightly been fastened upon non-applicant nos. 1 & 2, considering the facts and circumstance of the case, the fact that on the date of accident the offending vehicle was duly insured with non-applicant no.3, in view of decision of Hon'ble Supreme Court in the matter of ***Shivaraj vs. Rajendra and another,*** reported in ***2018 (4) T.A.C. 1 (S.C.),*** order of pay and recover may be passed in this case, thereby directing the Insurance Company to first pay the entire amount of compensation to the claimants and thereafter recover the same from non-applicant nos. 1 & 2 in accordance with law.

8. Counsel for the respondent nos. 1 & 2 submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no further enhancement by this Court.

9. Learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation and fastened liability on non-applicant nos. 1 & 2 which needs no interference by this Court.

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

11. **<u>MAC No.67/2013</u>**:- It is not disputed that at the time of accident deceased was sitting on the tractor and there is no passenger

carrying capacity in tractor. As per R.C. Book, the vehicle is insured for agricultural purposes and in the matter of ***Shivaraj (supra)***, the offending vehicle tractor was insured only for agricultural purposes having no capacity to accommodate any passenger except the driver, the appellant/injured was sitting in the tractor in breach of policy conditions and in these circumstances, the Hon'ble Supreme Court observed that exoneration of the Insurance Company is just and proper but directed for pay and recover in this case.

In the instant case also the deceased was travelling in the offending vehicle tractor which was not having any sitting capacity for any passenger except the driver and as such the offending vehicle was being driven in breach of policy conditions. Therefore, the Tribunal has rightly exonerated the Insurance Company of its liability and fastened the same on non-applicant nos. 1 & 2.

12. **MAC No.79/2013**:- As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.10,000/- per month by doing the work of sale and purchase of food grains but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased considered by the Tribunal as Rs.3,000/- per month is just and proper as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 22, 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:

S.I. No.	Heads	Calculation (in rupees)
1.	Income of the deceased @ Rs.3,000/-	Rs.36,000/- per annum
2.	40% of (i) above to be added towards future prospects.	Rs.14,400/- Rs.36,000 + Rs.14,400 = Rs.50,400/-
3.	½ deduction towards personal and living expenses of the deceased	Rs.25,200/-
4.	Multiplier of 18 to be applied	Rs.4,53,600/-
5.	Towards loss of estate and funeral expenses	Rs.30,000/-
	Total compensation	**Rs.4,83,600/-**

Since the Tribunal has already awarded Rs.2,67,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.2,16,600/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

13. However, considering the facts and circumstance of the case, the fact that the offending vehicle was duly insured with non-applicant no.3 at the relevant time vide Ex.D-2 (Insurance Policy), keeping in view the benevolent provisions of the Act in the light of the decisions of Hon'ble Supreme court in ***Shivaraj*** (supra)***,*** this Court

is of the opinion that the ends of justice would be served if the Insurance Company is directed to pay the entire amount of compensation to the claimants and then recover the same from the driver and owner of the offending vehicle in question in accordance with law. The amount, if any, already deposited by the owner with the Tribunal and paid to the claimants shall be adjusted accordingly.

14. In the result, the appeal preferred by the claimants i.e. **MAC No.79/2013** is allowed in part and the appeal preferred by the owner and driver i.e. **MAC No.67/2013** stands disposed of with modification in the impugned award to the above extent.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh