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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 8 of 2015

1. Smt. Sabita Baghel Wd/o Lt. Mangal Singh Baghel, aged about 21 years
   (Claimant No.1)
2. Rijais S/o Late Mangal Singh Baghel, aged about 03 years
   (Claimant No.2)
3. Rounak S/o Late Mangal Singh Baghel, aged about 01 years
   (Claimant No.3)
4. Smt. Jamuna W/o Narsingh Baghel, aged about 42 years
   (Claimant No.5)

   Appellant no. 2 and 3 are minor, they are represented through their natural guardian Smt. Sabita Baghel (Mother) appellant no. 01

   All are Residence of Metguda Ward Tahsil Gali Jagdalpur, District Bastar (C.G.)

---- Appellants/Claimants

Versus

1. Vinod John aged about 35 years, S/o K. John, Residence of Nayamunda Ward Near Tiranga Chowk Jagdalpur, District Bastar (C.G.)
   (Driver/Non-applicant No.1)
2. Nandu Bharati aged about 26 years, S/o Sundar Bharati Residence of Nayanaka Geedam Road Jagdalpur, District Bastar (C.G.)
   (Owner/Non-applicant No.2)
3. The Bajaj Alliance General Insurance Co. Ltd., Branch Office Shivmohan Bhawan Vidhansabha Marg Panari Raipur (C.G.) through Branch Manager Bajaj Alliance
   (Insurer/Non-applicant No.3)
4. Narsingh Baghel S/o Late Madan Singh Baghel, aged about 46 years, R/o. Metaguda Ward Tahsil Gali Jagdalpur, District Bastar (C.G.)
   (Claimant No.4)

---- Respondents

And

Miscellaneous Appeal (Civil) No. 11 of 2015

- Jay Prakash @ Munnu S/o Lt. Vijay Prakash, Residence of Village Metguda Nadguguli, Jagdalpur, District Bastar (C.G.)

---- Appellant/Claimant

Versus

1. Vinod John aged about 35 years, S/o K. John, Residence of Nayamunda Ward Near Tiranga Chowk Jagdalpur, District Bastar (C.G.)
   (Driver/Non-applicant No.1)
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3. The Bajaj Alliance General Insurance Co. Ltd., Branch Office Shivmohan Bhawan Vidhansabha Marg Panari Raipur (C.G.) through Branch Manager Bajaj Alliance
   (Insurer/Non-applicant No.3)

---- Respondents

For Appellants/Claimants	:	Shri Pravin Kumar Tulsyan, Advocate
For other Respondents 1 & 2/ Non-applicants 1 & 2	:	None
For Respondent No. 3/ Insurance Company	:	Shri Abhishek Singh & Shri Ghansyam Patel, Advocates

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

06.03.2019

1. Above both appeals arise out of the same accident occurred on 17.05.2010 involving the same vehicle- Auto bearing registration No. CG-17/T/0331 (hereinafter referred to as "offending vehicle"), they are being disposed of by this common judgment.

2. M.A.(C) No. 8 of 2015 arising out of Claim Case No. 14/13 and M.A.(C) No. 11 of 2015 arising out of Claim Case No. 03/13 decided by common award dated 24.07.2014 passed by Third Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur (C.G.) awarding compensation in favour of the Appellants/Claimants of Rs.7,03,500/- for the death of Mangal Singh Baghel (In Claim Case No. 14/13)- and awarding compensation in favour of the Claimant/Injured of Rs.2,31,225/- for the injuries sustained by him (In Claim Case No. 03/13) with interest @ 6% per annum from the date of application till realization respectively, while exonerating the Insurance Company/non-applicant No.3 in both claim petitions, fastening liability on non-applicants No. 1 & 2/driver & owner jointly and severally.

3. Brief facts necessary for disposal of both appeals are that on 17.05.2010 deceased Mangal Singh Baghel in Claim Case No. 14/13 and Claimant/injured in Claim Case No. 03/13 were travelling in the offending vehicle Auto bearing registration No. CG-17/T/0331 which was being driven by non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3, in a rash and negligent manner, dashed one Trinath and having got uncontrolled it turned turtle. As a result thereof, Mangal Singh Baghel sustained grievous injuries on his head, face, neck and other parts of the body and died during treatment in Maharani Hospital Jagdalpur.

Similarly, Claimant/injured also sustained grievous injuries on his head, right elbow, right knee, right ankle and other parts of the body, he was hospitalized in Maharani Hospital, Jagdalpur from 17.05.2010 to 08.06.2010 and had suffered 45% permanent disability.

4. In M.A.(C) No. 8 of 2015, learned counsel for the Appellants/Claimants submits that deceased Mangal Singh Baghel was aged about 26 years and was doing the work of labour/*hammal*. He further submits that no amount towards future prospect has been granted to the Claimants. He also submits that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. No amount towards loss of parental consortium has been granted to Claimant No. 2 & 3.

In M.A.(C) No. 11 of 2015, he submits that due to accident, as per Ex.-A/1 issued by District Medical Board, Maharani Hospital, Jagdalpur, Claimant Jay Prakash @ Munnu had suffered 45% permanent disability. He also submits that at the time of accident, the Claimant was aged about 25 years and was doing the work of driver, the Tribunal has wrongly applied the multiplier of 17 in place of 18. He further submits that no amount towards future prospect has been granted to Claimant/injured Jay Prakash @ Munnu. He further submits that no amount towards special diet and conveyance has been granted to the Claimant and the amount awarded towards loss of enjoyment of life, physical & mental agony, inconvenience caused to Claimant is on the lower side which 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 ***National Insurance Co. Ltd.*** Vs. ***Pranay Sethi, (2017) 16 SCC 680***; ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121*** and ***Magma General Insurance Co. Ltd.*** Vs. ***Nanuram @ Chuhru Ram and others in Civil Appeal***

No. 9581/2018 arising out of SLP (Civil) No. 3192/2018.

Learned counsel for the Appellants/Claimants also submits that the Tribunal has wrongly exonerated the Insurance Company in both claim petitions from its liability ignoring that at the time of the accident offending vehicle was being run for personal use not for commercial use, therefore, there was no requirement of permit and fitness. Alternatively, he submits that if this Court ultimately comes to the conclusion that exoneration of the Insurance Company is just and proper, then considering the facts and circumstances of the case, order of pay and recover may be passed in these cases.

5. On the other hand, learned counsel for non-applicant No.3/Insurance Company supports the impugned awards and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

6. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

7. I have heard the learned counsel appearing for the parties and perused the impugned awards including the records of claim petitions.

8. M.A.(C) No. 8 of 2015 arising out of Claim Case No. 14/13 filed by the Claimants for enhancement of compensation for the death of Mangal Singh Baghel:

At the time of accident, the deceased was doing the work of labour/*hammal*. The Tribunal has assessed the age of Deceased Mangal Singh Baghel as 26 years and was justified in considering the income of the deceased as Rs.4,500/- per month.

Further, considering the age of deceased i.e. 26 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Smt. Sarla Verma; Pranay Sethi* and *Magma General Insurance Co. Ltd.* (supra), the Claimants are held entitled for compensation in the following manner:

Sl.No.	**Heads**	**Calculation (In rupees)**
1.	Income of the deceased @	Rs.54,000/- per annum

	Rs.4,500/- per month (as considered by the Tribunal)	
2.	40% towards future prospects added to annual income	(Rs.54,000/- + Rs.21,600/-) Rs.75,600/-
3.	1/4th deduction towards personal and living expenses of Deceased	(Rs.75,600/- – Rs.18,900/-) Rs.56,700/-
4.	Multiplier of 17 applied	Rs.56,700/- x 17 = Rs.9,63,900/-
5.	Conventional heads:- Towards loss of consortium, loss of estate and funeral expenses	Rs.70,000/-
6.	Towards loss of Parental consortium @ Rs.20,000/- to Claimants No. 2 & 3 each	Rs.40,000/-
	Total Compensation	**Rs.10,73,900/-**

Since the Tribunal has already awarded Rs.7,03,500/-, after deducting the same from the above amount, the Claimants are held entitled for additional compensation of Rs.3,70,400/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

9. M.A.(C) No. 11 of 2015 arising out of Claim Case No. 03/13 filed by the Claimant/injured- Jay Prakash @ Munnu for enhancement of compensation for injuries sustained by him:

As regards the assessment of disability of the Claimant/Appellant Jay Prakash to the extent of 20% by the Tribunal, as per Ex.-A/1, a certificate of disability issued by the District Medical Board, Maharani Hospital, Jagdalpur, the Appellant had suffered 45% disability in relation to the particular limb of the body and not in relation to the whole body, therefore, the Tribunal was justified in considering that the Appellant has suffered 20% functional disability.

Considering the facts and circumstances of the case, the Appellant was hospitalized in Maharani Hospital, Jagdalpur from 17.05.2010 to 08.06.2010, thereafter in M.P.M. Hospital from 31/08/2010 to 14.09.2010, the amount of Rs.5,000/- towards loss of enjoyment of life, physical & mental agony, inconvenience caused to him is enhanced to Rs.15,000/-. The Claimant is also entitled to Rs.3,000/- towards conveyance and Rs.5,000/- towards special diet.

Further, considering the age of the Appellant/injured i.e. 25 years, functional disability i.e. 20% in future and the decisions of the Hon'ble Supreme Court in *Smt. Sarla Verma* and *Pranay Sethi* (supra), the Claimant/Appellant Jay Prakash is held entitled for compensation in the following manner:-

Sl.No.	**Head**	**Calculation (In rupees)**
1	Income of the injured-Appellant/Claimant Jai Prakash	Rs.4,500/- per month i.e. Rs.54,000/- per annum
2	40% towards future prospects added to annual income	(Rs.54,000/- + Rs.21,600/-) Rs.75,600/- per annum
3	Loss due to 20% functional disability	Rs.15,120/-
4	Multiplier of 18 applied	Rs.15,120/- x 18 = Rs.2,72,160/-
5	Loss of three months income to the Claimant @ Rs.4,500/- per month	Rs.13,500/- (as awarded by the Tribunal)
6	For medical treatment and medical bills	Rs.21,525/- (as awarded by the Tribunal)
7	Loss of enjoyment of life, physical & mental agony, inconvenience caused and attendant etc	Rs.15,000/-
8	For attendant	Rs.7,600/- (as awarded by the Tribunal)
9	For conveyance	Rs.3,000/-
10	For special diet	Rs.5,000/-
	Total Compensation	**Rs.3,37,785/-**

Since the Tribunal has already awarded Rs.2,31,225/-, after deducting the same from the above amount, the Claimant/injured is held entitled for additional compensation of Rs.1,06,560/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

10. So far as argument regarding order of pay and recover is concerned, in the matter of ***Amrit Paul Singh and Another*** Vs. ***Tata AIG General Insurance Company Limited and Others, (2018) 7 SCC 558***, the Supreme Court held in para-24 as under:

> "24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The Appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exception carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in ***National Insurance Co. Ltd.*** Vs. ***Swaran Singh, (2004) 3 SCC 297*** and ***Lakhmi Chand*** Vs. ***Reliance General Insurance, (2016) 3 SCC 100*** in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle is question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the Tribunal and as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in *Swaran Singh* (supra) and other cases pertaining to pay and recover principle."

11. 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.

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.

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”.

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."

12. When the matter is examined in its totality, in my opinion, in the present case, as per Ex.-NA-2, insurance policy of passenger carrying commercial vehicle, package policy, at the time of the accident offending vehicle was being run for personal use not for commercial use and the owner of the offending vehicle had no permit and the owner has utterly failed to prove that on the date of accident, he was having permit. Therefore, the Tribunal was justified in fastening liability on non-applicants No. 1 & 2/driver & owner jointly and severally to pay compensation. Thus, it is held that non-applicants No.1 & 2 is liable jointly and severally to satisfy the claim of the Claimants. However, considering the facts and circumstances of the case, the fact that on the date of accident admittedly the vehicle in question was duly insured with non-applicant No.3/Insurance Company, keeping in view of the judgments of the Hon'ble Supreme Court in *Amrit Paul Singh*; *Saju P. Paul* and *Manuara Khatun* (supra), this Court feels it proper to order for 'pay and recover' in this case. Hence, non-applicant No.3/Bajaj Allianze General Insurance Company Limited is directed to pay the awarded sum to the Claimants in both the appeals and then recover the same from non-applicants No. 1 & 2/driver & owner as per law laid down in *Saju P. Paul* (supra).

13. In the result, both above appeals are allowed in part. The award is modified to the above extent.

14. No order as to cost.

Sd/-
(Gautam Chourdiya)
Judge

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