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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 507 of 2016

- Branch Manager, United India Insurance Company Limited, Branch Office- Near Kumkum Hotel, Bramh Road, Ambikapur, P.S. And Tah. Ambikapur, Distt.- Surguja, Chhattisgarh.

----Appellant

Versus

1. Smt. Anita Kujur Wd/o Late Pramant Kujur, Aged About 27 Years Occupation- House Wife,

2. Aman Kujur S/o Late Pramant Kujur, Aged About 6 Years

3. Vikesh Kujur S/o Late Pramant Kujur, Aged About 2 Years Minor

   Respondent Nos. 2 & 3 are minor through their Mother- Smt. Anita Kujur Respondent No.1.

4. Smt. Hirmina Kujur Wd/o Late Asaiya Kujur, Aged About 59 Years Occupation- Pension,

   Respondent Nos. 1 to 4 all are R/o Vill.- Civildag, P.O.- Rehda, P.S.- Kusmi, Tah.- Samari Kusmi, Distt.- Balrampur-Ramanujganj, Chhattisgarh,

   Present Address- Vill.- Godhanpur, P.O.- Phundurdihari, P.S. And Tah.- Ambikapur, Distt.- Surguja, Chhattisgarh.

5. Rajkumar Singh S/o Krishna Kumar Singh, Aged About 21 Years R/o Vill.- Dhumadand, P.O. And P.S.- Chandaura, Tah.- Pratappur, Distt.- Surajpur, Chhattisgarh Driver.

6. Prakash Chandra Rai S/o Late Gaya Rai, Aged About 48 Years Occupation- Contractor And Vehicle Owner, R/o Vill.- Navapara, P.O.- Phundurdihari, P.S. And Tah.- Ambikapur, Distt.- Surguja, Chhattisgarh Vehicle Owner

---- Respondents

For Appellants	Shri Dashrath Gupta, Advocate.
For Respondent Nos. 1 to 4	Shri A.N. Pandey, Advocate.
For Respondent No.6	Shri Sunil Pillai, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

27/03/2019

1. This appeal is by the Insurance Company/non-applicant no.3 against the award dated 01.01.2016 passed by Motor Accident Claims Tribunal, Ambikapur, District Sarguja, C.G. in Claim Case No.188/15 awarding total compensation of Rs.40,05,417/- with interest @ 6% per annum from the date of application till realization, fastening liability on the Insurance Company/non-applicant no.3 jointly and severally along with non-applicants No. 1 & 2.
2. Respondents no. 1 to 4/Claimants have filed cross objection under Order 41 Rule 22 of CPC seeking enhancement of compensation.
3. As per claim petition, on 10.06.2015 deceased Pramant Kujur, aged about 29 years, earning Rs.15,407/- per month as Assistant Grade-3, died in the motor vehicular accident involving Pick-Up bearing no. CG15-A-8190 driven by Raj Kumar Singh/non-applicant no.1. At the time of accident, vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.
4. On claim petition being filed by the claimants i.e. wife, mother and children of the deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.56,45,880/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned above in para 1 of this judgment.
5. Learned counsel for the appellant submits that the Tribunal has wrongly fastened the liability on the Insurance Company as on the date of accident non-applicant no.1 driver was not having a

valid and effective driving licence to drive the offending vehicle and was having a light motor vehicle licence whereas the offending vehicle was a transport vehicle. He is also challenging the contributory negligence on the part of the deceased. He further submits the amount awarded by the Tribunal is just and proper and needs no interference by this Court.

6. Learned counsel for the respondents/claimants oppose the contention made by the appellant's counsel and submits that there is no breach of policy and the vehicle is light motor vehicle having weight below 7500 kg, therefore, driver of the offending was having a valid and effective driving licence on the date of accident. He also submits that no any evidence is adduced by the Insurance Company or other respondents regarding contributory negligence on the part of the deceased and driver of the offending vehicle was also not examined before the Tribunal. He further submits that the amount awarded under conventional heads is on lower side and needs to be enhanced suitably, therefore, he has filed cross objection under Order 41 Rule 22 of CPC for enhancement of compensation.

7. Counsel for the respondent no.6 opposes the contention made by the appellant's counsel.

8. Counsel for the appellant opposing the cross objection filed by the claimants it has been stated by the Insurance Company that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference

by this Court.

9. No counter appeal has been filed by the respondents as submitted by counsel for both the parties.

10. Heard both the parties on appeal as well as on cross objection and perused the impugned award.

11. It is not in dispute that the accident occurred on 10.06.2015 in which the non-applicant no.1 by driving the offending vehicle in a rash and negligent manner dashed the deceased who was riding motorcycle as a result of which he died. It is also not in dispute that on the date of accident non-applicant no.1 was having a valid licence to drive light motor vehicle and the vehicle in question was duly insured with non-applicant no.3. The only issue to be considered is whether the driving licence of LMV carried by non-applicant no.1 makes him eligible to drive the offending vehicle which is a transport vehicle. In the matter of ***Mukund Dewangan*** Vs. ***Oriental Insurance Company Limited*** reported in ***(2017) 14 SCC 663,*** whether a driver who is having a licence to drive the “light motor vehicle” is competent to drive “transport vehicle” of that class in absence of such an endorsement, and it was held therein as under:-

> “Held, the effect and 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 Statues - 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).”

12. In this case, it has not been disputed by the parties that the gross weight of the vehicle in question is below 7500 kg and non-applicant no.1 was having a valid and effective licence on the date of accident to drive light motor vehicle. In this view of the matter, keeping in view the law laid down in ***Mukund Dewangan*** (supra), there is no requirement of any endorsement in the driving licence of non-applicant no.1 authorizing him to drive the offending vehicle and since he was holding a valid and effective licence to drive LMV, he was competent to drive the offending vehicle which also falls in the category of LMV. Therefore, the Tribunal has not committed any illegality in fastening liability on the Insurance Company jointly and severally along with non-applicant nos. 1 & 2 of satisfying the award.

13. So far as contributory negligence on the part of the deceased is concerned, no evidence whatsoever has been adduced by the non-applicants to prove negligence on the part of the deceased. Even the driver of the offending vehicle has not been examined before the Tribunal, this court Court finds no substance in this

argument of the Insurance Company.

14. Learned counsel for the respondents/claimants has filed cross objection challenging the award of the Tribunal on the ground that the amount awarded by the Tribunal under the conventional heads is not just and proper and needs to be suitably enhanced. However, considering the facts and circumstances of the case and the principles of law laid down in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680,*** this Court is of the opinion that the Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, Rs.25,000/- towards loss of consortium and Rs.25,000/- towards loss of love and affection i.e. Rs.75,000/- awarded under the conventional heads cannot be said to be on the lower side warranting any enhancement by this Court.

15. In the result, the appeal filed by the Insurance Company and cross objection filed by the claimants being devoid of any substance are liable to be dismissed and are, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh