AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 89 of 2019

- The New India Insurance Company Limited Divisional Office, Rama Trader Centre, Second Floor, Bilaspur (Insurer Company) Through Manager.

---- Appellant

Versus

1. Santosh Suryavanshi (Laskar) S/o Shri Atma Ram Suryavanshi (Lasker) Aged About 49 Years

2. Santula Bai W/o Shri Santosh Suryavanshi (Laskar) Aged About 45 Years

   Both are R/o Village Bharari, Thana Ratanpur, Tahsil And District Bilaspur Chhattisgarh.

3. Dev Charan Sonwani S/o Shyam Das Sonwani R/o Village Khairvar, Tahsil And District - Mungeli (Vehicle Driver)

4. Dinesh Kumar Pandey S/o Shyam Kartik Pandey Through - Shri Anil Agrawal, Kharsiya Naka Ambikapur, District - Surguja Chhattisgarh. ---(Vehicle Owner)

---- Respondents

For Appellant	Shri Sudhir Agrawal, Advocate.
For Respondents	None.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

15/01/2019

1. Heard on admission.

2. This is insurer's appeal against the award dated 26.09.2018 passed by the 8th Motor Accident Claims Tribunal, Bilaspur, C.G. in Claim Case No.265/2013 awarding total compensation of Rs.7,48,080/- with interest @ 6 per annum from the date of application till realization, fastening liability

on the Insurance Company.

3. As per averments in the claim petition on 20.06.2013 Nakul Suryavanshi aged about 19 years, earing Rs.6,000/- working as Painter, was travelling in Auto bearing no. CG10T3911. However, on the way non-applicant no.1 by driving pick up bearing no. CG15-A-4572 in a rash and negligent manner dashed the auto, as a result of which Nakul Suryavanshi suffered grievous injuries and succumb to the same during treatment.

4. On claim petition being filed by the claimants the Tribunal considering the evidence led by the parties and passed an award as mentioned above.

5. Learned counsel for the appellant/Insurance Company submits that the Tribunal was not justified in fastening the liability on the insurance company as non-applicant no.1/driver was not holding a valid and effective licence to drive the offending vehicle. On the date of accident, non-applicant no.1 was holding learner's licnece to drive light motor vehicle and the offending vehicle was being driven in violation of provisions of Central Motor Vehicle Rules, 1989. He further submits that the Tribunal was also not justified in assessing the income of the deceased as Rs.4,650/- per month without any evidence and further granting 40% towards future prospect. Lastly, he submits that as there is head on collision between the vehicles, the Tribunal should have considered contributory negligence of the deceased and calculated the compensation accordingly but the said aspect has not been considered by the Tribunal.

6. Heard learned counsel for the appellant and perused the impugned award as also the documents annexed with this appeal.

7. So far as the issue of liability is concerned, the Tribunal considering the fact that the offending vehicle falls in the category of light motor vehicle as its gross vehicle weight is 2820 Kg i.e. below 7,500 Kg, in view of decision of Hon'ble Supreme Court in ***Mukund Dewangan Vs. Oriental Insurance Company Limited*** *reported in* ***(2017) 14 SCC 663*** held that non-applicant no.1/driver was competent to drive the offending vehicle on the date of accident.

8. As regards the issue of learner's licence, the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Swaran Singh and others, (2004) 3 SCC 297*** while dealing with the said issue observed as under:-

> "93. The Motor Vehicles Act, 1998 provides for grant of learner's licence.
> [See Section 4(3), Section 7(2), Section 10(3) and Section 14]. A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that a vehicle when being driven by a learner subject to the conditions mentioned in the licence, he would not be a person show is not duly licensed resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the said Act.
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> 94. The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Section 3(2) and 6 of the Act provides for the restriction in the matter of grant of driving licence, Section 7 deals with such restrictions on granting of learner's licence. Section 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence. Leaner's licences are granted under the rules framed by the Central Government or the State Governments in exercise of their rule making power. Conditions are attached to the learner's licences granted in terms of the statue. A person holding learner's licence would,

> thus, also come within the purview of "duly licensed" as such a licence is also granted in terms of the provisions of the Act and the rules framed thereunder. It is now a well-settled principle of law that rules validly framed become part of the statue. Such rules are, therefore, required to be read as a part of main enactment. It is also well-settled principle of law that for the interpretation of statue an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage."

9. In view of principles of law laid down in ***Swaran Singh*** (supra), this Court finds no substance in the argument of counsel for the appellant that non-applicant no.1 being holder of learner's licence was not competent to drive the offending vehicle.

10. So far as contributory negligence is concerned, this Court finds no substance in the argument of counsel for the appellant as the deceased was sitting in the Auto and no evidence whatsoever has been adduced by the Insurance Company on the point of contributory negligence.

11. As for the quantum of compensation, the Tribunal considering the fact that the deceased was a Painter by profession, minimum wages of the skilled labour at the relevant time, assessed the income of the deceased as Rs.4,650/-. Further, the Tribunal in view of decision of Hon'ble Supreme Court in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121,*** considering the dependency i.e. 2, the age of the deceased i.e. 19, claimants are parents & deceased was Bachelor, rightly deducted 50% towards personal and living expenses and applied the multiplier of 18. Further, the Tribunal considering the decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680,*** the age of the deceased and the nature

of his job granted 40% towards future prospect, Rs.15,000/- towards funeral, Rs.15,000/- towards loss of estate. The Tribunal considering the facts and circumstances of the case, the further awarded Rs.5,000/- towards loss of love and affection and Rs.10,000/- towards mental agony. The aforesaid assessment by the Tribunal is just and proper and based on proper appreciation of the evidence and in accordance with law laid down by the Hon'ble Supreme Court in the judgments cited above. Therefore, this Court finds no scope for interference in the quantum of compensation assessed by the Tribunal.

12. In the result, the appeal being without any substance is liable to be dismissed and is accordingly dismissed at the motion stage itself.

Sd/-
Gautam Chourdiya
Judge

Akhilesh