

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 289 of 2013**

{Arising out of order dated 05.11.2020 passed by the 3rd Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.211 of 2011}

1. Jawahar Lal Diwan S/o Sumer Singh Diwan Aged About 61 Years,
2. Smt. Shanta Bai Diwan W/o Jawahar Lal Diwan Aged About 59 Years,

Both are R/o Village Khedigaon, Post- Burkoni, P.S. Baghbahra, Tah. Pithoura, Distt. Mahasamund (C.G.)

---- Appellants**Versus**

1. Raysingh Nag S/o Shanker Nag, Caste-Gond, Aged About 47 Years R/o Aghanpur, Dongripura, Jagdalpur, P.S. Parpa, Distt. Jagdalpur (C.G.)
2. Devilal Soni S/o Manaklal Soni Aged About 21 Years R/o Main Road, Sukma, P.S. Sukma, Distt. Dantewada (C.G.)
3. Divisional Manager S/o The New India Insurance Company Ltd., Madina Building, Jail Road, Raipur, Distt. Raipur (C.G.)

---- Respondents

For Appellant	: Shri S.P. Sahu, Advocate
For Respondents No.1 & 2	: Shri Y.C. Sharma, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board**Per Parth Prateem Sahu, Judge****21.05.2020**

1. Challenge in this appeal is to the award dated 05.11.2012 passed by the learned 3rd Additional Motor Accident Claims Tribunal, Raipur in Claim Case No. 211/2011 whereby the learned Claims Tribunal allowed the claim of the Applicant and awarded a sum of Rs.3,74,500/- as total compensation exonerating the Insurance Company from its liability on account of violation of conditions of insurance policy.

2. The facts of the case in nutshell is that one Truck bearing registration No. CG/04-G/7160 driven by Non Applicant No.1 dashed the motor cycle bearing No. CG/04-DF1971 driven by Rajesh Kumar Deevan. In the aforementioned accident, the driver of the motor-cycle suffered grievous injuries and he was taken to the government hospital at Raipur and during the course of treatment, he succumbed to the injuries on 12.02.2011. The claimants who are parents of the deceased filed claim application claiming Rs.56,60,000/- as compensation on the ground that the deceased, on the date of accident was working as Constable in the Police Department and earning a salary of Rs.12150/- per month. They were dependent upon the deceased. The Non-Applicant No.1 & 2 who are driver and owner of the offending vehicle had put their reply and have resisted the claim of the appellants and while pleading that there was divider between the road, no accident has occurred from the offending Truck and the amount claimed by the Applicants in the claim application is highly exaggerated. The Insurance Company also filed its reply and denied all the adverse pleadings made in the claim application and had pleaded that on the date of accident the Truck was being plied in violation of the conditions of the insurance policy and therefore, the insurance company is not liable to satisfy the award, if any.
3. The learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties have arrived at a finding that the death of Rajesh Kumar Deevan took place on account of the rash and negligent driving of the Truck bearing registration No. CG/04G/7160 by Non Applicant No.1. There was violation of conditions of insurance policy and awarded a total sum of Rs. 3,74,500 alongwith interest @ 6% per annum.
4. The learned counsel for the Appellants/claimants submits that the learned Claims Tribunal have awarded a meager amount by applying the wrong multiplier which is contrary to the law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma & Ors v. Delhi Transport Corp. & Anr.** reported in

(2009) 6 SCC 121. He further submits that the learned Claims Tribunal have not awarded any amount towards the future prospect as per the law laid down by the Hon'ble Supreme Court in the matter of ***National Insurance Company Limited v. Pranay Sethi & Another***, reported in (2017) 16 SCC 680, and submits that impugned award may be enhanced suitably.

5. Per contra, the learned counsel appearing for the Respondent No.2 who is the owner of offending vehicle submits that they have also filed a cross appeal challenging the impugned award challenging the finding recorded by the Claims Tribunal of exoneration of the Insurance Company on account of the violation of the conditions of the insurance policy alongwith other grounds. He submits that on the date of accident the offending vehicle was having the permit for a period from 18.12.2008 to 17.12.2013, but due to mistake of the counsel representing the Appellant before the Claims Tribunal, this document could not be placed on record and proved by the Respondent No. 2. He submits that the learned Claims Tribunal has exonerated the Insurance Company only on the ground that on the date of accident, the offending vehicle was not having the permit. In fact the vehicle was having the valid permit as per document Annexure A/2 filed alongwith cross appeal. The learned counsel has placed across the board the document Annexure A/2 and perusal of the same shows that the said permit was issued on 17.12.2008. He also submits that the permit has been seized by the investigative agency during the course of investigation which is also been mentioned in the Exhibit P/13 i.e. the seizure memo. In that seizure memo also, the period of permit has been mentioned as 18.12.2008 to 17.12.2013.
6. We have heard the learned counsel for the respective parties and perused the record.
7. So far as the submissions made by the learned counsel for the Appellants that the learned Claims Tribunal awarded a meager amount by applying the multiplier of 10 without considering the age of the parents is concerned. This issue has been considered by the Hon'ble Supreme Court in the matter of **Sube**

Singh & Another v. Shyam Singh (Dead) & Others reported in **(2018) 3 SCC 18**, wherein the Hon'ble Supreme Court considering its earlier judgment on the issue has held that even in cases of bachelors, the multiplier is to be applied considering the age of the deceased.

8. In view of the aforementioned law laid down by the Hon'ble Supreme Court, we hold that the multiplier applied by the learned Claims Tribunal considering the age of the parents is not sustainable and is set aside. So far as the other submissions made by the learned counsel for the Appellant is that the Tribunal has not awarded any amount towards the future prospect is concerned, this issue has also been considered by the Hon'ble Supreme Court in the matter of Pranay Sethi (supra) and has held that the deceased who was a permanent employee and less than 40 years of the age is entitled for 50% of the addition of the established income. In the case in hand, the learned Claims Tribunal has not added any amount in the income of the deceased towards the future prospects. These issues can be considered by this Court and by applying proper multiplier and adding the amount towards future prospects, the prayer of the learned counsel for the Appellant can be allowed. But looking to the grounds raised by the learned counsel for the Respondent No.2 in the cross appeal with respect to permit which is placed on record as Annexure A/2, and the copy of which is already forming part of the record of claim case, we are not considering and deciding the issues raised by the learned counsel for the Appellant in this appeal for the present but we are leaving it open for the learned Claims Tribunal to decide all the issues raised by the learned counsel for the Appellant in this appeal.
9. To appreciate the submissions made by the learned counsel for the Respondent No.2 that on the date of accident, the offending vehicle was having valid permit. We have perused the records and the document which has been executed by the claimant himself as Exhibit P/13 in which it has been clearly mentioned that the investigating agency/police seized the permanent permit alongwith other

documents i.e. the copy of RC, insurance, driving licence, etc. and in Exhibit P/13 the period of permit from 18.12.2008 to 17.12.2013 has been specifically mentioned. Perusal of the records would further show that alongwith the records of the Trial Court the bunch of document is also available which has not been marked as exhibit but it has been placed on record by the respective parties. Along with the bunch of documents the copy of the permit which is now been placed by the Appellant alongwith cross appeal is available and perusal of which shows the permit is dated 17.12.2008 and the validity period of that permit shows that it is valid from 18.12.2008 to 17.12.2013. This permit is issued from the Regional Transport Office, Jagdalpur. We fail to understand that as to why the learned Claims Tribunal have not taken note of that permit and put question to the witness examined by the Non Applicant No.3 as NAW 1/3 who is a clerk of the Regional Transport Office, Jagdalpur by name Ramcharan Ratre. The Claims Tribunal is also having its duty under the Motor Vehicles Act to consider all the materials placed on record looking to the object and also considering the legislation to be a beneficial piece of legislation. By not putting a question referring to the document which is already available on record i.e. the permit issued under Rule 73 (1)G of the Chhattisgarh Motor Vehicle Act Rules to the witness who is an employee of the Regional Transport Office, in the opinion of this Court the learned Claims Tribunal have failed in its duty to try the case in accordance with the provisions of the Motor Vehicles Act and to pass just and proper award.

10. For the forgoing reasons, we remand back the case to the concerned Claims Tribunal with a direction to decided the claim application afresh after providing an opportunity of hearing to all the respective parties. It goes without saying that parties will be at liberty to amend their pleadings and lead further evidence. The Claims Tribunal will be oblige to pass an award, taking into consideration the law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (supra)**, **Sube Singh (supra)** and **Pranay Sethi (supra)** on the issue and

grounds as raised by the learned counsel for the Appellant as well as Respondents.

11. The impugned award is set aside, case is remitted back to the learned Claims Tribunal for deciding the claim a fresh. The learned Claims Tribunal will take all its endeavor to decide the claim application within the period of 3 months from the date of receipt of the copy of this judgment.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

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