

AFR

HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 1089 of 2014**

United India Insurance Company Limited Branch Office,
Near Kumkum Hotel, Ambikapur, Distt. Surguja C.G.,
Through its Divisional Manager, Divisional Office, 2nd Floor,
Guru Kripa Towers, Vyapar Vihar Road, Bilaspur, District
Bilaspur, Chhattisgarh.

---- Appellant**Versus**

1. Kimani Devi W/o Umesh Rai, Aged About 44 Years.
2. Ajay Kumar S/o Umesh Rai, Aged About 21 Years.
3. Biltan S/o Umesh Rai, Aged About 19 Years.
4. Ku. Mangali D/o Umesh Rai, Aged About 17 Years.
5. Bhulu Kumar S/o Umesh Rai, Aged About 15 Years.
6. Ku. Sajna D/o Umesh Rai, Aged About 12 Years.
7. Chhotu Kumar S/o Umesh Rai, Aged About 6 Years.

Respondent No.4 to 7 are minor, Through guardian Mother
Kimani Devi (Respondent No.1)

Respondent No.1 to 7 all are Kurmi by caste and are R/o
Village Minapur, P.S. Matihani, District Begusarai (Bihar).

8. Kailash Kumar S/o Laxmi, R/o Village Kevra, P.S. Pratappur,
District Surajpur, Chhattisgarh.
9. Raj Kumar S/o Nand Kishor Goel, R/o Village Main Road,
Bishrampur, P.S. Bishrampur, District Surajpur,
Chhattisgarh.
10. Kanhaiya Lal S/o Brijmohan Cherva, Aged About 27 Years,
R/o Village Hariharpur (Chainpur), P.S. Chandraura, District
Surajpur, Chhattisgarh.

---- Respondents

For Appellant : Shri Dashrath Gupta, Advocate

For Respondents No.1 to 7 : None

For Respondent No.8 : Shri Rakesh Pandey, Advocate

For Respondents No.9 & 10 : None

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

Judgment on Board

Per Parth Prateem Sahu, Judge

09.10.2020

1. Appellant/non-applicant No.1/Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 31.07.2014 passed by the Additional Motor Accident Claims Tribunal Pratappur, District Surajpur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.81 of 2012 whereby learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.5,64,000/- as compensation in a death case.
2. Facts relevant for disposal of this appeal, are that, on 18.05.2011, Karan alias Phekan along with other labourers by name, Ashok Chaudhary, Vijay Kumar, Santosh and Prakash travelling on a Dumper bearing No.CG-15/ZC/0139 (hereinafter referred to as 'offending vehicle') to village Badeli for bringing cement and iron rods. When they were returning on the offending vehicle after loading cement and iron rods at about 1.30 pm, reached near village Ghat Pendari, offending vehicle met with an accident due to rash

and negligent driving of offending vehicle by non-applicant No.4. In the aforementioned accident, Karan alias Phekan came under the offending vehicle and died.

3. The claimants/respondents No.1 to 7 filed claim application under Section 166 of the M.V. Act before the learned Claims Tribunal claiming a sum of Rs.10,32,200/- as compensation on account of untimely motor accidental death of Karan alias Phekan pleading therein that on the date of accident, deceased was aged about 30 years, working as labourer and earning Rs.6,000/- per month.
4. Non-applicant No.1/Insurance Company submitted reply to claim application. While denying the pleadings made therein, pleaded that deceased was travelling as 'gratuitous passenger' in offending vehicle, deceased do not come within the purview of 'third party'. It was further pleaded that offending vehicle was insured with non-applicant No.1 for a period from 06.04.2011 to 05.04.2012 as 'goods carrying vehicle' with a condition that the vehicle is to be driven by driver possessing valid and effective driving licence, information of accident was not forwarded to Insurance Company. It was also pleaded that on the date of accident, non-applicant No.4 was not possessing valid and effective driving licence, thereby there was breach of conditions of insurance policy; claimants are not legal representatives of

deceased; deceased was unmarried and his parents have not filed claim application.

5. Non-applicant No.2 submitted reply to claim application, while denying the pleadings made in claim application pleaded that offending vehicle is in the ownership and possession of non-applicant No.3, which is insured with non-applicant No.1 and there was no liability upon non-applicant No.2 to pay any amount of compensation.
6. Non-applicant No.3 submitted reply to claim application, while denying the pleadings made in claim application pleaded that he was earlier registered owner of offending vehicle, but the vehicle was sold to non-applicant No.2 on 19.11.2010, whereas accident took place on 18.05.2011 much after the sale. It was further pleaded that non-applicant No.2 is owner of offending vehicle and as the period of insurance was continuing; the name of insured as mentioned in insurance policy was not changed and name of non-applicant No.3 continued as owner, he is not liable for payment of any amount of compensation.
7. Non-applicant No.4/driver of offending vehicle submitted separate reply to claim application, while denying the pleadings made in claim application pleaded that on the date of accident, he was not driving the offending vehicle; he was on leave for last one month from the date of accident; owner

of offending vehicle has engaged some other driver during that period; implication of non-applicant No.4 being driver of offending vehicle on the date of accident is false and fabricated, therefore, he is not liable to pay any amount of compensation.

8. On appreciation of the pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that Karan alias Phekan died on account of rash and negligent driving of offending vehicle by non-applicant No.4; breach of policy conditions could not be proved and while assessing the age of deceased as 23 years, awarded a sum of Rs.5,64,000/- as compensation in a death case.
9. Shri Dashrath Gupta, learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal erred in fastening the liability upon Insurance Company. He further submits that appellant/Insurance Company has taken a specific plea that deceased was travelling as 'gratuitous passenger' in a 'goods carriage vehicle'; driver of offending vehicle was not possessing valid and effective driving licence, claimants are not entitled for any amount of compensation. Learned Claims Tribunal has not considered the issue with regard to breach of conditions of insurance policy as deceased was travelling on a 'goods

carriage vehicle' as 'gratuitous passenger' and erroneously recorded a finding that on the date of accident, driver of offending vehicle was possessing valid and effective driving licence without there being any evidence in this regard. It is contended that claimants are married sister and her children, not parents of deceased, therefore, amount of compensation could not have been awarded to them except the amount of compensation towards loss of estate only. He places his reliance in case of **Manjuri Bera (Smt.) v. Oriental Insurance Company Ltd. and another** reported in **(2007) 10 SCC 643**.

10. Per contra, Shri Rakesh Pandey, learned counsel for respondent No.8 submits that it was burden upon the Insurance Company to prove that on the date of accident, driver of offending vehicle was not possessing valid and effective driving licence, in which, it failed and no evidence has been brought on record by Insurance Company in support of their ground to prove that non-applicant No.4 was not possessing valid and effective driving licence. He points out that learned Claims Tribunal in paragraph-18 of impugned award has recorded that copy of driving licence was produced on record, but that was not challenged and it remained uncontroverted, hence, the argument raised by learned counsel for the appellant/Insurance Company is not sustainable.

11. No one appeared on behalf of Respondents No.1 to 7, 9 and 10.
12. Heard Shri Dashrath Gupta, learned counsel for the appellant/Insurance Company as well as Shri Rakesh Pandey, learned counsel representing the 8th Respondent and perused the record of claim case as also the memo of appeal.
13. So far as the first ground raised by learned counsel for the appellant/Insurance Company with regard to breach of policy conditions is concerned, perusal of record would show that claimants have filed the documents of criminal case as Ex.A/1 to Ex.A/13. Final Report (Ex.A/1) and First Information Report (Ex.A/2) would show that deceased along with other labourers were travelling on the offending vehicle loaded with cement and iron rods and in claim application filed under Section 166 of M.V. Act also, claimants have pleaded that deceased was travelling on offending vehicle. Claimant No.1-Kimani Devi was examined as AW-1, who in her evidence stated that deceased was travelling inside the offending vehicle. One Vijay Rai was examined as AW-2, who is an eyewitness to the accident, stated in his evidence that deceased Karan alias Phekan was travelling inside the offending vehicle. Copy of insurance policy (Ex.D/1) would show that insurance policy

was issued as 'Liability Only Policy'. From the evidence and pleadings made by claimants themselves, it is clear that deceased was not working as driver/cleaner of offending vehicle, but he was working as labourer for erection of electric tower and the deceased went on offending vehicle for loading cement and iron rods.

14. In view of aforementioned undisputed facts and evidence available on record that deceased was travelling in a goods carriage vehicle, he was not an employee of the owner of offending vehicle; the policy issued was only 'Liability Only Policy', no premium paid for any gratuitous passenger travelling in the vehicle, Insurance Company cannot be held liable to satisfy the amount of compensation against the death of Karan alias Phekan whose status was of 'gratuitous passenger'.
15. The issue with regard to injury suffered by the injured/deceased travelling in a goods vehicle has been considered by Hon'ble Supreme Court in case of **New India Assurance Co. Ltd. v. Asha Rani and others** reported in **(2003) 2 SCC 223** and **National Insurance Co. Ltd. v. Baljit Kaur and Others** reported in **(2004) 2 SCC 1**. In **Asha Rani** (supra), Hon'ble Supreme Court in paragraph 22 has held that the insurer would not be liable for payment of any amount of compensation when the deceased or injured

is travelling in a goods vehicle. Paragraphs-26, 28 and 29 reads as follows :

“26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words “any person” must also be attributed having regard to the context in which they have been used i.e. “a third party”. Keeping in view the provision of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

28. An owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court's decision in *New India Assurance Co. v. Satpal Singh* [(2000) 1 SCC 237] is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy wherefor even no premium is required to be paid.

29. We may consider the matter from another angle. Section 149 (2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. In terms of clause (c) of sub-section (2) of Section 149 of the Act one of the defences which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used. Such a statutory defence available to the insurer would be obliterated in view of the decision of this Court in Satpal Singh case.”

16. In view of above facts and circumstances of the case and the law laid down by Hon'ble Supreme Court in aforementioned judgments, there was breach of conditions of insurance policy and Insurance Company cannot be held liable to satisfy the amount of compensation.
17. So far as second ground raised by learned counsel for the appellant/Insurance Company with regard to no licence is concerned, learned Claims Tribunal in paragraph-18 of its award though recorded that photocopy of licence has been placed on record by non-applicant No.4, which remained uncontroverted, but there is no such copy of licence available on record of claim case. Upon examining the record, we only find permit, fitness certificate, insurance policy and registration certificate of offending vehicle. Copy of licence is not available on record so that the Insurance

Company could have verified the licence whether the licence, if any, to be valid or not.

18. In these facts of the case where the copy of licence was not placed on record by the owner or driver of offending vehicle, upon whom, it was initial burden to say that on the date of accident, vehicle was being driven by the driver who was possessing valid and effective driving licence, which was not discharged finding of Tribunal on the licence is not correct. Once, the copy of licence is placed on record by owner and driver of offending vehicle, the burden shifts upon Insurance Company to prove that the licence available on record is not valid and effective. As in the case at hand, the licence itself was not placed on record, then it cannot be said that Insurance Company has not discharged its burden to prove that non-applicant No.4 was not possessing valid and effective driving licence, in fact, it is a case of no licence. Even before this Court, Shri Rakesh Pandey, who is appearing for respondent No.8 failed to produce any copy of driving licence.
19. In view of above, we are of the considered view that the finding recorded by learned Claims Tribunal that non-applicant No.4 was possessing valid and effective driving licence is perverse and it is hereby set aside.

20. So far as next ground raised by learned counsel for the appellant/Insurance Company that claimants are not entitled for any amount of compensation as they are not legal representatives and dependant upon the deceased is concerned, we have perused the pleadings made in claim application filed under Section 166 of the M.V. Act. In claim application, claimants have pleaded that parents of deceased died earlier of the deceased; claimants were dependant upon the deceased and they were residing along with deceased jointly in the house of deceased itself. In evidence, Kimani Devi (AW-1) has stated that deceased was younger brother of claimant No.1, who was residing with her. In cross-examination, she admitted that she had not placed on record any document showing her relationship with deceased nor had filed any document showing father's name of deceased and her father's name. In paragraph-8 of cross-examination, she admitted that she is not aware of the fact that where the deceased was residing on the date of accident. Vijay Rai (AW-2) son of claimant No.1, aged about 22 years has stated in his affidavit statement that deceased was residing with them. In cross-examination at paragraph-5, he admitted that on account of death of parents of deceased, he was residing separately (single) and as he become orphan, he was residing with his mother i.e. claimant No.1.

21. Taking into consideration the entire facts and circumstances of the case as well as evidence placed on record by the claimants with regard to entitlement of compensation, evidence of Kimani Devi (AW-1) and Vijay Rai (AW-2) appears to be self contradictory. Kimani Devi (AW-1) has admitted in his evidence that she is not aware as to where deceased was residing on the date of accident. Vijay Rai (AW-2) in one place of his evidence has stated that after death of parents of the deceased, he was residing single and thereafter, tried to state that as he become orphan, he was residing with her mother i.e. claimant No.1. Evidence of Kimani Devi (AW-1) that she is dependant upon the income of deceased also does not appear to be correct when she is a married lady having her husband alive, but has not stated anything about her husband. Vijay Rai (AW2) is son of Kimani Devi (AW-1), who is also residing with her and stated to be working along with the deceased in the same erection company engaged for erection of electric tower, but has not arrayed as claimant.
22. In view of aforementioned evidence available on record when the claimants have not filed any document to show their relationship with deceased nor examined any independent witness of the village where the deceased was residing to prove that deceased was residing with claimants on the date of accident, claimant No.1 to be sister. The

husband of claimant No.1 and father of claimants No.2 to 7 is there to take care of family. Son of claimant No.1 is also working and earning money, it cannot be said that claimants are entirely dependant upon the income of deceased. The claimants can if at all be the legal representative and only be entitled for loss of estate, if any.

23. The issue with respect to maintaining an application by a person not dependant on the deceased has been dealt with by Hon'ble Supreme Court in case of **Manjuri Bera (Smt.)** (supra), wherein Hon'ble Supreme Court after considering earlier judgments held as under :

“12. As observed by this Court in *Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique*, AIR 1989 SC 1589 the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead, it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in *Gujarat SRTC v. Ramanbhai Prabhatbhai*, (1987) 3

SCC 234 a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

13. There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency.

14. Section 165 of the Act also throws some light on the controversy. The Explanation includes the liability under Sections 140 and 163-A.

15. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability

referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. The appeal is allowed to the aforesaid extent. There will be no order as to costs. We record our appreciation for the able assistance rendered by Shri Jayant Bhushan, the learned Amicus Curiae.”

24. In case of **Manjuri Bera (Smt.)** (supra), Hon'ble Supreme Court has categorically held that whether a legal representative filed an application for compensation under Section 166 of M.V. Act, but is not dependant, the quantum cannot be less than the fixed amount provided under Section 140 of M.V. Act.
25. For the foregoing reasons, we hold that the claimants failed to prove that they were dependant upon deceased, relationship being respondent No.1 to be real sister of deceased not proved. Non-applicant No.2 is earning and nothing is mentioned about husband of applicant No.1 and father of applicants No.2 to 7. In these facts of the case and evidence available on record, we hold that the case of **Manjuri Bera** (supra) applies to the facts of the case with full

force. The claimants will be entitled for Rs.50,000/- towards loss of estate.

26. In view of above, the appeal is allowed. Insurance Company is exonerated from its liability to satisfy the amount of compensation. Now liability to pay the amount of compensation is upon non-applicant No.3/registered owner of the offending vehicle. Claimants shall recover the balance amount of compensation from non-applicant No.3. Appellant/Insurance Company shall be entitled to recover the amount so deposited by it from non-applicant No.3/registered owner of the offending vehicle.
27. The appeal is allowed in aforementioned terms and the award is modified accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge