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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc Appeal (C) No. 525 of 2014

(Arising out of Award dated 30.01.2014 passed by the learned Motor Accident Claims Tribunal, Kunkuri, District – Jashpur in Claim Case No.24/2011)

1. Oriental Insurance Company Ltd., Branch Manager, Local Office, Raipur, District – Raipur (C.G.)

Appellant/Insurer

Versus

1. Smt. Saniyaro Bai, W/o Late Prabhu Das Chauhan, aged about 45 years, Caste – Cheek, R/o Village – Kurkunga, Tahsil – Kunkuri, District – Jashpur (C.G.)
2. Arawati Chauhan, D/o Prabhu Ram, aged 27 years, Through – Natural Guardian mother Saniyaro Bai, Caste – Cheek, R/o Village – Kurkunga, Tahsil – Kunkuri, District – Jashpur (C.G.)

(Claimants)

3. Shri Surendra Prasad, S/o Shri Shivaji Prasad, aged 31 years, R/o Village – Jagir Kurmi Tola, Bhakariya, P.S. - Majouliya, District – West Champaran (Bihar) **(Driver)**
4. Smt. Rani Singh, W/o Shri Sanjay Kumar, R/o Village – Ram Nagar Kunj, Ashiyana Nagar, Patna (Bihar) **(Owner)**

Respondents

For Appellant/Insurer	:	Shri Raj Awasthi, Advocate
For Respondents No.1&2/Claimants	:	Ms. Meena Shastri, Advocate
For Respondent No.3/Driver	:	None
For Respondent No.3/Owner	:	None

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, P. R. Ramachandra Menon, Chief Justice

16.09.2020

1. Appeal is at the instance of the Insurer of the offending vehicle involved in a road traffic accident. Grievance is mainly with regard to the course pursued by the Tribunal mulcting the liability upon the Appellant/Insurer quite casually and without any regard to the absence of valid permit for the offending vehicle.

2. Heard Shri Raj Awasthi, the learned counsel for the Appellant/Insurer as well as Ms. Meena Shastri, the learned counsel appearing for Respondents No.1 & 2 / Claimants. Despite the completion of service of notice on Respondents No.3 & 4, Driver and Owner respectively, through paper publication, they have not chosen to turn up.

3. The accident happened on 06.01.2010. The deceased was proceeding on his motorcycle along with his friend and when they reached the place of occurrence by about 15.15 pm, they were knocked down by the offending Truck bearing No. BR-31-B/5106, driven by the 3rd Respondent, owned by the 4th Respondent and insured by the Appellant. The claim was sought to be resisted by the Respondents by filing separate written statements. The Appellant/Insurer of the offending vehicle had specifically contended that there was no valid permit for the offending Truck at the time of accident and that there was no valid driving licence for the Driver as well. In the written statement filed by the Driver and Owner, they only sought to contend that there was no negligence on the part of driver of the Truck, but for the negligence on the part of deceased rider and sought to shift the liability, if any, to the shoulders of the Appellant/Insurer of the vehicle by virtue of valid policy available on the date of accident.

4. On completion of the trial, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the Driver of the offending Truck. Reckoning the notional income of the deceased as Rs.3,000/- per month and adopting multiplier of '11', based on the age of

the deceased, compensation due to loss of life was fixed as Rs.2,64,000/-. Awarding a sum of Rs.20,000/- towards the loss of love and affection; Rs.15,000/- towards funeral expenses, Rs.2,070/- towards medical expenses and Rs.25,000/- towards loss of consortium, the total compensation payable was fixed as Rs.3,26,070/-, which was directed to be satisfied with interest @ 6% per annum from the date of the filing of the claim petition till the date of passing of Award i.e., 30.01.2014 and there after @ 9% per annum till its satisfaction. The liability was fastened on the shoulders of the Appellant/Insurer, simply holding that they had failed to substantiate their plea as to violation the statutory/policy conditions. This, in turn, is under challenge in this appeal.

5. The Respondents No.1 & 2, the Claimants, who are the widow and daughter of the deceased, have filed a cross-objection, pointing out that the amounts awarded by the Tribunal under various heads are quite inadequate, being on the lower side and hence the claim for enhanced compensation.

6. The evidence adduced before the Tribunal, as disclosed from the lower Court records, does not disclose that, the offending Truck was covered by any valid permit on the relevant date. Possession of a valid permit is mandatory for operation of transport vehicle in a public place by virtue of Section 66 of the Motor Vehicles Act, 1988, read with the relevant Rules. It is seen that the Appellant/ Insurance Company had taken a specific plea that there was no valid permit for the vehicle. No availability of any valid permit is mentioned in the written statement filed from the part of the

Driver and Owner and no such document was ever produced before the Tribunal. The pleadings in the Memorandum of Appeal are quite specific. The offending vehicle was being driven at the relevant time without valid permit. As mentioned already, despite the completion of service of notice to Respondents No.3 and 4, Driver and Owner of the vehicle, effected through paper publication, they have not turned up and have not rebutted the pleadings raised by the Appellant/Insurer. Unrebutted pleadings are liable to be treated as admissions. Since the Respondents No.3 and 4, the Driver and Owner of the vehicle, though appeared and contested the matter before the Tribunal, didn't say anything with regard to the possession of a valid permit. They were the best parties to have said anything with regard to the possession of valid permit, as the vehicle was driven by the 3rd Respondent and owned by the 4th Respondent at the relevant time. Since the pleadings raised by the Appellant/Insurer stand uncontroverted, we are compelled to draw adverse inference against the Respondents No.3 and 4, who have not chosen to contest the appeal. Accordingly, we accept the version of the Appellant that the offending vehicle was being driven without possessing a valid permit.

7. Absence of valid permit is a valid defence for the Insurance Company in terms of Section 149(2)(a)(i)(c) of the MV Act, 1988 in view of the law declared by the Apex Court in ***National Insurance Co. Ltd. v. Challa Bharathamma and Others*** reported in ***(2004) 8 SCC 517***. (The name of the said case was subsequently corrected by the Apex Court as "***National Insurance Co. Ltd vs. Challa Upendra Rao and Others***" =

(2004) 8 SCC 517). Whether the absence of permit is a 'fundamental breach' or a 'technical breach' was considered elaborately by a Five Member Bench of the High Court of Kerala in ***Pareed Pillai vs. Oriental Insurance Co. Ltd*** reported in ***2018 SCC Online Ker 3542*** (authored by P.R.Ramachandra Menon, CJ.), holding that it is a 'fundamental breach' and not a technical breach. As it stands so, the finding rendered by the Tribunal in this regard is not correct and requires intervention. The question is to what extent the intervention is necessary ?

8. When the transport vehicle was being used without a valid permit, it very much amounts to violation of statutory/policy conditions, giving a solid ground of defence to the Insurer of the vehicle. But even in the said circumstance, the right of the third party has been protected and in view of the law declared by the Apex Court in ***Amrit Paul Singh and Another v. Tata AIG General Insurance Co. Ltd. & Others*** reported in ***2018 (7) SCC 558,*** the remedy of the Insurance Company, in such circumstance, is to satisfy the Award in favour of the Claimants and get it recovered later from the violaters of law i.e. Respondents No.3 and 4, Driver and Owner of the vehicle respectively.

9. It is relevant to not that the Respondents No.1 and 2, the Claimants, have preferred a cross-objection, contending that the amounts awarded by the Tribunal under different heads are not adequate enough. It is contended that the deceased aged 55 years was having a substantial income of Rs.15,000/- per month from the shop conducted by him and also as the income derived from agriculture. As observed by the Tribunal, no reliable

material has been produced as to running of the shop or as to the agricultural income by producing reliable materials; such as, registration of the shop under the Shops and Commercial Establishments Act, 1961 or the license issued to conduct such shop by the Local Authority. Similar is the position with regard to the agriculture, w.r.t. the procurement of seeds or fertilizers and such other documents with regard to statutory obligations, if any. Even otherwise, it is to be noted that despite the demise of the deceased, the shop remains there and goods available in the shop are not lost. Similarly, the agricultural field is still remaining and it is quite open for the Claimants to run the shop or to conduct the agriculture, if they so desire, either by themselves or by deploying somebody else in this regard. However, the notional income taken by the Tribunal as Rs.3,000/- per month in respect of the accident occurred in the year 2010, cannot but be said as on the lower side. We find it appropriate to re-fix the same as Rs.4,000/- per month.

10. It is relevant to note that no future prospects have been considered by the Tribunal for fixing the multiplicand. Since the deceased was aged more than 55 years, by virtue of the law declared by the Apex Court in ***Sarla Verma Vs. Delhi Transportation Corporation*** reported in **(2009) 6 SCC 121,** to the extent as affirmed by the subsequent Constitution Bench of the Apex Court in ***National Insurance Company Limited vs Pranay Sethi & Others*** reported in **(2017) 16 SCC 680,** 10% increase is possible under this head. As such, the monthly income becomes Rs.4000 + (4000x10%) 400) = Rs. 4,400/-. On reworking the compensation for the

loss of life, it becomes 4,400 x 12 x 2/3 x 11 = 3,87,200/-. Since the Tribunal has awarded only a sum of Rs. 2,64,000/- under this head, balance comes to Rs. 3,87,200 – 2,64,000 = **Rs. 1,23,200/-**. By virtue of the law declared by the Apex Court as above, the Claimants are entitled to get a sum of Rs.15,000/- towards the loss of estate. Since no amount has been awarded under this head, we award a sum of **Rs.15,000/-** towards the loss of estate.

11. The concept of the term 'consortium' has been explained by the Apex Court in ***Magma General Insurance Company Limited vs Nanu Ram Alias Chuhru Ram & Others*** reported in **(2018) 18 SCC 130**, holding that the 'consortium' is of 'three' different types; **Parental consortium** (payable to children because of the death of parents); **Spousal consortium** (payable to the spouse because of the death of the partner) and **Filial consortium** (payable to the parents because of the death of children). In the instant case, the Tribunal has award a sum of Rs.25,000/- towards the loss of consortium and as such there is a deficit of **Rs.15,000/-**, which is awarded accordingly, as payable to the 1st Respondent – widow of the deceased, as “Spousal Consortium”. The Tribunal has awarded a sum of Rs.20,000/- towards the loss of love and affection. In view of the law declared by the Apex Court in ***Magma General Insurance Company Limited*** (supra), the 2nd Respondent, who is the daughter of the deceased, is entitled to get 'Parental Consortium' to an extent of Rs.40,000/- and this being the position, there is a deficit of **Rs.20,000/-** under this head. It is awarded accordingly. Thus, the total

additional compensation payable comes to **Rs. 1,23,200 + 15,000 + 15,000 + 20,000 = 1,73,200/- (Rs. One Lac Seventy Three Thousand Two Hundred only).**

12. In the above circumstance, since the coverage and the policy is admitted, we direct the Appellant/Insurer to satisfy the additional compensation of **1,73,200/- (Rs. One Lac Seventy Three Thousand Two Hundred only)** with interest @ 7% per annum from the date of filing of claim petition, till satisfaction. The amount as above shall be deposited by the Appellant/Insurer before the Tribunal with intimation to the Respondents No.1 and 2, the Claimants, as expeditiously as possible, at any rate within one month from the date of receipt of a copy of this judgment.

13. In view of our finding that the offending vehicle was being driven without having a valid permit at the relevant time and that there is violation of statutory/policy conditions, right is reserved for the Appellant/Insurer to get the amount recovered from the Respondents No.3 and 4, the Driver and Owner of the vehicle respectively, after satisfying the liability to the Claimants as above.

The appeal and cross-objection stand allowed to the said extent.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

Chandra