NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 505 of 2013

- Ramchandra Agrawal S/o Ramkumar Agrawal Aged About 63 Years R/o Sitamani, Gokulganj, Main Road, Korba, P.O. And P.S. Korba, Distt. Korba, Chhattisgarh

---- Appellant

Versus

1. Smt. Ganga Bai, W/o Late Maan Singh, Aged About 50 Years R/o Near Shiv Mandir, Gokul Ganj, Sitamani, Korba, P.S. And P.O. Korba, Tah. And Distt. Korba, Chhattisgarh (Claimant/applicant)
2. The Oriental Insu. Co. Ltd. Thru- Divisional Manager, The Oriental Insu. Co.Ltd., Divisional Office, Geetanjali Bhawan, Old Bus Stand, Korba, P.S. And P.O. Korba, Tah. And Distt. Korba, Chhattisgarh (Insurer)
3. Smt. Urmila Singh @ Sushma Singh W/o Late Raju Singh Aged About 30 Years
4. Ku. Vishakha Singh D/o Late Raju Singh Aged About 8 Years Minor, Thru-Mother Smt. Urmila Singh @ Sushma Singh

   Both R/o Gokul Ganj, Sitamani, Near Shiv Mandir, Korba, P.S. And P.O. Korba, Tah. And Distt. Korba C.G., District : Korba, Chhattisgarh

----Respondents

For Appellant	:	Shri Sudeep Agrawal, Advocate
For Respondent-2	:	Shri NK Malviya, Advocate
For Respondents- 1, 3 and 4	:	None appears

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
13.07.2020

1. This is owner's appeal filed under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 07.02.2013 passed in Claim Case- 38 of 2009 by Motor Accident Claims Tribunal, Korba, Chhattisgarh (for short, 'Claims Tribunal'), whereby learned Claims Tribunal allowed the claim application in part, while exonerating the Insurance Company from its liability, awarded Rs.4,42,400/- as compensation.

2. Facts of the case in a nutshell are that on 14.12.2008 Raju Singh (since deceased) was driving a Pick-up Jeep bearing No. CG 12-9434 (for short, 'offending vehicle'), owned by appellant/NA1 from Korba to village Peediya via Bandhapali. On the way, the offending vehicle met with an accident and it turned turtle. In the aforementioned accident, Raju Singh suffered grievous injuries over his person and succumbed to those injuries on the spot. Claimant, who is mother of deceased filed claim application under Section 163 of the Motor Vehicles Act, 1988 for grant of compensation of Rs.18,00,000/- on account of untimely motor accidental death of her son late Raju Singh.

3. Appellant/NA1, owner of offending vehicle submitted reply to the claim application mentioning therin that amount claimed in the application is highly exaggerated; it was admitted that offending vehicle was owned by him; deceased was driving the vehicle as its driver and he was possessing a valid and effective driving license on the date of accident; and offending vehicle was insured with the Insurance Company, therefore, liability, if any, for payment of compensation to the claimant, will be upon the Insurance Company.

4. Respondent-2/NA2 Insurance Company filed separate reply pleading therein that the Insurer of offending vehicle has not paid any additional premium for covering the risk of driver. All the legal representatives of the deceased have been arrayed as party. On the date of accident, deceased driver was not possessing valid and effective driving license, hence, there was breach of conditions of Insurance Policy. It is also submitted that offending vehicle was being plied without valid

permit and there was contributory negligence on the part of driver of offending vehicle (deceased).

5. Respondents- 3 and 4/NA-3 submitted reply to the claim application pleading there in that they are Class I legal representatives of deceased Raju Singh. NA3 being widow of deceased, is entitle for all the amount of compensation. The claimant/mother of deceased is not entitle for any amount of compensation except on the head of loss of love and affection.

6. Learned Claims Tribunal on appreciation of evidence and pleadings placed on record by respective parties, held that the accident occurred on 14.12.2008 on account of coming of animals suddenly on the road and while saving them, offending vehicle met with accident & turned turtle in the accident, Raju Singh, driver of offending vehicle died. The offending vehicle was being plied in breach of conditions of Insurance Policy. Appellant/NA1 has paid additional premium for covering risk of driver of offending vehicle at the time of taking policy. Learned Claims Tribunal awarded total sum of Rs.4,42,400/- in favour of claimant, NA-3 and 4.

7. Learned counsel for the appellant submits that learned Claims Tribunal erred in holding that there was breach of conditions of Insurance Policy. He submits that on the date of accident, driver of offending vehicle was possessing valid and effective driving license and copy of which is filed as Annexure A1 along with memo of appeal, in which validity of license has been shown up to 04.09.2009, whereas, the accident took place on 14.12.2008. He submits that the finding arrived by learned Claims Tribunal that on the date of accident, the deceased driver of

offending vehicle was not possessing valid and effective driving license is not correct. It is also contended that Insurance Company in its reply has pleaded that offending vehicle was being used in breach of conditions of Insurance Policy, but no evidence in this regard has been brought on record to support its pleading. No witness has been examined in this regard, but even then, learned Claims Tribunal exonerated the Insurance Company. Referring to Annexure A1 license, it is argued by learned counsel for the appellant that in the copy of license, which has been placed on record, there is seal mentioning its renewal up to 04.09.2009. He lastly, contended that amount of compensation awarded by learned Claims Tribunal is on higher side.

8. Per contra, Shri NK Malviya, learned counsel appearing for the Insurance Company submits that appellant/NA1 has not produced copy of license before the learned Claims Tribunal and learned Claims Tribunal, upon considering the evidence of Virendra Kumar Khakha, NAW-3, based on the license particulars of Ex,D1 issued from the RTO, Bilaspur and Ex.D3 showing the license valid for LMV up to 04.09.2003 and for heavy vehicles, from 06.05.2002 to 05.05.2005. Accident is of year 2008. Investigator of Insurance Company during the course of investigation, had obtained Ex.D2 license, and license verification report, filed as Ex.D3. Impugned order passed by learned Claims Tribunal is based on the evidence available on record which do not call for any interference.

9. We have heard learned counsel for the respective parties. The ground raised by learned counsel for the appellant that the finding recorded by learned Claims Tribunal with regard to the validity of license

on the date of accident is concerned, he referred Annexure A1 in support of aforementioned submission. Annexure A1 is copy of license, showing that it was for LMV (Light Motor Vehicle). Date of expiry of license has been mentioned as 04.09.2009 in this document, just above the signature, which was made basis of argument by learned counsel for the appellant. Copy of license is also available on record and upon perusal of license it appears that the copy of license available on record and the copy of license placed as Annexure A1 by the appellant to be one and the same. On going through the dates mentioned in the copy of license available on record of learned Claims Tribunal at Pg 39, it clearly bears the date as 04.09.2003 and by going through both the licenses, they appear to be one and the same. But in Annexure A1 renewal date has been manipulated as 04.09.2009. The manipulation of date is apparent as over writing is clearly appearing in document Annexure A1 while comparing the driving license available on record at Pg.39. It appears that the appellant made available the manipulated document Annexure A1 to the counsel at the time of filing of the appeal before this Court. The said act of appellant is of serious nature. But, looking to the fact that the present counsel ie Shri Sudeep Agrawal has been engaged consequently, after filing of appeal, we are restraining ourselves from passing any adverse order against appellant in this appeal.

10. In view of the above, ground raised by learned counsel for the appellant that on the date of accident, deceased driver was having a valid and effective driving license in view of Annexure A1 being fabricated is not sustainable and it is hereby repelled.

11. Other ground taken by learned counsel for the appellant is that income of deceased has been taken on higher side and further challenging the quantum of award on the ground that the award on other conventional heads is also on higher side is not appealing to us, particularly looking to the conduct of the appellant and secondly, income has been taken as Rs.3,300/- per month in an accident case, which took place on 14.12.2008. Engagement of deceased as driver with him is not disputed by the appellant and therefore, deceased being skilled labour, we do not find any error in holding the income of deceased as Rs.3,300/- per month.

12. There are three claimants including wife and child Therefore, the deduction towards personal and living expenses was 1/3rd. The deceased has been shown to be aged between 31-35 years and appropriate multiplier of 16 has been applied. Both deduction and application of multiplier are in accordance with law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt) and Others Vs Delhi Transport Corporation and Another** reported in (2009) 6 Supreme Court Cases 121,

13. Learned Claims Tribunal awarded only Rs.10,000/- in total on other conventional heads, which cannot be said to be on higher side.

14. The last submission which is raised by learned counsel for the appellant that the Insurance Company has not proved the document ie Ex.D1 (Insurance Policy) and Ex.D2 issued by the licensing authority, Korba by examining any of the authority or RTO Office, Korba. The

Investigator has made an application for issuance of license particulars to the authority, based upon the application the license particulars were issued and the investigator has placed copy of license particulars issued by the competent authority before the Assistant Manager of Oriental Insurance Company and in his evidence, marked as Ex.D1 and Ex.D2 to those documents. Further, the license which is placed on record with memo of appeal as Annexure A1, on which appellant is relying, also available on record at Pg 39. The date is manipulated as 04.09.2009 in Annexure A1and therefore, this being the position, that once appellant himself has placed on record, copy of license relying on the same, then, he cannot say that the copy of license has not been proved. The license has been placed on record and placing reliance on it by the appellant, this Court is not considering the nature of document but analysing it comparatively for just decision of the case, particularly, the case under the Motor Vehicles Act, 1988, which is in the nature of enquiry.

15. For the foregoing reasons, we do not find any merit in the appeal. The appeal which is liable to be and it is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma