NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 932 of 2012

- Reliance General Insurance Company limited, Korba Branch office, through its Legal Manager, Reliance General Insurance Company Limited, 4th floor, 412-413, Ravi Bhawan, Near Jaistambh Chowk, Raipur C.G.

------Appellant/Insurer

VERSUS

1. Smt. Kumari Bai Wd/o Late Manthir Lal Joshi, aged about 35 years
2. Ku. Narmada D/o Manthir Lal Joshi, aged about 18 years
3. Gajadhar S/o Manthir Lal Joshi, aged about 16 years
4. Ku. Rekha D/o Manthir Lal Joshi, aged about 14 years
5. Ku. Dhan D/o Manthir Lal Joshi, aged about 12 years
6. Sukhalu Ram Joshi, S/o Late Sukhru Ram Joshi, aged about 60 years (DELETED)
7. Smt. Budhiyarin Bai W/o Sukalu Ram Joshi, aged about 57 years

   Respondent 3 to 5 being minor represented through Mother Smt. Kumari Bai, All R/o Village Bhatagaon, P.O. Batang, Tahsil Patan, district Durg C.G.: Present Address- Village & Post Raipura, Tahsil and District Raipur C.G.
8. Leeladhar Dheemar S/o Bisheshar Dheemar, R/o Village Bathena, Bhathapara, P.S. Patan, District Durg C.G. **---------------Driver**
9. M/s K.M.C. Construction & Development through its Manager, M/s. K.M.C. Construction and Development Raipur C.G. **-----------Owner**

-------Respondents

For Appellant	:	Mr. Sourabh Sharma, Advocate.
For Respondent 1 to 5 & 7	:	Mr. Amiykant Tiwari, Advocate
For Respondent 8 & 9	:	Mr. P.R. Patankar, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, J.

13/07/2020

1. The Appellant-Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988, challenging the impugned award dated 10-05-2012 passed in Claim Case No. 54/2012 by First Additional Motor Accident Claims Tribunal, Raipur, wherein learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs. 4,29,000/- as compensation in a death case.

2. Facts relevant for disposal of this appeal are that on 21-06-2009 at about 7:30 p.m. when Manthir Lal was traveling on bicycle at Sakra-Lavan road, Police Station Kumhari, District Durg, Respondent 8/ Non-applicant 1 by driving his vehicle bearing Registration No. CG 04ZB 1180 Matador (referred to as "offending Matador") rashly and negligently dashed the bicycle of Manthir Lal and caused accident. In the aforementioned accident, Manthir Lal suffered grievous injuries over his person and succumbed to those injuries on spot. Respondent 1 to 7 filed claim application under Section 166 of the Motor Vehicles Act, before the learned Claims Tribunal, seeking compensation of Rs. 7,32,000/- against untimely death of late Manthir Lal in motor accident.

3. Respondent 9/ Non-applicant 2, owner of the offending Matador did not appear before the learned Claims Tribunal and was proceeded ex parte.

4. Respondent 8/ Non-applicant 1 driver of the offending Matador submitted reply to the claim application and denied the fact of rash and negligent driving of offending Matador and stated that death of late Mathir Lal was on account of his self negligency, it was also denied that occupation of the deceased Manthir Lal as Mason and his earning of Rs. 4,000/- per month.

5. Appellant-Insurance Company submitted its reply to the claim application and denied the pleadings made in the claim application and further pleaded that the accident was not on account of rash and negligent driving of the offending Matador by Respondent 8/ Non-applicant 1, but the accident took place on account of self negligency of the deceased Manthir Lal, they have also denied the fact of occupation and earning of the deceased, there was no valid and effective Driving licence with Respondent 8/ Non-applicant 1 and further the offending Matador was not insured with Insurance Company.

6. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by the respective parties held that the motor accidental death of late Manthir Lal was on account of rash and negligent driving of the offending Matador

by its driver Respondent 8, there was no breach of conditions of insurance policy, the income of the deceased was not found to be proved and awarded a total sum of Rs. 4,29,000/- as compensation.

7. Learned counsel for the appellant submits that the learned Claims Tribunal committed error in not considering that the original copy of the insurance policy was not produced before the learned Claims Tribunal in evidence and photocopy of the same which is available on record was not legible, and therefore, the insurance policy itself was not proved by the claimants. It is further contended that the Insurance Company has filed an application under Order 11 Rule 12 of CPC before the learned Claims Tribunal for producing insurance policy but the learned Claims Tribunal has not decided the same and proceeded for passing the award on the basis of the evidence available on record. He submits that in absence of producing the policy before the Claims Tribunal and the pleadings made by the Appellant-Insurance Company in reply to claim application in very specific terms that the photocopy of the insurance policy as placed on record was not issued from their Company, therefore, the Claims Tribunal ought to have drawn adverse inference against the owner under Section 114 III (g) of the Evidence Act, 1872**,** in addition to that, learned counsel also submitted that the Claims Tribunal erred in applying the multiplier of 16 in place of 15 and the award of amount of Rs. 45,000/- towards other conventional heads to be on higher side.

8. Per contra, Mr. Amiykant Tiwari, learned counsel appearing for Respondent 1 to 5 and 7 who are the claimants submits, that the amount of compensation passed by the Claims Tribunal is in fact on lower side, therefore, it does not call for any interference. He further submitted that the Appellant-Insurance company except the pleadings and statement made that the photocopy of the policy which is placed on record was not issued from their company, has not produced any documentary evidence even the policy register of that period on which serial number of the policy available on record is mentioned and also the cover notebook of the serial number as mentioned in the photocopy of the policy. He

also submits that the Insurance Company failed to prove the fact that the photocopy of the policy available on record was not issued from their office and it is a forged document. He submits that it is burden upon for the Appellant-Insurance Company to prove the fact which was taken by them in their defence which was not discharged and, therefore, the learned Claims Tribunal has rightly held the Insurance Company to be liable to satisfy the amount of compensation. In support of his submission, Mr. Amiykant Tiwari, places reliance on ***National Insurance Company limited vs. Jugal Kishore and others*** reported in ***1988(1) SCC 626.***

9. We have heard learned counsel for the respective parties and also perused the record.

10. Learned counsel for the appellant-Insurance Company has raised two grounds for consideration before this Court *(a)* that the copy of policy available on record is a forged document; (*b)* the amount of compensation awarded is on higher side. Sofar as, the first ground raised by the learned counsel for the appellant that the copy of the policy available on record is a forged document, in support of this defence, appellant-Insurance Company has made pleading in their reply to the claim application and to prove the pleading, examined Abhishek Singh, Legal Manager as NAW-1-3. In reply to the claim application, the appellant-Insurance Company has only pleaded that the photocopy of the policy available on record is denied for want of its verification and in paragraph 14 of the reply pleaded that, the vehicle was not covered under the policy. In reply, they have not pleaded that the Insurance Company upon receiving the facts of the claim application has sent any letter to the owner of the offending vehicle for producing the documents of the vehicle for necessary action. The witness examined on behalf of the appellant-Insurance Company in his evidence has stated that on the basis of the chassis number and engine number mentioned in the RC book, the policy was searched in the office, but it was not traced that the offending vehicle was insured from the Branch at Raipur or any other Branch of the company. In cross examination,

witness admits that he has not brought the policy issuing register from the date 18-06-2009 to 17-06-2010. On the basis of copy of cover note available on record, the policy was searched but it could be traced and he admits that he has not brought the cover notebook of serial number 6. He also admitted that the record of insurance policy issued by the Company is kept secured for a period of 5 years and further that he has not filed any material to show that the investigator appointed by the Company has visited the address of the owner of the offending vehicle.

11. In view of the aforementioned pleadings and evidence placed on record by the Appellant-Insurance Company, one thing which cannot be lost sight of the fact is that the appellant-Insurance Company itself has not sent any letter to the owner of the offending vehicle for production of the copy of the policy or other relevant documents with regard to the offending vehicle. But, contrary in a case where the owner was proceeded ex parte, has moved an application much belatedly under Order 11 Rule 12 of the CPC. The Claims Tribunal has not considered the said application because the owner of the offending vehicle was proceeded ex parte. The photocopy of the document available on record showing the policy number, cover notebook number very clearly, but the appellant-Insurance Company has not produced any document to show that during the period for which the insurance policy was issued was not of the serial number which is available in the photocopy of the policy or the serial number of cover notebook also was not of the company of that relevant period to prove their case. Appellant-Insurance Company has not produced the policy issuing register kept as record by the Insurance Company for the period as mentioned in the policy as 18-06-2009 to 17-06-2010. In absence of placing on record the best available evidence to appreciate the defence taken by the Insurance Company who was in possession of the documents which could be the relevant material for just decision of the case, we find it difficult to accept the submission of learned counsel for the Appellant. In view of the above, we do not find any error or infirmity in the finding

recored by the Claims Tribunal in paragraph 15 of the award, rejecting the defence/ plea taken by the Insurance Company. For the foregoing reasons, we do not find any substance in the first ground raised by the learned counsel and the same is repelled.

12. Sofar as, the second ground raised by the learned counsel for appellant-Insurance Company that the Claims Tribunal erred in applying multiplier of 16 instead of 15 and further the awarded amount of Rs. 45,000/- on other conventional heads is concerned. The Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680** has held that the award of amount of compensation on other conventional heads to be Rs. 40,000/- towards loss of consortium on spousal consortium and Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses. In case of ***Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others*** reported in **(2018) 18 SCC 130**, the Honble Supreme Court has held that the children and parent are also entitled for parental and filial consortium of Rs. 40,000/- each. In view of the above, the submission made by the learned counsel for the Appellant-Insurance Company that the amount of compensation on other conventional heads is on higher side is not acceptable and it is rejected. Sofar as the application of multiplier of 16 by the learned Claims Tribunal, perusal of the post mortem report would show that the age of the deceased has been recored as 38 years and in pleading also, the claimants have pleaded the age of the deceased as 38 years.

13. The submission made by the learned counsel for the appellant appears to be correct as in case of ***Sarla Verma & others v. Delhi Transport Corp. & anr.*** Reported in **(2009) 6 SCC 121**, the Hon'ble Supreme Court has considered the application of multiplicity on the basis of age slab. The Hon'ble Supreme Court has held that for the age group of 36-40 years, multiplier applicable will be 15. Learned Claims Tribunal erred in applying multiplier of 16. Sofar as, the submission of the learned counsel for the appellant for reducing the amount of

compensation accordingly is not acceptable in the peculiar facts of the case. The Motor Vehicles Act, is a beneficial piece of legislation, object of the said Act is to award just compensation to the injured or legal representatives of the deceased. In the case at hand, deceased was aged about 38 years abled body person, pleaded to be working as Mason (skilled labour), accident was of 21-06-2009 and during that period, wages must be more than that of Rs. 3,000/- per month as assessed by the learned Claims Tribunal, no amount on future prospects is awarded, amount on other conventional heads is on lower side.

14. In view of the above facts and circumstances of the case, we are not inclined to interfere with the quantum of the amount of compensation awarded by the learned Claims Tribunal.

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

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

Pawan