NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A(C) No.690 of 2014

United India Insurance Company Limited Tara Complex, G.E. Road, Power House, Bhilai, Distt. Durg C.G., Thru- Its Divisional Manager, Divisional Office- 2nd Floor, Gurukripa Towers, Vyapar Vihar Road, Bilaspur, Distt. Bilaspur C.G., Chhattisgarh **---- Appellant**

Versus

1. Smt.Rajni Parija, W/o Late Pushpraj Parija Aged About 43 Years R/o Sector-8, Bhilai, Distt. Durg C.G., Chhattisgarh
2. Rahul Parija S/o Late Pushpraj Parija Aged About 20 Years R/o Sector-8, Bhilai, Distt. Durg C.G., District : Durg, Chhattisgarh
3. Ku. Richa Parija D/o Late Pushpraj Parija Aged About 17 Years Minor, Thru- Mother Smt. Rajni Parija, R/o Sector-8, Bhilai, Distt. Durg C.G., District : Durg, Chhattisgarh
4. Amit Kumar S/o Lalit Kumar Aged About 21 Years R/o Gandhi Nagar, Kosanala, Supela, Bhilai, Distt. Durg C.G., District : Durg, Chhattisgarh
5. Proprietor- Vinod Bandhe S/o M.S. Jai Bajrang Transport Company, Heavy Transport Company, In Front Of Kikka Bhai Complex, G.E. Road, Rajnandgaon C.G., District : Rajnandgaon, Chhattisgarh **---- Respondents**

Shri Dashrath Gupta, counsel for the Appellant.
Shri Syed Majid Ali, counsel for Respondents No.1 to 3.
None for Respondents No.4 & 5, though served.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J
Award On Board

13.03.2020

1. This Miscellaneous Appeal has been preferred by Non-Applicant No.3-The United India Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award dated 09.04.2014 passed by the 6th Additional Motor Accidents Claims Tribunal, District Durg (CG) (for short 'the Claims Tribunal') in Claim Case No.84/2012 whereby, the Claims Tribunal, while allowing the claim in part, awarded a total amount of compensation to the tune of Rs.19,47,400/- with 7% interest per annum from the date of filing of the claim Petition till its realization while fastening the liability upon the Insurance Company. The parties to this Appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated, the facts of the case are that on 12.10.2011, deceased Pushpraj Parija was going from Durg to Vaishali Nagar along with his brother-in-law namely Ajay on a motorcycle and as soon as he reached near Abhi Traders at Ramnagar (Supela), he was dashed vehemently by the offending vehicle 'truck - dumper' bearing its registration No.CG 08 B 1456, which was owned by Non-Applicant No.2-Vinod Bandhe and insured with Non-Applicant No.3-United India Insurance Company Limited. At the relevant time, the vehicle in question was being driven rashly and negligently by its driver Non-Applicant No.1 namely Amit Kumar as a result of which, deceased Pushpraj Parija was injured badly and was immediately admitted into Apollo Hospital at Bhilai, where he expired during the course of his treatment, while his brother-in-law Ajay was also injured. A criminal case was registered against the driver of the said offending vehicle under Sections 279, 337, 338 and 304-A IPC in connection with Crime No.804/2011.

3. On account of the aforesaid accident, the Claimants being widow and children of the deceased, instituted a Claim Petition enumerated under Section 166 of the Act of 1988 claiming total amount of compensation to the tune of Rs.60,00,000/- under various heads by submitting *inter alia* that deceased Pushpraj, a 45 year old, was a contractor in M/s. Maa Sheetla Associates and used to earn Rs.12,000/- per month.

4. Non-Applicants No.1 & 2, who were the driver and owner respectively of the vehicle in question were proceeded *ex parte,* while Non-Applicant No.3-United India Insurance Company Limited has contested the claim on the ground that the alleged accident has not occurred with the vehicle in question as some other vehicle bearing Registration No.CG 07 C 1456 was involved. It is contested further on the ground that the vehicle in question was being driven without any permit and fitness certificate and the driver of it was also not holding any valid and effective driving license and therefore, no liability could be fastened upon it owing to the violation of the insurance policy.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 12.10.2011 due to rash and negligent driving of the driver of the offending vehicle resulting into the sad demise of Pushpraj Parija. It held further that the vehicle in question was not being used in violation of the insurance policy and by considering the age of the deceased as 46 years and that by considering further the monthly income of the deceased as Rs.12,000/-, awarded total amount of compensation as mentioned hereinabove.

6. Being aggrieved, Non-Applicant No.3, the Insurance Company has preferred this Appeal. Shri Dashrath Gupta, learned Counsel for the Appellant submits that while passing the award impugned, the Claims Tribunal has committed an illegality in holding that the vehicle in question bearing Registration No.CG 08 B 1456 was involved in the alleged accident, however, from a bare perusal of the First Information Report (Ex.P-2), it is evident that some other vehicle i.e. CG 07 C 1456 was in fact involved. It is contended further while inviting attention to the report (Ex.D-6) that the vehicle in question was found to be used without any permit. However, without considering this fact in its proper manner, the Claims Tribunal has erred in fastening the liability upon the Insurance Company. At last, he submits that the amount of compensation as awarded under the conventional heads to the tune of Rs.3,25,000/- and future prospects of the income of the deceased, as assessed to the extent of 30% of his income by the Claims Tribunal is extremely on higher side and, therefore, not sustainable in the eye of law. In support, he placed his reliance upon the decision rendered in the matter of *National Insurance Company Limited vs. Pranay Sethi And Others, Pappu and Others vs. Vinod Kumar Lamba and Another* and *Amrit Paul Singh and Another vs. Tata AIG General Insurance Company Limited and Others* reported respectively in **(2017) 16 Supreme Court Cases 680, (2018) 3 Supreme Court Cases 208 and (2018) 7 Supreme Court Cases 558.**

7. On the other hand, Shri Syed Majid Ali, learned Counsel for Respondents No.1 to 3/Claimants has supported the award impugned.

8. I have heard learned Counsel for the parties and perused the entire record carefully.

9. From perusal of the record, it appears that the alleged accident occurred on 12.10.2011 when the deceased was going from Durg to Vaishali Nagar along with his brother-in-law where he was dashed vehemently by the offending vehicle bearing its Registration No.CG 08 B 1456. However, while inviting attention to F.I.R (Ex.P-2), it is contended by Shri Gupta, learned Counsel for the Appellant that some other vehicle having its Registration No.CG 07 C 1456 was involved and not the vehicle in question as alleged by the Claimants. It is true that at the time of lodging the F.I.R (Ex.P-2), the number of offending vehicle was mentioned by the lodger of the report as CG 07 C 1456, but after investigating the matter in connection with the said Crime No.804/2011, it was found that the vehicle in question, which was involved, was the vehicle having its Registration No. CG 08 B 1456. The Tribunal, has therefore, rightly arrived at a conclusion by considering further the statement of eyewitness Ajay Verma (AW-3) that the number of vehicle involved in connection with the said accident was CG 08 B 1456 and I do not find any infirmity in the same.

10. In so far as the further contention of Shri Gupta regarding the use of the vehicle in question without any permit is concerned, I find force in it. Permit of the alleged vehicle as seized from the driver of the alleged vehicle vide seizure memo (Ex.P-8) was got verified by the Insurance Company through its Investigator Santosh Dewangan, who obtained its verification report under the Right to Information Act from the Additional Regional Transport Authority, Durg as evidenced by its letter (Ex.D-6) which reveals the fact that no permit as such was issued with regard to the vehicle in question. Initial burden was, however, upon the insured to establish the fact that he was utilizing the alleged vehicle with a

valid permit, but he failed even to contest the claim. At this juncture, the principles laid down in the matter of Pappu and Others vs. Vinod Kumar Lamba and Another (supra) are to be seen where under such circumstances, it has been held at paragraph 13 as under:-

> "13...........Merely producing a valid insurance certificate in respect of the offending truck was not enough for Respondent 1 to make the insurance company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The insurance company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle that the vehicle was not only duly insured but also that it was driven by an authorized person having a valid driving licence. Without disclosing the name of the driver in the written statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorized to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The insurance company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle."

11. In absence of such a plea and materials placed on record by the insured showing that he had a permit of the vehicle, onus of proof that it has no permit, cannot be shifted upon the insurer as held by the Supreme Court in the matter of Amrit Paul Singh and Another vs. Tata AIG General Insurance Company Limited and Others (supra), where at paragraph-24, it was observed as under:-

> "24.....That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer....."

12. Applying the aforesaid principles to the case in hand, it is thus evident that

the vehicle in question was being used without any permit and therefore, no liability could be fastened upon the Appellant-Insurance Company. Consequently, the finding of the Tribunal fastening the liability upon the Insurance Company is therefore liable to be and is hereby set aside. It accordingly held that at the relevant point of time, the vehicle in question was being used in violation of the policy and the Appellant-Insurance Company is therefore, entitled to be and is hereby exonerated from its liability.

13. Now, the amount of compensation as awarded by the Claims Tribunal, by considering the future prospects of the income of deceased to the extent of 30% of his income and that by awarding further a sum of Rs.3,25,000/- towards conventional heads appears to be on higher side. Admittedly, the deceased was not a Government employee and was a self employed person working as a Contractor in M/s. Maa Sheetla Associates and was found to be 46 years old at the time of the accident. Therefore, an addition of 25% instead of 30% towards future prospects of his income was required to be taken into consideration in the light of the principles laid down in the matter of National Insurance Company Limited vs. Pranay Sethi And Others (supra) and based upon it, the Claimants could be entitled to a sum of Rs.70,000/- only instead of Rs.3,25,000/-, towards conventional heads as under:-

	Mode of Compensation	Amount (Rs.)
I.	Filial Consortium to wife	40,000/-
II	Funeral Expenses,	15,000/-
III	Loss of estate,	15,000/-
IV	Total	70,000/-

14. Considering the facts and circumstances of the case and considering further the monthly income of the deceased as Rs.12,000/-, yearly Rs.1,44,000/- and by adding 25% of it, i.e. Rs.36,000/- towards future prospects of his income,

the yearly income of the deceased would come to Rs.1,80,000/-. Since number of dependents upon him was three, therefore, while deducting 1/3rd of it, i.e. Rs.60,000/- towards his personal and living expenses, the yearly dependency would thus arrive at Rs.1,20,000/-. As the age of the deceased at the time of the accident was 46, the multiplier applicable would be 13. Therefore, by applying the multiplier of 13, the total dependency would thus arrive at Rs.15,60,000/-. The Claimants, would thus be entitled to a total sum of Rs.16,30,000/- instead of Rs.19,47,400/-, with 7% interest per annum from the date of filing of the claim Petition till is realization.

15. Since the vehicle in question was admittedly insured with the Appellant/Insurance Company, therefore, by applying the principles of 'pay and recover' as held in the matter of *National Insurance Co. Ltd vs. Swaran Singh and Others* reported in **(2004) 3 SCC 297,** it would be just and proper to issue a direction to the Appellant/Insurance Company to first pay the awarded sum i.e. Rs.16,30,000/- with 7% interest per annum from the date of filing of the claim Petition till its realization to the Claimants and then to recover the same from the owner and driver of the offending vehicle, i.e. Non-Applicant No.2, Vinod Bandhe and Non-Applicant No.1, Amit Kumar respectively in execution proceedings arising in this very case.

16. In view of foregoing discussions, the Appeal is accordingly allowed with the aforesaid observations. Rest of the observations as made by the Tribunal shall remain in tact. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
Judge

Priya