**NAFR**

**HIGH COURT OF CHHATTISGARH BILASPUR**

**M. A. (C) No. 1376 of 2014**

National Insurance Company Limited, Divisional Office, Mobin Palace, 2nd Floor, G.E. Road, Raipur, Chhattisgarh
Through : Authorized Signatory, National Insurance Company Limited, Divisional Office, Taha Complex, Ring Road-1, Priyadarshani Nagar, Bilaspur, Chhattisgarh.

**---- Appellant**

**Versus**

1. Ram Sing Banjare, aged about 48 years, S/o Peela Ram Banjare,
2. Smt. Dulorin Bai, W/o Ram Sing Banjare, aged about 47 years, both by Caste Satnami
   Respondent No.1 & 2 R/o Village Piparbhavna (Tendua) P.S. Sarsiwan, Tehsil Bilaigarh, District Baloudabazar Bhatapara, Chhattisgarh.
3. Jagjit Singh Bhatiya, aged about 45 years, S/o Amolak Singh Bhatiya, R/o Village Baya, P.S. and Tehsil Kasdol, District Baloudabazar, Chhattisgarh.
4. Manish Kumar, aged about 24 years, S/o Jogindar Singh, R/o Sujji, P.S. Domriya, District Gaya (Bihar)
   Present Residence Deshi Liquor Shop Bhatgaon, P.S. & Tehsil Bilaigarh, District Baloudabazar, Chhattisgarh

**---- Respondents**

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For Appellant : Shri B.N. Nande, Advocate
For Respondents : None

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

**Judgment on Board**

**Per Parth Prateem Sahu, Judge**

**19.11.2020**

1. Appellant/non-applicant No.3/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 29.09.2014 passed by the First Additional Motor Accident Claims Tribunal, Balodabazar, District Balodabazar, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Accident Claim Case No.240 of 2011 whereby learned Claims Tribunal allowed an application filed under Section 166 of the M.V. Act in part and awarded Rs.7,54,727/- as compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal, are that, on 13.10.2011, Jaiprakash alias Konda was travelling on a motorcycle bearing No.CG-04/DS/6557 along with Dinesh Kurre from village Sirsa to village Dhobnidih. On the way, one Bolero Jeep bearing No.CG-05/HB/7409 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently dashed the motorcycle of Jaiprakash alias Konda and thereafter offending vehicle turned turtle. In the said accident, Jaiprakash alias Konda and Dinesh Kurre suffered grievous injuries over their person. After primary treatment at Government Hospital, they were shifted to 'Care n Cure Multi Specialty Hospital' where Jaiprakash alias Konda remained in Intensive Care Unit from 13.10.2011 to 18.10.2011, in coma. Looking to the condition of Jaiprakash alias Konda, he was discharged from Hospital and while going to village Piparbhawna, he died on the way. Accident was reported to concerned Police Station,

based upon which, crime No.356 of 2011 was registered against non-applicant No.1/driver of offending vehicle.

3. Claimants, who are parents of deceased Jaiprakash alias Konda filed an application under Section 166 of the M.V. Act before learned Claims Tribunal seeking compensation of Rs.15,29,000/- pleading therein that on the date of accident, deceased was aged about 20 years, working as Carpenter and earning Rs.9,000/- per month.

4. Non-applicants No.1 and 2, who are driver and owner of offending vehicle did not appear before learned Claims Tribunal and were proceeded *ex parte*.

5. Non-applicant No.3/Insurance Company submitted reply to claim application, while denying the pleadings made in claim application admitted insurance policy. It was pleaded that on the date of accident, driver of offending vehicle was not possessed with valid and effective driving licence, there was breach of policy conditions; adding that, owner of offending vehicle has not followed the terms and conditions of insurance policy, hence, Insurance Company is not liable to pay any amount of compensation.

6. Learned Claims Tribunal on the basis of pleadings of respective parties has formulated as many as six issues for consideration including the issue with regard to whether non-

applicants No.1 and 2 plied the offending vehicle in breach of policy conditions.

7. Upon appreciation of pleadings and evidence placed on behalf of respective parties, learned Claims Tribunal held that non-applicant No.1/driver of offending vehicle while driving the offending vehicle rashly and negligently dashed the motorcycle of Jaiprakash alias Konda and caused accident; Jaiprakash alias Konda died on account of grievous injuries suffered by him in motor accident; breach of policy conditions was not found to be proved, awarded Rs.7,54,727/- as compensation and fastened liability to satisfy the amount of compensation upon non-applicants therein jointly and severally.

8. Shri B.N. Nande, learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal has not taken into consideration that offending vehicle was being used for criminal activities as on the date and time of accident, offending vehicle was carrying illicit liquor. He further submits that the Police while seizing the offending vehicle has also seized illicit liquor in the offending vehicle, therefore, offence under Section 34 of the Excise Act was also registered against non-applicant No.1 along with offences under Sections 279, 337, 338 and 304-A of the Indian Penal Code. When offending vehicle insured by the appellant/Insurance Company is involved in any criminal

activity and mets with an accident, then the Insurance Company is not having any liability to satisfy the amount of compensation. It is contended that on the date of accident, driver of offending vehicle was not having valid and effective driving licence, but learned Claims Tribunal had not considered that whether driver of offending vehicle was possessed with valid and effective driving licence on the date of accident and held that Insurance Company has failed to prove breach of policy conditions erroneously. He lastly argued that amount of compensation awarded to the claimants is on higher side. He places reliance on the verdict passed by this Court in **MAC No.182 of 2013**, parties being **United India Insurance Company Limited v. Smt. Rahi Solanki and Others**, decided on **14.08.2020** in support of his contention that the offending vehicle is involved in criminal activities, hence, Insurance Company is not liable to satisfy the amount of compensation.

9. No one appeared on behalf of the respondents.

10. Respondents No.1 and 2 were served with notice, but no one appeared on their behalf.

11. Respondents No.3 and 4 who are owner and driver of offending vehicle have been served through paper publication, but even after paper publication, no one appeared on their behalf. From record of claim case, it

reveals that owner and driver were served through paper publication, but no one appeared on their behalf before the Claims Tribunal.

12. We have heard learned counsel for the appellant/Insurance Company and perused the record carefully.

13. Learned counsel for the appellant/Insurance Company has raised three grounds for consideration of this appeal that (i) offending vehicle was carrying illicit liquor involved in criminal activity, hence, Insurance Company is not liable to satisfy the amount of compensation; (ii) driver of offending vehicle was not possessed with valid and effective driving licence on the date of accident; and (iii) learned Claims Tribunal has awarded excessive amount of compensation to the claimants?

14. So far as the first ground raised by learned counsel for the appellant/Insurance Company that offending vehicle is being used for carrying illicit liquor and met with an accident is concerned, deceased Jaiprakash alias Konda who met with an accident was a third party as he was travelling on the motorcycle. True it is that at the time of accident, offending vehicle was transporting liquor as some liquor has been seized amounting to Rs.5,136/- as mentioned in Ex.A/4 (seizure memo), but then, whether Insurance Company can be exonerated from its liability mainly on the ground that

offending vehicle which is insured by the Insurance Company was found carrying some illicit liquor in it when insurance policy of offending vehicle has not been denied.

15. As per Section 149 of the M.V. Act, it is the duty of the insurer to satisfy the judgment and award against the person insured in respect of third party risk. In the instant case, deceased was a third party, Insurance Company can absolve from its liability only when it is proved that the conditions as enumerated under Section 149(2) of the M.V. Act is breached. Unfortunately, non-applicant/insurer has not brought on record any evidence in this regard. Perusal of order-sheets of claim case would show that when the case was fixed for examination of non-applicants' witnesses, counsel appearing on behalf of non-applicant No.3/Insurance Company has pleaded that they do not want to examine any witness, thereafter, the case was fixed for final arguments.

16. The liability to prove the breach of policy conditions is upon the Insurance Company, which could have been done by examining the witnesses in their behalf to prove that which of the condition of insurance policy has been breached, which is lacking in this case. Merely carrying of illicit liquor in the offending vehicle in itself will not be presumed to be breach of policy conditions unless and until breach of any of the conditions is proved in accordance with law. Carrying of

illicit liquor in any of the vehicle may be an offence, for which, punishment is also prescribed in different statute, but in so far as it relates to award of compensation under the M.V. Act and that too for accidental injuries suffered to third party, then it is heavy burden upon the Insurance Company to prove that Insurance Company is not liable to satisfy the amount of compensation due to breach of particular policy condition, in which, Insurance Company has utterly failed.

17. The judgment passed by this Court in MAC No.182 of 2013 is on different facts. There driver of offending vehicle in that case has used the vehicle as tool for committing murder of the person. The claim application has been filed seeking compensation against the death of a person who was actually murdered by use of offending vehicle, in fact, offending vehicle has been used as a tool to cause murder. The driver of that vehicle was charged for offence under Section 302 of IPC and after trial of the case, he was convicted by Sessions Court. In view of the above, judgment relied upon by the counsel for the appellant is on different facts and not applicable to the present facts of the case.

18. For the foregoing reasons, first ground raised by learned counsel for the appellant/Insurance Company is not sustainable and is hereby repelled.

19. So far as the second ground raised by learned counsel for the appellant/Insurance Company with regard to driver of offending vehicle to be not possessed with valid and effective driving licence is concerned, ground 'e' of memo of appeal itself would show that driving licence of driver of offending vehicle was entrusted to Investigator who submitted its report that the licence is fake, but in the defence before Claims Tribunal, they have not furnished any documentary and oral evidence to prove the same. Appellant/Insurance Company has not brought any evidence on record.

20. In view of aforementioned specific ground taken by the appellant/Insurance Company that licence of driver of offending vehicle was sent for its verification and the same has been found to be fake, but even then, no verification report or extract of licence has been placed on record nor has examined any witness in support of their defence to proof that ground. In absence of any evidence, ground taken by the appellant/Insurance Company that licence of non-applicant No.1 was found to be fake is not sustainable. Even before this Court, appellant/Insurance Company has not placed on record any document in support of their plea. As such, second ground raised by learned counsel for the appellant/Insurance Company is also repelled.

21. So far as the third ground raised by learned counsel for the appellant/Insurance Company with regard to quantum of compensation awarded by Claims Tribunal is concerned, perusal of impugned award would show that Tribunal while assessing the income of deceased as Rs.6,000/- per month, deducting 50% towards personal and living expenses, applying the multiplier of 10, awarded Rs.5,40,000/- towards loss of dependency, Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of love and affection to mother and Rs.25,000/- towards loss of love and affection to father, Rs.33,000/- towards medical expenses and Rs.31,727/- towards bills of purchase of medicines. Learned Claims Tribunal has not awarded any amount towards future prospects, applied multiplier on lower side of 10 overlooking the age of deceased to be 20 years.

22. Claims Tribunal assessed income of deceased as Rs.6,000/- per month as on 13.10.2011, added 50% of established income towards future prospects and calculated the amount of compensation by applying deduction of 50% and multiplier of 10. True it is that the Tribunal has assessed the income of deceased on higher side, added more amount towards future prospects and awarded much more amount on the head of love and affection and funeral expenses.

23. In view of the ground raised by appellant, we find it appropriate to recalculate the compensation to look into,

weather the total amount of compensation awarded is more than the amount of compensation for which the claimants are entitled for.

24. There is no proof of income hence taking into consideration the date of accident and his occupation of Carpenter, income of the deceased is assessed as Rs.5,000/- per month and Rs.60,000/- per annum. By adding 40% towards future prospects as held in case of **National Insurance Company Limited v. Pranay Sethi & Others** reported in **(2017) 16 SCC 680**, total yearly income will come to Rs.84,000/- (60,000 x 40%). After deducting 50% towards personal and living expenses, loss of yearly dependency will be Rs.42,000/- (84,000 x 50%). Upon applying the multiplier of 18 as held in case of **Sarla Verma v. Delhi Transportation Corporation** reported in **(2009) 6 SCC 121**, total loss of yearly dependency will come to Rs.7,56,000/- (42,000 x 18). The claimants will further be entitled for Rs.40,000/- towards loss of filial consortium, Rs.15,000/- each towards loss of estate and funeral expenses, which makes the total compensation of Rs.8,26,000/-.

25. This appeal is filed by the Insurance Company. Even if the Tribunal has assessed the income on higher side and added excess amount towards future prospects, but upon considering the entirety of facts and circumstances of the case and quantum of compensation awarded by Tribunal i.e.

Rs.7,54,727/-, we do not find that learned Claims Tribunal has awarded excessive amount of compensation than the amount of compensation, for which, the claimants are entitled for. Hence, we do not find any reason to interfere with the quantum of amount of compensation also.

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

Sd/-
**(P. R. Ramachandra Menon)**
**Chief Justice**

Sd/-
**(Parth Prateem Sahu)**
**Judge**

Yogesh