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HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 334 of 2014

(Arising out of award dated 17.02.2014 passed in Motor Accident Claim Case No.33 of 2011 by the Motor Accident Claims Tribunal, Surajpur, District Surajpur, Chhattisgarh)

1. S.R. Chaturvedi S/o Late J.P. Chaturvedi, aged about 50 years
2. Ku. Divya Chaturvedi D/o S.R. Chaturvedi, aged about 21 years
3. Nilesh Chaturvedi S/o S.R. Chaturvedi, aged about 19 years
4. Richa Chaturvedi D/o S.R. Chaturvedi, aged about 31 years
5. Reena Richhariya D/o S.R. Chaturvedi, aged about 29 years

All R/o Jail Road, nearby Telephone Office, Surajpur, Police Station, Tahsil and District Surajpur, Chhattisgarh

---- Appellants

Versus

1. Ranjeet Choudhary S/o Krishna Choudhary, aged about 19 years, R/o village Godhanpur, Ambikapur, Police Station and Tahsil Ambikapur, District Surguja, Chhattisgarh
2. Rajkumar Gupta S/o Hari Sao, R/o Ward No.27, Mayapur, Ambikapur, Police Station and Tahsil Ambikapur, District Surguja, Chhattisgarh
3. Bajaj Alliance General Insurance Company Limited, G.E. Plaza, Airport Road, Pune, (Maharashtra)

---- Respondents

M. A. (C) No. 483 of 2014

(Arising out of award dated 17.02.2014 passed in Motor Accident Claim Case No.33 of 2011 by the Motor Accident Claims Tribunal, Surajpur, District Surajpur, Chhattisgarh)

Bajaj Allianz General Insurance Company Limited, G.E. Plaza, Airport Road, Puna, (Maharashtra), Through Branch Manager, Vidhan Sabha Road, Shivmohan Bhawan, Pandri, Pandri, P.S. Pandri, Civil and Revenue District Raipur, Chhattisgarh

---- Appellant

Versus

1. S.R. Chaturvedi S/o Late J.P. Chaturvedi, aged about 50 years
2. Ku. Divya Chaturvedi D/o S.R. Chaturvedi, aged about 21 years (Student)
3. Nilesh Chaturvedi S/o S.R. Chaturvedi, aged about 19 years (Student)
4. Richa Chaturvedi D/o S.R. Chaturvedi, aged about 31 years
5. Reena Richariya D/o S.R. Chaturvedi, aged about 29 years

   All R/o Jail Road, Near Telephone Office, Surajpur, Police Station and Tahsil Surajpur, Civil and Revenue District Surajpur, Chhattisgarh
6. Ranjeet Chowdhary S/o Krishna Chowdhary, aged about 19 years, Profession, Driver, R/o Godhanpur, Ambikapur, Police Station and Tahsil Ambikapur, District Sarguja, Civil and Revenue District Sarguja, Chhattisgarh
7. Rajkumar Gupta S/o Harisao Gupta (Veh. owner), R/o Ward No.27, Mayapur, Ambikapur, Police Station and Tahsil Ambikapur, District Sarguja, Civil and Revenue District Sarguja, Chhattisgarh

---- Respondents

MAC No.334 of 2014

For Appellants	: Shri Anil Gulati, Advocate
For Respondent No.1	: None
For Respondent No.2	: Shri Shailendra Bajpai, Advocate
For Respondent No.3	: Shri Raj Awasthi, Advocate

MAC No.483 of 2014

For Appellant	: Shri Raj Awasthi, Advocate
For Respondents No.1 to 5	: Shri Anil Gulati, Advocate
For Respondent No.6	: None
For Respondent No.7	: Shri Shailendra Bajpai, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, Judge

24/08/2020

1. As both the appeals are arising out of award dated 17.02.2014 passed by Motor Accident Claims Tribunal, Surajpur District

Surajpur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.33 of 2011, therefore, they are being disposed of by this common judgment.

2. MAC No.334 of 2014 is filed by the claimants seeking enhancement of amount of compensation awarded by learned Claims Tribunal, whereas MAC No.483 of 2014 is filed by the Insurance Company of Jeep bearing No.CG-15/ZD/0651 (hereinafter referred to as 'offending vehicle') challenging fastening of liability to satisfy the amount of compensation upon it, on the ground of breach of conditions of insurance policy.

3. Facts relevant for disposal of these appeals, are that, on 30.01.2011, when Smt. Sudha Chaturvedi was travelling along with her daughter on Scooty (two-wheeler) bearing registration No.CG-10/EB/1079 towards market, while so, they reached near Bhawani Computer on main road, offending vehicle driven by non-applicant No.1 dashed the Scooty and caused accident. In the aforesaid accident, Smt. Sudha Chaturvedi suffered grievous injuries on her head. Thereafter, she was taken to Community Health Center, Surajpur where she was declared dead.

4. Claimants, who are husband and children of late Smt. Sudha Chaturvedi filed claim application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before learned Claims Tribunal seeking compensation of Rs.20,00,000/- against the untimely motor accidental death of late Smt. Sudha

Chaturvedi mentioning therein that deceased was owner of JCB machine (Excavator), which she used to run on hire and thereby earning Rs.20,000/- per month. The said JCB machine was purchased in partnership along with one Ashok Mishra in the year 2008 and for the purpose of supervising the JCB machine, they have engaged another person on a monthly sum of Rs.5,000/-.

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

6. Non-applicant No.3/Insurance company submitted reply to claim application while denying the pleadings made in claim application, pleaded that deceased was not having any income; the accident was on account of negligence on the part of driver of Scooty; on the date of accident, offending vehicle was not having valid registration and permit; there was no valid and effective driving licence with non-applicant No.1; there was breach of conditions of insurance policy and claim against non-applicant No.3 may be dismissed.

7. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as four issues for consideration. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that the accident occurred on account of rash and negligent driving of offending vehicle by non-applicant No.1, in which, Smt. Sudha

Chaturvedi died and awarded a total sum of Rs.3,37,000/- as compensation to the claimants.

8. Shri Anil Gulati, learned counsel for the claimants submits that learned Claims Tribunal has erred in assessing the income of deceased as Rs.3,000/- per month only ignoring the documentary evidence placed on record with regard to her income as Ex.A/13 and Ex.A/14, which are the documents issued by the Income Tax Department. He further submits that learned Claims Tribunal has not awarded any amount towards future prospects and erred in deducting 1/3rd towards personal and living expenses ignoring the number of claimants/legal heirs of deceased. It is contended that learned Claims Tribunal has erred in awarding meager amount of Rs.25,000/- towards other conventional heads; adding that amount of compensation awarded by learned Claims Tribunal is on the lower side.

9. Per contra, Shri Raj Awasthi, learned counsel for the Insurance Company submits that learned Claims Tribunal after taking into consideration overall facts and circumstances of the case, has calculated just and proper amount of compensation taking into consideration that claimants have failed to prove that after demise of owner of JCB machine i.e. wife of claimant No.1, income from JCB machine has been lost. It is contended that impugned award passed by learned Claims Tribunal is strictly in accordance with law and does not call for any interference. It is further contended that Insurance Company has also preferred an appeal challenging

the liability fastened upon it on the ground that non-applicant No.1/driver of offending vehicle was not possessing valid and effective driving licence as on the date of accident, offending vehicle was registered as 'Commercial Vehicle' and insurance policy issued showing the offending vehicle to be a 'Commercial Vehicle', but on the date of accident, licence which non-applicant No.1 was possessing was only having endorsement and authorization to drive 'Light Motor Vehicle' and it was not having any endorsement authorizing him to driver 'Commercial Vehicle/ Transport Vehicle'

10. We have heard learned counsel for the respective parties and perused the record carefully.

11. So far as the submission made by learned counsel for the claimants for enhancement of impugned award, especially, the income assessed by learned Claims Tribunal, we have gone through the pleadings made in claim application wherein in paragraph-21 of claim application, they have pleaded that on account of death of Smt. Sudha Chaturvedi, they have to engage another person on a salary of Rs.5,000/- per month for the purpose of supervision of JCB machine. It was also pleaded that the said JCB machine was purchased in partnership along with one Ashok Mishra in the year 2008 and they have placed on record Ex.A/13 and Ex.A/14 i.e. the documents issued by Income Tax Department under Section 143(1) of the Income Tax Act, 1961, which are notice issued in the name of the deceased.

Learned Claims Tribunal while assessing the income of deceased as pleaded in the claim application as Rs.20,000/- per month from JCB machine, has considered that source of income of deceased has been shown to be from money received by her on account of giving JCB machine on hire. Learned Claims Tribunal further taking into consideration that even after the death of owner of JCB machine, JCB machine will be there to generate income from hire as it was prior to the death of owner of the machine, claimants have not produced any documentary evidence to prove their pleadings that they have to engage another person for the purpose of supervising the JCB machine by placing any cogent and admissible piece of documentary evidence.

12. Taking into consideration the entire evidence and pleadings available on record, we do not find any infirmity in the finding recorded by learned Claims Tribunal for not considering the income of deceased as Rs.20,000/- per month and also for the expenditure towards another person as supervisor looking to the fact that deceased is a lady; JCB machine has been purchased in partnership with one Ashok Mishra and husband of deceased is alive. Even in the lifetime of deceased, appellant No.1 (husband) might be managing the affairs of business. In the aforementioned circumstance, it cannot be said that all the activities of supervision and business from JCB machine is being done only by the deceased.

13. The other submission made by learned counsel for the claimants

that assessment of income of deceased taken by learned Claims Tribunal as Rs.3,000/- per month to be on lower side appears to have some force. True it is that the income of deceased Smt. Sudha Chaturvedi has not been proved by placing admissible piece of evidence before the learned Claims Tribunal by claimants, but then, proper course to assess the income of the deceased is by taking notional income. The notional income of any person is to be assessed considering the price index, cost of living and wage structure prevailing on the date of accident.

14. In the instant case, the date of accident is 30.01.2011. Even if, it is taken that the deceased was a housewife, but then the work performed by a housewife for his family cannot be considered to be less than the income of an ordinary manual labour.

15. The housewife work in different capacities in a day for her family. There is no working hours for her and she has to work from early morning till late night. Hon'ble Supreme Court in the matter of **Lata Wadhwa and others v. State of Bihar and others**[1] while dealing with an accident of 1989 of which Civil Appeal came to be decided in the year 2001 held the income of housewife as Rs.3000/- per month in paragraph No.10 of its judgment, which is extracted below :

> "10. So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been

1 **(2001) 8 SCC 197**

> made to determine the compensation, on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs.12,000/- per annum in cases of some and Rs.10,000/- for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration, the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs.3000/- per month and Rs.36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life............."

16. In the light of the aforementioned law laid down by Hon'ble Supreme Court, if facts of present case are considered, date of accident is 30.01.2011; being a wife of claimant No.1 and mother of claimants No.2 and 3/children of tender age, she might be doing entire household work, cooking food, taking care of her children and her husband; for house wife, there is no fixed

working hours, she has to work for her family right from early morning till late night in several capacity. In view of above, we find it appropriate to assess the income of deceased as Rs.4,000/- per month and Rs.48,000/- per annum.

17. The claimants in their claim application has pleaded that on the date of accident, deceased was aged about 40 years and also shown to be 40 years in the postmortem report (Ex.A/5), but learned Claims Tribunal after taking note of the age of deceased mentioned in the sale letter as 44 years and the age of her daughters mentioned in cause-title of claim application, has considered the age of deceased in between age group of 45-50 years, we do not find any error in recording the said finding and assessing the age of deceased in between 45-50 years. The Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others[2],** has held that even a person who is not engaged in permanent employment or self-employed, is entitled for amount towards future prospects and have categorized under three age groups i.e. less than 40 years, 40 years but less than 50 years and 50-60 years. On the date of accident, age of the deceased has assessed in between 45-50 years, therefore, in view of law laid down by Hon'ble Supreme Court in **Pranay Sethi** (supra), there will be an addition of 25% of the income towards future prospects for calculating the monthly/yearly income of the deceased.

2 **(2017) 16 SCC 680**

18. Learned Claims Tribunal has applied the correct multiplier of 13 as per the law laid down in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[3], but meager amount of Rs.25,000/- towards other conventional heads has been awarded, which in the opinion of this Court, is on the lower side in view of the dictum of Hon'ble Supreme Court in the matters of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others**[4]**.**

19. For the aforementioned reasons and discussions, the amount of compensation awarded by learned Claims Tribunal to the appellants/claimants requires re-consideration and re-computation, which is as under :

As discussed above, the income of deceased is assessed by this Court as Rs.4,000/- per month i.e. Rs.48,000/- per annum. On the date of accident, age of the deceased has assessed in between 45-50 years, therefore, in view of law laid down by Hon'ble Supreme Court in **Pranay Sethi** (supra), there will be an addition of 25% of the income towards future prospects. By adding 25% of the income towards future prospects, the total annual income of deceased will come to Rs. 60,000/- (48,000 x 25% = 12,000 and 48,000 + 12,000). After deducting 1/3rd towards her personal and living expenses of the deceased, yearly loss of dependency of the claimants will come to Rs.40,000/- (60,000 / 3

3 **(2009) 6 SCC 121**
4 **(2018) 18 SCC 130**

= 20,000 and 60,000 – 20,000). As it is held the age of the deceased to be in between 45-50 years, the appropriate multiplier would be 13. By applying the multiplier of 13, the loss of dependency of the claimants will come to **Rs.5,20,000/-** (40,000 x 13). Apart from above, the claimants will be further entitled for a sum of **Rs.40,000/-** towards spousal consortium to the husband (payable to the spouse because of the death of partner), **Rs.40,000/-** towards parental consortium to the children (payable to children because of the death of parents), **Rs.15,000/-** towards loss of estate, **Rs.15,000/-** towards funeral expenses.

20. Now, the appellants/claimants are entitled for total compensation of **Rs.6,30,000/-** (5,20,000 + 40,000 + 40,000 + 15,000 + 15,000) instead of Rs.3,37,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

21. So far as the appeal filed by Insurance Company challenging the liability on the ground of licence of non-applicant No.1/driver of offending vehicle is concerned, the submission of learned counsel for the Insurance Company that offending vehicle was registered as 'Commercial Vehicle' as verified from the Regional Transport Office, Ambikapur vide Ex.D/15 showing that offending vehicle was registered to be 'Motor Cab (Commercial Vehicle)'. He further submits that offending vehicle is 'Light Motor Vehicle' and the

driver of offending vehicle was possessing licence to driver 'Light Motor Vehicle (LMV)' as per extract of driving licence issued by the competent authority vide Ex.D/4. The only argument raised by learned counsel for the Insurance Company that there is no endorsement in the licence of non-applicant No.1 authorizing him to driver 'Commercial Vehicle/Transport Vehicle'.

22. The submission made by learned counsel for the Insurance Company is not sustainable in view of the law laid down by Hon'ble Supreme Court in the matter of **Mukund Dewangan v. Oriental Insurance Company Limited**[5], wherein Hon'ble Supreme Court has held as under :

> "59. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28-03-2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in Section 2(21) and

5 **(2017) 14 SCC 663**

the provisions of Section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in Section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed.

60. Thus we answer the questions which are referred to us thus:

> 60.1. ''Light motor vehicle'' as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54 of 1994.
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> 60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would

be a light motor vehicle and also motor car or tractor or a road roller, ‘unladen weight’ of which does not exceed 7500 kg. and holder of a driving licence to drive class of “light motor vehicle” as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the “unladen weight” of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28-03-2001 in the form.

60.3. The effect of the amendment made by virtue of Act No.54 of 1994 w.e.f. 14-11-1994 while substituting clauses (e) to (h) of Section 10(2) which contained “medium goods vehicle” in Section 10(2)(e), “medium passenger motor vehicle” in Section 10(2)(f), “heavy goods vehicle” in Section 10(2)(g) and “heavy passenger motor vehicle” in Section 10(2)(h), with expression “transport vehicle” as substituted in Section 10(2)(e) related only to the aforesaid substituted classes only. It does not

> exclude transport vehicle, from the purview of Section 10(2)(d) and Section 2(41) of the Act i.e. light motor vehicle.
>
> 60.4. The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of “light motor vehicle” continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.”

23. In the light of law laid down by Hon'ble Supreme Court in the aforementioned case as well as considering the fact of the case that non-applicant No.1 was possessing licence to drive 'Light Motor Vehicle', which was not disputed by learned counsel for the Insurance Company, the submission made by learned counsel for the Insurance Company that the driver of offending vehicle was not possessing valid and effective driving licence is not sustainable and is hereby rejected. In view of above, we do not find any error in the finding recorded by learned Claims Tribunal holding the Insurance Company liable to satisfy the amount of

compensation.

24. In the result:-

(i) MAC No.334 of 2014 filed by the claimants is allowed in part and the impugned award is modified to the extent indicated herein above. Now the claimants are entitled for a sum of **Rs.6,30,000/-** along with interest at the rate of 6% per annum from the date of filing of claim application till its realization to be satisfied by the Insurance Company. Other conditions imposed by learned Claims Tribunal shall remain intact.

(ii) MAC No.483 of 2014 filed by the Insurance Company of offending vehicle is dismissed being devoid of merit.

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

Yogesh