NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 817 of 2014

- HDFC Ergo General Insurance Company Limited Mumbai, Thru-Manager, Near Sai Mandir, Sai Nagar, Devendra Nagar, P.S. Devendra Nagar, Civil and Revenue Distt. Raipur Chhattisgarh

---- Appellant

Versus

1. Pyari Bai, W/o Khilawan, Aged About 35 Years,
2. Ku. Muskan D/o Khilawan Aged About 6 Years Minor,
3. Mausam D/o Khilawan Aged About 3 Years Minor,

   Respondents 2 and 3 minors represented through natural guardian mother Pyari Bai

   All R/o Village Pausri, Post- Kamta, P.S. Raipur, Civil and Revenue District : Raipur, Chhattisgarh (Claimants)
4. Hradaya S/o Prahlad Sahu R/o Village And Post- Raveli, P.S. Bemetara, Distt. Durg C.G., At Present – R/o Dashrath S/o Shobha Chandrakar, Village And Post- Simga, P.S. Simga, Distt. Raipur C.G. Now Civil and Revenue District : Durg, Chhattisgarh (Driver of Metador No.CG 04 G 8618)
5. Dashrath S/o Shobha Chandrakar R/o Village And Post- Simga, P.S. Simga, Distt. Raipur C.G., Now Civil and Revenue District : Durg, Chhattisgarh (Owner of Metador No.CG 04 G 8618)

-----Respondents

For Appellant	:	Shri NK Thakur, Advocate
For Respondents-1 to 3	:	Shri Amiyakant Tiwari, Advocate
For Respondent-4	:	Shri Anand Shukla, Advocate
For Respondent-5	:	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.
01.10.2020

1. Appellant/Insurance Company has filed this appeal under Section 173 of Motor Vehicle Act, 1988 challenging the impugned award dated 26.02.2014 passed by the 3rd Additional Motor Accident Claims Tribunal, Raipur (for short, 'Claims Tribunal') in Claim Case-61 of 2011, whereby

learned Claims Tribunal allowed the claim application in part, awarded compensation of Rs.4,63,500/- and fastened liability upon the Insurance Company/ appellant herein to satisfy the amount of compensation.

2. Facts of the case, in nutshell, are that, on 17.03.2009, Khilawan Barley along with other labourers were travelling on Matador bearing No.CG 04 G 8618 (for short, 'offending vehicle'), loaded with woods. When the offending vehicle reached near village Tarpongi, suspension of the vehicle got broken, due to which, offending vehicle turned turtle and met with an accident. In the said accident, Khilawan came under the vehicle and died. Bhagat Singh, who was also labourer, suffered grievous injuries. Accident was reported to concerned Police Station, based on which, crime was registered against the driver of offending vehicle.

3. Claimants, who are widow and children of late Khilawan, have filed an application under Section 163A of the Act of 1988 pleading therein that on the date of accident, deceased was working as labourer and was earning Rs.40,000/- per annum. On account of untimely death of deceased, they suffered irreparable loss and claimed Rs.4,97,000/- as compensation.

4. NA1 and 2, who are driver and owner of offending vehicle, submitted reply to claim application denying the pleadings made therein. They further pleaded that on the date of accident, offending vehicle was insured with NA3 for a period from 22.11.2008 to 21.11.2009 and there was valid permit of offending vehicle.

5. NA3, Insurance Company submitted reply to claim application, admitted that on the date of accident, offending vehicle was insured with the Company. It was also pleaded that risk of the deceased was not covered under the policy. Insurance Company is not liable for compensation.

6. Upon appreciation of pleadings and evidence placed on record by the respective parties, learned Claims Tribunal allowed the claim application in part, held that offending vehicle over turned due to mechanical fault. In the said accident, Khilawan died. Breach of conditions of Insurance Policy was not found to be proved and awarded Rs.4,63,500/- as compensation.

7. Shri NK Thakur, learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal erred in not considering the offending vehicle to be a goods vehicle. Deceased-Khilawan was travelling as labourer on the vehicle and when the offending vehicle over turned and met with an accident, deceased came under the vehicle. He submits that no person or labourer is permitted to travel in the goods vehicle, except its employees. He further contended that gross vehicle weight of offending vehicle is 8000 kgs, hence the offending vehicle does not come within the category of ‘LMV’ as defined under Section 2(21) of the Act of 1998. He further submits that the driver of offending vehicle admittedly was possessing license to drive 'LMV' on the date of accident, and there was clear breach of conditions of Insurance Policy on both counts but the learned Claims Tribunal has arrived at a finding that there was no breach of conditions of Insurance Policy. He further pointed out

that learned Claims Tribunal awarded Rs.25,000/- towards loss of consortium and Rs.50,000/- towards love and affection apart from award of Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of award of compensation on other heads is much more than what provided under the Second Schedule of the Act of 1988. He submits that when claim application is filed under Section 163 A of the Act of 1988, amount of compensation is to be awarded strictly in accordance with the Second Schedule of the Act of 1988, no amount can be awarded exceeding the amount fixed under the heads prescribed in the Schedule and no amount of compensation can be awarded under any other additional heads which is not mentioned therein.

8. Per contra, Shri Amiyakant Tiwari, learned counsel for the claimants submits that the insurer has not contested the case before the learned Claims Tribunal on grounds as raised before this Court. He submits that learned Claims Tribunal has awarded amount of compensation on other conventional heads taking into consideration the age of claimants. He further submits that the claimants have filed cross-objection seeking enhancement of the amount of compensation on the ground that income of the deceased was assessed on lower side.

9. We have heard learned counsel for the respective parties and perused the record of claim case.

10. Shri NK Thakur, learned counsel for the appellant /Insurance Company has raised legal issues before this Court. First issue raised is that the deceased was travelling on Matador, which is a goods vehicle and

hence there is no liability of the Insurance Company to cover the risk of the gratuitous passenger. There is no dispute that the offending vehicle is a goods vehicle having permit of 'Public Goods vehicle' for a period from 21.04.2004 to 24.11.2009. As per the registration Certificate also, (Ex.D4C) class of vehicle has been shown as “MGV” (Medium Goods vehicle). In claim application, it is specifically mentioned that deceased Khiilawan was sitting in the offending vehicle. Copy of Insurance Policy is placed on record as Ex.D2. The Policy was issued as Goods Carrying Vehicle Policy. Under Premium Details, premium is paid for Basic Third Party Liability, Owner Driver, and LL to Paid Drivers.

11. The Schedule of Premium Detail of Ex.D2, Insurance Policy is extracted below for ready reference:

<table>
<tr><th colspan="6">PREMIUM DETAILS (INR)</th></tr>
<tr><td colspan="2">Own Damage (A)</td><td colspan="2">Liability Only (B)</td><td colspan="2">Total Premium</td></tr>
<tr><td>Basic Own Damage</td><td>4880.40</td><td>Basic Third Party Liability</td><td>5920.00</td><td rowspan="4">Total Package Premium (A+B)</td><td rowspan="4">8779.22</td></tr>
<tr><td>Total</td><td>4880.40</td><td>Personal Accident:</td><td></td></tr>
<tr><td>Add:</td><td>0.00</td><td>Owner Driver of Rs. 2,00,000</td><td>100.00</td></tr>
<tr><td>Total</td><td>4880.40</td><td>LL to Employees of Insured</td><td>0.00</td></tr>
<tr><td>Add:</td><td></td><td>LL to Paid Drivers</td><td>25.00</td><td rowspan="2">Net Premium</td><td rowspan="2">8779.00</td></tr>
<tr><td>Sub Total (Additions)</td><td>0.00</td><td>Total:</td><td>6045.00</td></tr>
<tr><td>Less:</td><td>0.00</td><td>Add:</td><td>50.00</td><td rowspan="3">Service Tax</td><td rowspan="3">1085.00</td></tr>
<tr><td>NCB 45%</td><td>-2196.18</td><td>Sub Total (Additions)</td><td>50.00</td></tr>
<tr><td>Sub Total (Deductions)</td><td>-2196.18</td><td>Less:</td><td>0.00</td></tr>
<tr><td></td><td></td><td>Sub Total (Deductions)</td><td>0.00</td><td rowspan="2">Total Premium</td><td rowspan="2">9864.00</td></tr>
<tr><td>Total</td><td>2684.22</td><td>Total:</td><td>6095.00</td></tr>
</table>

12. From perusal of schedule of premium, it reveals that no premium is paid for labourers as argued by learned counsel for the respondents/claimants.

13. Honble Sureme Court in the matter of **New India Assurance Company Limited Vs Asha Rani** reported in (2003) 2 SCC 223 has held that Insurance Company will not have any liability under the Motor Vehicle Act 1988 for insuring the passenger / gratuitous passenger travelling in goods vehicle and held thus:

> “22. Thus, it may be noticed that so far as employees of the owner of the motor vehicle are concerned, an insurance policy was not required to be taken in relation to their liability other than arising in terms of the provisions of the Workmen's Compensation Act, 1923. On the other hand, proviso (ii) appended to Section 95 of 1939 Act, enjoined a statutory liability upon the owner of the vehicle to take out an insurance policy to cover the liability in respect of a person who was travelling in a vehicle pursuant to a contract of employment. The Legislature has consciously not inserted the said provision in 1988 Act.
>
> 23. The applicability of decision of this Court in Mallawwa (Smt.) & Ors. v. Oriental Insurance Company Ltd. & Ors. [(1999) 1 SCC 403] in this case must be considered keeping that aspect in view. Section 2(35) of 1988 Act does not include passengers in goods carriage whereas Section 2(25) of 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of the "goods vehicle" in 1939 Act and "goods carriage" in 1988 Act is significant. By reason of the change in the definitions of the terminology, the Legislature intended that a goods vehicle could not carry any passenger, as the words "in addition to passengers" occurring in the definition of goods vehicle in 1939 Act were omitted. Furthermore, it categorically states that 'goods carriage' would mean a motor vehicle constructed or adapted for use "solely for the carriage of goods". Carrying of passengers in a 'goods carriage', thus, is not contemplated under 1988 Act.

> 26. In view of the changes in the relevant provisions in 1988 Act vis--vis 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. 'a third party'. Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor."

14. Section 147 (1) (b) of the Act 1988 deals with the risk of any person including owner of the goods or his/her authorized representative carried in the vehicle.

15. Hon'ble Supreme Court in the aforementioned judgment has considered the claim of injury to any person as forming part of Section 147(1)(b) and held that injury to any person mentioned is for the 3rd party.

16. Persons travelling in the vehicle cannot be treated as 3rd party. There was specific case of claimants that the deceased was travelling on vehicle as labourer. Hence in view of above facts and circumstances of the case, as well as the law laid down by Hon'ble Supreme Court, we are of the view that there was breach of conditions of Insurance Policy and that the risk of deceased was not covered under the Policy Ex.D2.

17. So far as the ground raised by learned counsel for the appellant with respect to the license of the driver of offending vehicle which is placed on record D1. Copy of the permit is available on record in which the gross vehicle weight of offending vehicle is mentioned as 8000 kgs and in the registration certificate D4C the Goods vehicle weight has been shown as

8000 kgs. The same weight is also mentioned in D2 Insurance Policy. Taking into consideration the Goods vehicle weight as mentioned in the aforementioned documents the offending vehicle will not fall within the category of LMV as defined under Section 2(21) of the Act of 1988, which is extracted below for ready reference:

> Sec. 2(21) “light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed [7,500] kilograms:

18. The vehicles which are having its gross vehicle weight of 7500 kg or less only will come within the definition of ‘LMV’. In the case at hand, the weight of offending vehicle has been shown as 8000 kgs in all documents placed on record by its owner, ie the Certificate of Registration, Permit and Insurance Policy. Hence, learned Claims Tribunal erred in recording a finding that the offending vehicle comes within the category of ‘LMV'. The said finding is not sustainable and it is hereby set aside.

19. The submission made by learned counsel for the appellant is with respect to license that the driver of offending vehicle was not possessed with valid license on the date of accident. We have perused the extract of driving licence placed on record as Ex.D1. Perusal of license would show that the additional coverage endorsement of transport vehicle has been made for a period of from 07.08.2008 to 06.08.20011. Column B ie Subsequent Transactions, which is extracted below for ready reference:

B. Subsequent Transactions

S. No.	Transaction	Endorsement Date	Validity		Period of DL Not Valid, If any		Class of Vehicle Endorsed	Endorse Authority
			From	To	From	To		
1	ISSUE DUPL DL	01/04/2009	27/04/2006 07/082008	06/08/2011 (NT) 06/08/2011 (TR)				CG04
2	ADD A COV TO DL	06/30/2010	27/04/2006 07/08/2008	06/08/2011 (NT) 06/08/2011 (TR)			TRANS	CG04
3	ADD A COV TO DL	06/30/2020	27/04/2006 07/08/2008	06/08/2011 (NT) 06/08/2011 (TR)			PSVBUS	CG04
4	ISSUE PSV BADGE	06/30/2020	27/04/2006 07/08/2008	06/08/2011 (NT) 06/08/2011 (TR)			PSVBUS	CG04

20. Under Column 'C' Current details of license mentioned at SI No.3 TR LMV-GV and GV has been mentioned showing the date of issue as 07.08.2008. Thereby at SI No.4 'Trans' has been shown as 30.06.2010. Column 'C' also reproduced here below for ready reference:

C) Current Details **Valid Upto** NT: 06/08/2011 TR: 06/08/2011

SI No.	Catg.	COV	COV Iss Dt.	Office Code	Driving Testdt	Tested By	Test Result	Badge No	Badge Issue Dt.
1	NT	MCWG	27/04/2006	CG 04					
2	NT	LMV	27/04/2006	CG 04					
3	TR	LMV-GV	08/07/2008	CG 04					
4	TR	TRANS	30/06/2010	CG 04	30/06/2010	RB CHOURASIYA	PASS		
5	TR	PSVBUS	30/06/2010	CG 04	30/06/2010	RB CHOURASIYA	PASS	10/379	30/06/2010

21. From perusal of Ex.D1 it is clear that after making endorsement of Transport vehicle, though it has been shown to be for LMV, the validity period has been shown for three years. After making an endorsement of transport vehicle showing it to be 30.06.2010, its validity period has been shown to be the same ie 06.08.2011.

22. Section 10 of the Act of 1988 provides for form and contents of license to drive. Section 10(ii) mentions about the class of vehicle which is extracted below for ready reference:

> Sec.10 Form and contents of licences to drive. - (1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

(a) motor cycle without gear;

(b) motor cycle with gear;

(c) invalid carriage;

(d) light motor vehicle;

(e) transport vehicle;

(I) road-roller;

(j) motor vehicle of a specified description.

23. Perusal of license would show that endorsement with regard to the transport vehicle has been made only on 30.06.2010, whereas the date of accident was on 17.03.2009. As discussed above, the gross vehicle weight is 8000 kgs and it is a Medium Goods Vehicle. Therefore, for driving the offending vehicle the driver should had possess the license having endorsement to drive Transport vehicle, which he was not possessing on the date of accident.

24. In view of above, we are of the considered view that on the date of accident driver of offending vehicle was not possessed with valid and effective driving license. Insurance Company cannot be held liable for more than one reason, (i) deceased was travelling in goods vehicle, (ii) his risk was not covered under Policy, (iii) driver of the offending vehicle was not possessed with valid license.

25. The last submission made by learned counsel for the appellant/Insurance Company that the Tribunal has awarded excess

amount on other conventional heads ie Rs.25,000/- towards loss of consortium, Rs.50,000/- towards loss of love and affection is correct. The application for grant of compensation is filed under Section 163A of the Act of 1988. If once the claimants themselves chose to file an application under Section 163A, amount of compensation is to be awarded strictly as it is provided under Second Schedule. Under Schedule at Sl No.3 under the head of general damages the heads of compensation is provided as a funeral expenses, loss of consortium, if beneficial is spouse and loss of estate.

26. Apart from the above, the claimant will also be entitled for medical expenses if any, up to the maximum of Rs.15,000/-. From perusal of the column, general damages under Second Schedule, there is no mention of the award of any compensation under the head of loss of love and affection, which the learned claims Tribunal has erroneously awarded. The Second Schedule specifically provides for award of loss of consortium of Rs.5,000/- only, where as the Claims Tribunal awarded Rs.25,000/- towards the loss of consortium, which is also not sustainable and requires to be scaled down.

27. So far as the submission made by learned counsel for the respondents claimants with regard to the cross objection, we have perused the pleadings of the claim application. They have pleaded that the deceased was earning Rs.40,000/- as labourer. In evidence, claimant-1, widow of deceased has stated that the deceased on the date of accident was earning Rs.3,300/- per month. The accident is of 17.03.2009. Though the claimants failed to prove income of the deceased

by placing cogent and reliable piece of evidence or any documentary evidence in this regard, but in absence of proof of income of deceased, the income is to be assessed on notional basis, taking into consideration the date of accident, price index, wage structure and cost of living. In the facts and circumstances of the case, we find it appropriate to assess the income of deceased as Rs.3,300/- per month, instead of Rs.3,000/- as assessed by the Tribunal.

28. For the foregoing reasons, the amount to be awarded to the claimants requires re-computation, which is as under:

a) Income as assessed by this Court Rs.3,300/- per month and Rs.39,600/-per annum.

b) There will be deduction of 1/3rd towards personal and living expenses, which makes the yearly loss of dependency as Rs.26,400/-.

c) Deceased on the date of accident, was aged about 38 years, hence, appropriate multiplier would be 16 as per the Second Schedule of the Act of 1988. By applying multiplier of 16 to the yearly loss of dependency, total loss of dependency comes to Rs.4,22,400/-.

d) Apart from above, claimants will be further entitled for Rs.2,000/- towards funeral expenses, Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate.

e) Now, appellants /claimants will be entitled for a total sum of **Rs.4,31,900/-** as compensation instead of Rs.4,63,500/-

29. Amount of compensation will carry interest @ 6% from the date of filing of claim application till its realization.

30. In the result, appeal filed by the Insurance Company is allowed and the Insurance Company is exonerated from the liability to satisfy the amount of compensation. Now, liability to satisfy the amount of compensation would be upon NA1 and 2, respondents-4 and 5 (driver and owner of offending vehicle). Claimants are entitled for Rs.4,31,900/- as total compensation.

31. In the result, the impugned award is set aside. Appeal of Insurance Company and Cross objection filed by the claimants are allowed in part in above terms. The Insurance Company is entitled to recover the amount of compensation deposited by it in pursuance of the impugned award from NA1 and 2/respondents- 4 and 5 ie driver and owner of offending vehicle in accordance with law upon depositing the entire amount of compensation by Owner and Driver of offending vehicle.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma