NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1054 of 2014

- Smt. Sita Bai W/o Late Gopal Sidar Aged About 34 Years R/o Fuljhariya Para, Ward No. 1, Kamal Nagar, Sarangarh, Tah. And Post- Sarangarh, Distt. Raigarh (CG)

---- Appellant

Versus

1. Pawan Kumar Agrawal, S/o Ramji Agrawal Aged About 34 Years R/o Chhotemat Para, Sarangarh, Tah. And Post- Sarangarh, Distt. Raigarh C.G., Chhattisgarh
2. Bedhram S/o Shesh Ram Aged About 45 Years R/o Mahakampur, Post- Hardi, Tah. Sarangarh, Distt. Raigarh C.G.
3. The Oriental Insurance Company Ltd., Branch Office, Itwari Bazar, Raigarh, Tah. & Distt. Raigarh C.G.

---- Respondents

MAC No. 1055 of 2014

1. Mahaveer Prasad S/o Shiv Bhagwan Prasad Agrawal Aged About 68 Years R/o Nagar Palika Chowk, Sarangarh, Tah. & Post- Sarangarh, Distt. Raigarh C.G.
2. Ishwar Agrawal S/o Mahaveer Prasad Aged About 43 Years R/o Nagar Palika Chowk, Sarangarh, Tah. & Post- Sarangarh, Distt. Raigarh C.G.
3. Balkrishn Agrawal S/o Mahaveer Prasad Aged About 35 Years R/o Nagar Palika Chowk, Sarangarh, Tah. & Post- Sarangarh, Distt. Raigarh C.G.

---- Appellants

Versus

1. Pawan Kumar Agrawal, S/o Ramji Agrawal Aged About 34 Years R/o Chhotemat Para, Sarangarh, Tah. And Post- Sarangarh, Distt. Raigarh C.G.
2. Bedhram S/o Shesh Ram Aged About 45 Years R/o Mahakampur, Post- Hardi, Tah. Sarangarh, Distt. Raigarh C.G.
3. The Oriental Insurance Company Ltd. S/o Branch Office, Itwari Bazar, Raigarh, Tah. And Distt. Raigarh C.G.

---- Respondents

MAC No. 209 of 2016

- Pawan Kumar Agrawal W/o S/o Ramji Agrawal, Aged About 40 Years R/o Chhotemath Para, Sarangarh, Tahsil & Post- Sarangarh, Civil And Revenue Distt. Raigarh (CG)

---- Appellant

Versus

1. Basant Kumar Agrawal S/o Mahavir Prasad Agrawal, Occup.- Business, R/o Kachahri Gali, Sarangarh, Tahsil & Thana- Sarangarh, Distt.- Raigarh, Chhattisgarh

2. Smt. Ratna Devi S/o W/o Basant Kumar, Occup.- House Wife, R/o Kachahri Gali, Sarangarh, Tahsil And Thana- Sarangarh, Distt.- Raigarh, Chhattisgarh

3. Rakesh Kumar Agrawal S/o Basant Kumar Agrawal, Aged About 24 Years R/o Kachahri Gali, Sarangarh, Tahsil And Thana- Sarangarh, Distt.- Raigarh, Chhattisgarh

4. Dinesh Agrawal S/o Basant Kumar Agrawal, Aged About 29 Years R/o Kachahri Gali, Sarangarh, Tahsil And Thana- Sarangarh, Distt.- Raigarh, Chhattisgarh

5. Bedhram S/o S/o Shesh Ram, Aged About 45 Years R/o Village Mahakampur, Post- Hardi, Tahsil Sarangarh, Distt. Raigarh, Chhattisgarh ....Owner

6. The Oriental Insurance Company, S/o Branch Office Itwari Bazar, Raigarh, Tahsil & Distt. Raigarh, Chhattisgarh ....Insurance Company, District : Raigarh.

---- Respondents

<u>MAC No. 210 of 2016</u>

- Pawan Kumar Agrawal, S/o Ramji Agrawal, Aged About 40 Years R/o Chhotemath Para, Sarangarh, Tahsil & Post- Sarangarh, Civil & Revenue Distt. Raigarh, Distt.- Raigarh, Chhattisgarh ....Driver, Chhattisgarh

---- Appellant

Versus

1. Sushila Devi S/o W/o Heeralal Ijardar, Occupation House Wife, R/o Village- Butipara, Sarangarh, Tahsil And Thana- Sarangarh Distt.- Raigarh, Chhattisgarh, Chhattisgarh

2. Vijay Ijardar S/o S/o Heeralal Ijardar, Occupation Student, R/o Village- Butipara, Sarangarh, Tahsil & Thana- Sarangarh Distt.- Raigarh, Chhattisgarh.

3. Nirakar Ijardar S/o S/o Heeralal Ijardar, Occupation Student, R/o Village- Butipara, Sarangarh, Tahsil & Thana- Sarangarh Distt.- Raigarh, Chhattisgarh ....Claimants

4. Bedhram S/o Shesh Ram, Aged About 45 Years R/o Village Mahakampur, Post- Hardi, Tahsil Sarangarh, Distt. Raigarh, Chhattisgarh ....Owner.

5. The Oriental Insurance Company, Branch Office Itwari Bazar, Raigarh, Tahsil & Distt. Raigarh (CG) ....Insurance Company.

---- Respondents

MAC No. 211 of 2016

- Pawan Kumar Agrawal, S/o Ramji Agrawal, Aged About 40 Years R/o Chhotemath Para, Sarangarh, Tahsil & Post- Sarangarh, Civil & Revenue Distt. Raigarh, Distt.- Raigarh, Chhattisgarh ....Driver

---- Appellant

Versus

1. Mu. Anusuiya Bai W/o Late Ramesh Yadav, Occupation House Wife, R/o Village- Chhotemathpara, Sarangarh, Tahsil & Thana- Sarangarh, Distt.- Raigarh, Chhattisgarh

2. Sailesh Yadav S/o Late Ramesh Yadav, R/o Village- Chhotemathpara, Sarangarh, Tahsil & Thana- Sarangarh, Distt.- Raigarh, Chhattisgarh

3. Ku. Vijay Laxmi Yadav, D/o Late Ramesh Yadav, R/o Village- Chhotemathpara, Sarangarh, Tahsil & Thana- Sarangarh, Distt.- Raigarh, Chhattisgarh

4. Ku. Rakhi Yadav D/o Late Ramesh Yadav, R/o Village- Chhotemathpara, Sarangarh, Tahsil & Thana- Sarangarh, Distt.- Raigarh, Chhattisgarh ....Claimants.

5. Bedhram S/o Shesh Ram, Aged About 45 Years R/o Village Mahakampur, Post- Hardi, Tahsil Sarangarh, Distt. Raigarh, Chhattisgarh ....Owner.

6. The Oriental Insurance Company, Branch Office Itwari Bazar, Raigarh, Tahsil & Distt. Raigarh (CG)..........Insurance Company

---- Respondents

MAC No. 212 of 2016

- Pawan Kumar Agrawal S/o Ramji Agrawal, Aged About 40 Years R/o Chhotemath Para, Sarangarh, Tahsil & Post- Sarangarh, Civil And Revenue Distt. Raigarh, Distt.- Raigarh, Chhattisgarh ....Driver

---- Appellant

Versus

1. Dilip Kumar Shrivas S/o Ramnarayan Shrivas, R/o Chhotemath Para, Sarangarh, Tahsil & Thana- Sarangarh Distt.- Raigarh, Chhattisgarh

2. Ramnarayan Shrivas S/o Chamru Singh Shrivas, R/o Chhotemath Para, Sarangarh, Tahsil And Thana- Sarangarh Distt.- Raigarh, Chhattisgarh

3. Prakash Srivas S/o Ramnarayan Shrivas, R/o Chhotemath Para, Sarangarh, Tahsil And Thana- Sarangarh Distt.- Raigarh, Chhattisgarh.

4. Girjadevi Shrivas W/o Ramnarayan Shrivas, R/o Chhotemath Para, Sarangarh, Tahsil And Thana- Sarangarh Distt.- Raigarh, Chhattisgarh ....Claimants,

5. Bedhram S/o Shesh Ram, Aged About 45 Years R/o Village Mahakampur, Post- Hardi, Tahsil Sarangarh, Distt. Raigarh, Chhattisgarh ....Owner

6. The Oriental Insurance Company, Branch Office Itwari Bazar, Raigarh, Tahsil And Distt. Raigarh, CG........Insurance Company

---- Respondents

MAC No.1054/14 & 1055/14

For Appellant	:	Mr. Vineet Pandey, Advocate
For Respondent No.1 & 2	:	Miss Sharmila Singhai, Advocate
For Respondent No.3	:	Mr. Sudhir Agrawal, Advocate

&

MAC No.209/16, 210/16, 211/16 & 212/16

For Appellant	:	Miss Sharmila Singhai, Advocate
For Respondent-Insurance Co.	:	Mr. Sudhir Agrawal, Advocate

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

08/10/2020

1. All these appeals are arising out of the common award passed by the learned 1st Additional Motor Accident Claims Tribunal, Raipur (for short 'the Claims Tribunal'), but in different claim cases, hence all these appeals are being disposed off by this

common order.

2. MAC No.1054/14 & 1055/14 are filed by appellant-claimants seeking enhancement of the amount of compensation awarded by the Claims Tribunal vide award dated 1.8.2014 passed in Claim Cases No.5/13 & 7/13 respectively. In both the aforementioned appeals, respondents driver & owners of Jeep bearing registration No.MP26-E-6701 (for short 'the offending vehicle') have filed cross-objection challenging the liability fastened upon them for satisfying the amount of compensation.

3. MAC Nos.209/16, 210/16, 211/16 & 212/16 are filed by driver of offending vehicle only challenging liability fastened upon him and exoneration of insurance company by the Claims Tribunal vide impugned award dated 1.8.2014 passed in Claim Cases No.8/13, 3/13, 4/13 & 6/13.

4. Facts relevant for disposal of these appeals are that the deceased persons in Claim Case Nos.3/13, 4/13, 5/13, 6/13, 7/13 & 8/13 went to Hirakund Dam at Sambalpur on the offending vehicle from their village Fuljhariya Para, Sarangarh. On the way, due to rash and negligent driving of offending vehicle by its driver, it dashed against a standing tree on road side and caused accident. In the said accident, Gopal Sidar, Baijnath Agrawal, Chandresh Yadav, Omjai Ijardaar & Chhabilal Sahu died on spot, whereas Dipak Sriwas, Mukesh Agrawal, Shyamlal, Ramkumar, Pawan Kumar Agarwal suffered grievous injuries. Accident was reported to concerned police station based on which crime bearing No.5/13 was registered against

the driver of offending vehicle.

5. Separate claim applications were filed by respective claimants against death of Gopal Sidar, Baijnath Agrawal, Chandresh Yadav, Omjai Ijardaar & Chhabilal Sahu seeking amount of compensation of Rs.44,42,500/-, Rs.46,65,000/-, Rs.10,16,000/-, Rs.10,11,321=81 paise, Rs.8,82,000/- & Rs.9,85,448/- respectively.

6. Non-applicant No.1 submitted reply to claim applications pleading therein that on the date of accident, the offending vehicle was driven by Chhabilal Sahu, who died in the accident. Non-applicant No.1 is not liable to make payment of any amount of compensation as he was not driving offending vehicle at the time of accident, rather he was travelling as a passenger in it.

7. Non-applicant No.2, owner of offending vehicle, filed its reply to claim applications and accepted the fact that he is owner of offending vehicle. It was also pleaded that at the time of accident, non-applicant No.1 was driving the offending vehicle, it was insured with non-applicant No.3 Insurance Company, hence liability to pay amount of compensation is upon the insurance company.

8. Non-applicant No.3 Insurance Company also submitted its reply pleading therein that the insurance policy was not issued in the name of non-applicant No.2, there was breach of policy condition, on the date of accident all the deceased persons had

consumed liquor, there was no valid and effective driving license with non-applicant No.1 to drive offending vehicle and prayed for its exoneration.

9. Upon appreciation of pleadings and evidence placed on record by respective parties, the Claims Tribunal has initially passed award in MAC No.1054/14 on 31.7.2004 and held that deceased Gopal Sidar died in the motor accident while travelling in offending Jeep driven by non-applicant No.1 on 31.12.199 and awarded Rs.2,06,000/- as compensation and fastened liability upon non-applicant No.1 & 2, owner & driver of offending vehicle respectively. Similarly, in other claim cases also the Claims Tribunal has passed the award.

10. Claimants have preferred appeals before this Court seeking enhancement of amount of compensation. Upon hearing learned counsel for respective parties, the learned Single Judge has remanded back all the cases to the Claims Tribunal upon framing additional issues for consideration. Issues No.'b', 'c' & 'e' are relevant in the facts and circumstances of the case, which are with respect to use of vehicle and valid & effective driving license with driver of offending vehicle, therefore, the same are extracted below:-

> “(b) Whether the jeep in question (offending vehicle) was registered as a private vehicle and if so whether it was being used as a commercial vehicle on the date of accident and if so its effect?
>
> (c) Whether the deceased persons were travelling as passengers in the jeep on payment or were travelling as mere occupants and if so its effect?
>
> (e) Whether the person driving the jeep was

> possessed of valid driving license to drive the jeep on the date of accident?"

Learned Single Judge further issued a direction granting liberty to the parties to amend their pleadings, adduce evidence and file documents and thereafter to decide the claim case afresh after taking into consideration fresh pleadings additional evidence along with earlier evidence available on record.

11. The Claims Tribunal in Para-24 of the impugned award has concluded that on the date of accident 12 persons were travelling in the offending vehicle. Use of vehicle on the date of accident to be used as 'commercial vehicle' has been found to be proved and in Para-25 it is held that non-applicant No.1 was not having valid and effective driving license on the date of accident as copy of license bearing DL number mentioned therein has been found to be in the name of Praveen Kumar on its verification and accordingly exonerated the insurance company. The Claims Tribunal awarded Rs.3,07,000/- in Claim Case No.4/13; Rs.2,11,000/- in Claim Case No.5/13; Rs.2,16,000/- in Claim Case No.3/13; Rs.2,16,000/- in Claim Case No.7/13; Rs.2,16,000/- in Claim Case No.8/13; Rs.2,16,000/- in Claim Case No.6/13.

12. Mr. Vineet Pandey, learned counsel representing appellants in MAC No.1054 & 1055 of 2014 seeking enhancement of the awards submits that the Claims Tribunal erred in assessing income of deceased as Rs.15,000/- per annum for an accident which took place on 31.12.1999. He submits that deceased persons in both the cases were able bodied young persons

aged about 26 & 22 years respectively, therefore, even if for want of evidence with regard to their income, as pleaded in claim application and stated by respective claimants in their evidence, cannot be accepted, then also income can be assessed taking into consideration the deceased persons to be labour and income is to be fixed at Rs.30,000/- p.a. on notional basis at the rate of Rs.2,500/- per month. He further argued that the Claims Tribunal has not awarded any amount towards future prospects and the amount awarded under other conventional heads are also on lower side. Hence, the amount of compensation awarded by the Claims Tribunal deserves to be enhanced suitably.

13. Driver & owner of offending vehicle have filed cross-objection in the appeals filed by claimant-appellants, challenging the liability fastened upon them on the ground that the Claims Tribunal has arrived at a conclusion that offending vehicle was being used as a commercial vehicle without there being any evidence on record in this regard. Further, the license available in record of the Claims Tribunal was in the name of Pawan Kumar Agrawal as per verification report issued by the District Transport Office, Raigarh on 3.3.2015, but the Claims Tribunal only on the basis of verification report submitted by the Insurance Company mentioning license number to be in the name of 'Praveen Kumar' held that on the date of accident, non-applicant No.1-driver was not having valid and effective driving license.

14. Non-applicant No.1-driver of offending vehicle, has separately

filed MAC Nos.209/16, 210/16, 211/16 & 212/16 challenging the award passed in Claim Case Nos.8/13, 3/13, 4/13 & 6/13 respectively. Miss Singhai, learned counsel representing appellant in these appeals submits that document placed on record by the Insurance Company as Ex.NA-2 issued by the Licensing Authority shows the name of license holder to be Praveen Kumar Agrawal, but from the same authority non-applicant No.1 has obtained duplicate license and further verification report from the Competent Authority on 3.3.2015 which clearly mentions name of license holder as Pawan Kumar Agrawal. Duplicate license issued by the Competent Authority in the name of Pawan Kumar Agrawal son of Shri Ramji is also filed. She submits that there may be some clerical error by employee concerned of the Transport Office while issuing verification report dated 28.5.2002, more so when the same Licensing Authority issued again verification report on 3.3.2015 verifying the same license number i.e. P9502/98 to be in the name of non-applicant No.1. Hence, the finding recorded by the Claims Tribunal only on the basis of verification report issued by the RTO concerned without examining any employee of the RTO and producing register maintained by the RTO with respect to issuance of license is not sustainable and is liable to be interdicted. She further argued that the Claims Tribunal based on the evidence of one Ramkumar, examined on behalf of claimant as AW-2, recorded a finding that on the date of accident, the offending vehicle was hired by the persons travelling in it. Said finding is contrary to the evidence available on record as that witness has stated that he does not know whether the Jeep was hired or not. She submits that in the aforementioned peculiar facts of the case and evidence available on record as well as documents placed in the appeals filed by non-applicant No.1, the exoneration of insurance company is erroneous and the said finding of the Claims Tribunal is not sustainable.

15. We have heard learned counsel for the parties and perused the record of the Claims Tribunal.

16. So far as appeals filed on behalf of claimants by Mr. Vineet Pandey, Advocate seeking enhancement in compensation are concerned, claimant/appellant in MAC No.1054/14 has very specifically pleaded that on the date of accident deceased Gopal Sidar was aged about 26 years, he was working as driver and earning Rs.3,500/- per month. Similarly, claimants/ appellants have specifically pleaded that on the date of accident, deceased Baijnath was 22 years old, he was running a grocery shop and earning Rs.10,000/- per month. True it is that the appellants in both appeals have not substantiated their pleadings by placing cogent and reliable piece of evidence with respect to occupation and income of deceased persons, but then looking to their age, the Claims Tribunal is required to assess the amount of compensation taking into consideration the nature of employment, price index, wage structure etc. Taking into consideration the date of accident i.e. 31.12.1999,

age of deceased persons being 26 & 22 years respectively, we find it appropriate to assess income of deceased persons as Rs.2,500/- per month and Rs.30,000/- per annum. On the date of accident, both the deceased were below 40 years of age, therefore, there will be an addition of 40% of the established income towards future prospects in view of the decision of Hon'ble Supreme Court in Pranay Sethi's case (supra).

17. So far as deduction towards personal and living expenses from the income of deceased is concerned, the Claims Tribunal has rightly deducted one-third in Claim Case No.5/13 (MAC No.1054/14), but erred in deducting one-third in Claim Case No.7/13 (MAC No.1055/14) as in this case the deceased was a bachelor and as such, 50% is to be deducted, as per decision of Hon'ble Supreme Court in the matter of **Sarla Verma & ors Vs. Delhi Transport Corporation & another** reported in **(2009) 6 SCC 121.**

18. Likewise, multiplier of '17' applied by the Claims Tribunal in Claim Case No.7/13 (MAC No.1055/14) is incorrect and it ought to be '18' as per decision of Sarla Verma's case (supra) wherein it has been held that where deceased was in the age group of 20 to 25 years, multiplier of 18 will be applicable. In case at hand, deceased Baijnath being 22 years of age, was admittedly in the age group of 20 to 25 years, therefore, multiplier of '18' would be applicable and not '17' as applied by the Claims Tribunal.

19. As regards compensation under other conventional heads in

both appeals i.e. for loss of estate and for funeral expenses, we are of the considered view that in the given facts and circumstances of the case, the same is on lower and deserves to be enhanced reasonably.

20. For the foregoing reasons, we propose to recompute the amount of compensation payable to claimant/appellants in MAC No.1054/14 & 1055/14 to award just compensation.

21. As regards MAC No.1054/14, the income of deceased is taken as Rs.2,500/- per month and since at the time of accident the deceased was below the age of 40 years and was not in permanent employment, in view of law laid down in the matter of **Pranay Sethi** (supra), the income of deceased is required to be increased by 40% towards future prospects, which comes to Rs.3,500/- [2500+1000 (40% of 2500)]. Accordingly, annual income of deceased for the purpose of calculating compensation comes to Rs.42,000/- (3500x12). Out of this amount, one-third is to be deducted towards personal & living expenses of the deceased and after deducting one-third, annual loss of dependency would come to Rs.28,000/- (42000-14000). By applying multiplier of 17, as applied by the Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.4,76,000/- (28000x17). Besides this, appellant, widow of deceased, is entitled for a sum of Rs.40,000/- towards spousal consortium, as held by Hon'ble Supreme Court in the matters of Pranay Sethi (supra) and **Magma General Insurance Company Limited vs. Nanu Ram**

alias Chuhru Ram & ors reported in **(2018) 18 SCC 130**. In addition to aforesaid amount, the appellant is also entitled to get a sum of Rs.15,000/- for funeral expenses; Rs.15,000/- for loss of estate. Thus, claimant/appellant is entitled for a total sum of Rs.,5,46,000/-, instead of Rs.2,11,000/- as awarded by the Claims Tribunal. This amount of compensation shall carry simple interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimant/appellant as compensation shall be adjusted from the total amount of compensation as calculated above.

22. As regards MAC No.1055/14, the income of deceased is taken as Rs.2,500/- per month and since at the time of accident the deceased was below the age of 40 years and was not in permanent employment, in view of law laid down in the matter of **Pranay Sethi** (supra), the income of deceased is required to be increased by 40% towards future prospects, which comes to Rs.3,500/- [2500+1000(40% of 2500)]. Accordingly, annual income of deceased for the purpose of calculating compensation comes to Rs.42,000/- (3500x12). Out of this amount, 50% is to be deducted towards personal & living expenses of the deceased and after deducting 50%, annual loss of dependency would come to Rs.21,000/- (42000-21000). By applying multiplier of 18, as held above, to annual loss of dependency, total loss of dependency would come to Rs.3,78,000/- (21000x18). Besides this, appellants No.1 & 2,

parents of deceased, are entitled for a sum of Rs.40,000/- towards filial consortium, as held by Hon'ble Supreme Court in the matters of Pranay Sethi (supra) and Magma General Insurance Company Limited (supra). In addition to aforesaid amount, the appellants are also entitled to get a sum of Rs.15,000/- for funeral expenses; Rs.15,000/- for loss of estate. Thus, claimant/appellants are entitled for a total sum of Rs.4,48,000/-, instead of Rs.2,16,000/- as awarded by the Claims Tribunal. This amount of compensation shall carry simple interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimant/appellant as compensation shall be adjusted from the total amount of compensation as calculated above.

23. Now we shall deal with the grounds raised in appeals and cross-objection preferred by owner and driver of offending vehicle.

24. Miss Singhai has raised two fold submissions, firstly that the Claims Tribunal has wrongly appreciated evidence of Ramkumar (AW-2) and arrived at a erroneous finding that on the date of accident, offending vehicle was plied for hire & reward i.e. as a commercial vehicle. Secondly, the Claims Tribunal erred in holding that non-applicant No.1 was not possessed of valid and effective driving license on the date of accident only on the basis of verification report submitted by the Insurance Company without proving the said document by

examining the Regional Transport Officer or any employee of Regional Transport Office, Bilaspur along with register maintained for issuance of license.

25. So far as first ground is concerned, we have perused the record. Issuance of policy of offending vehicle as private car policy is not in dispute. Original policy is available in record at Page No.96/152 and perusal of which reveals that it is a 'Private Car Policy (Zone A) Policy B Comprehensive' and has been issued for a period of one year starting from 3.10.1999 to 2.10.2000 (midnight). It is also not in dispute that deceased persons along with non-applicant No.1 and one Ramkumar were travelling in the offending vehicle, going to celebrate new year eve at Hirakund Dam, Sambalpur and on the way, the offending vehicle met with an accident. Evidence of Ramkumar (AW-2), who is one of occupants of offending vehicle and companion of deceased persons, has stated in Para-5 of his cross-examination as under:-

> “5. मैं वाहन में शराब नहीं पिया था परन्तु छबीलाल, पवन, ओमजय, इजारदार, दिलीप, मुकेश, बैजनाथ, चन्द्रेश, गोपाल, श्यामलाल, उन लोग शराब पिये हुये थे, जीप मैं लेकर नहीं आया था जीप कौन चलाया था मुझे नहीं मालुम जीप किराया में ली गई थी परन्तु कितना किराया में लिये थे मुझे नहीं मालुम मेरे से जीप किराया का पैसा कोई नहीं लिया था.”

26. Perusal of above quoted Para-5 of evidence of Ramkumar (AW-2) shows that he has admitted that he was not driving the Jeep, he is also not aware as to who drove the Jeep; the Jeep was hired but he does not know what was the fare/charges; no one has asked for fare of Jeep from him. Non-applicant

Nos.1 & 2 were represented by counsel. Even after remand of the case to the Claims Tribunal for deciding the specific issues including issues 'whether deceased persons were travelling as passengers on payment or travelling mere as occupants'; who was driving offending vehicle at the time of accident and; whether person driving offending vehicle was having valid and effective driving license to drive offending vehicle on the date of accident? The Claims Tribunal has recorded order sheet dated 3.7.2014 to the effect that on 28.6.2014 non-applicant No.1 & 2 have stated that they do not want to amend their pleadings, file any additional documents or lead further evidence. This being the position, the evidence of Ramkumar (AW-2) recorded by the Claims Tribunal on 13.7.2004 remained uncontroverted wherein he has specifically admitted that offending vehicle was hired.

27. The policy contains 'Limitation' clause which reads as under:-

> “Limitation:- Use only for social domestic and pleasure purpose and insured own business. The policy does not cover use for Hire or Reward, Organized racing, Speed testing and carriage of goods (other than samples) in connection with any trade or business or use for any purpose in connection with MOTOR TRADE.”

Admittedly, there is evidence available on record that on the date of accident, the offending vehicle was used for hire & reward, which amounts to breach of condition of policy, therefore, on this ground alone the insurance company is liable to be exonerated from its liability to indemnify insured.

28. As regards second ground raised on behalf of non-applicant Nos.1 & 2 with regard to license relying upon the documents placed on record as Annexure R1-1, which are copies of verification report of license issued in favour of non-applicant No.1 and photocopy of license which was issued on 26.5.2018. From bare perusal of verification report, it is apparent that this verification report has been issued by the Licensing Authority, Bilaspur on 3.3.2018 and copy of license, which is also placed on record, has been issued by the competent authority on 26.5.2018 under new pattern i.e. chip system. The Claims Tribunal has relied upon the verification report issued by the Licensing Authority placed on record as Ex.NA-2 on 28.5.2002, but no witness was examined from the RTO, Bilaspur and even license issuing register was not placed before the Claims Tribunal. In the light of availability of two verification reports by the same Licensing Authority, we find some force in the submission of learned counsel for driver of offending vehicle that verification report has not been proved by examining employee/ RTO concerned along with documents before the Claims Tribunal. However, as we have already held that the Claims Tribunal on the basis of evidence of Ramkumar (AW-2) has held that on the date of accident the offending vehicle, which was registered as private car, was used for hire & reward, therefore, finding on the issue of license in favour of driver of offending vehicle will not tilt the balance shifting liability of making payment of compensation from the driver &

owner of offending vehicle to the insurance company. Hence, we are not deciding issue with regard to license as raised by learned counsel for appellant-driver.

29. For the foregoing discussions, we do not find any merit in the appeals & cross-appeal filed on behalf of owner & driver of offending vehicle. The same are liable to be dismissed and are accordingly dismissed.

30. In the result, MAC No.1054/14 & 1055/14 filed on behalf of claimants are allowed in part, whereas cross appeal in MAC No.1054/14 & 1055/14, MAC No.209/16, 210/16, 211/16 & 212/16 filed on behalf of driver of offending vehicle stand dismissed.

31. The impugned award in MAC No.1054/14 & 1055/14 are modified to the extent as indicated in Para-21 & 22 of this order.

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

roshan/