NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1353 of 2014

{Arising out of order dated 29.10.2014 passed by learned Sixth Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh in Claim Case No.111 of 2013}

The Oriental Insurance Company Limited Through Divisional Manager, Office 1st Floor, Rama Trade Centre, In Front of Rajiv Plaza, Old Bus Stand, Tah. And Distt. Bilaspur C.G.

---- Appellant

Versus

1. Mohan Lal Sahu S/o Late Rajaram Sahu Aged About 33 Years
2. Johan Lal Sahu S/o Late Rajaram Sahu Aged About 27 Years
3. Ram Manohar Sahu S/o Late Rajaram Sahu Aged About 20 Years
4. Kumari Har Kunwar D/o Late Rajaram Sahu Aged About 16 Years

   Respondent No.4 is minor through Brother Respondent No.1 Mohan Lal Sahu S/o Late Shri Rajaram Sahu

   All R/o Village- Gondiaya Mohalla Oaklahi Para, P.S. Ratanpur, Distt. Bilaspur C.G.
5. Butani @ Manglu Ram Suryavanshi S/o Manharan Lal Suryavanshi Aged About 20 Years R/o Khaiyyapara, Ratanpur, P.S. Ratanpur, Distt. Bilaspur C.G., Through- Mukesh Tiwari, Age- 31 Yrs, S/o Chhottelal Tiwari, R/o Bangalipara, Sarkanda, P.S. Sarkanda, Distt. Bilaspur C.G.
6. Mukesh Tiwari S/o Chhottelal Tiwari Aged About 31 Years R/o Bangalipara, Sarkanda, P.S. Sarkanda, Distt. Bilaspur C.G.
7. Smt. Bhagwati Bai Sahu W/o Darash Ram Sahu Aged About 35 Years R/o Village- Madanpur, P.S. Madanpur, Distt. Bilaspur C.G.
8. Smt. Harbati Bai Sahu W/o Nirmal Sahu Aged About 25 Years R/o Near By Apollo Hospital, Rajkishore Nagar, P.S. Sarkanda, Tah. And Distt. Bilaspur C.G.

---- Respondents

MAC No. 338 of 2015

{Arising out of order dated 29.10.2014 passed by learned Sixth Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh in Claim Case No.111 of 2013}

1. Mohan Lal Sahu S/o Late Rajaram Sahu Aged About 33 Years
2. Johan Lal Sahu S/o Late Rajaram Sahu Aged About 27 Years
3. Ram Manohar Sahu S/o Late Rajaram Sahu Aged About 20 Years
4. Kumari Har Kunwar D/o Late Rajaram Sahu Aged About 16 Years

   Appellant No.4 Minor Through Natural Guardian Brother Appellant No. 1 Mohan Lal Sahu S/o Late Rajaram Sahu, aged about 33 years

   All R/o Village- Gondiaya Mohalla Oaklahi Para, P.S. Ratanpur, Tahsil And District Bilaspur, Chhattisgarh

---- Appellants

Versus

1. Butani @ Manglu Ram Suryavanshi S/o Shri Manharan Lal Suryavanshi Aged About 20 Years R/o Village- Khaiyyapara, Ratanpur, P.S. Ratanpur, Tahsil And District Bilaspur, C.G.

   Through Owner Mukesh Tiwari, S/o Shri Chhottelal Tiwari, aged about 31 years, R/o Bangalaipara Sarkanda, P.S. Sarkanda, Distt.- Bilaspur, Chhattisgarh
2. Mukesh Tiwari S/o Shri Chhottelal Tiwari Aged About 31 Years R/o Bangalaipara Sarkanda, P.S. Sarkanda, Distt.- Bilaspur, Chhattisgarh
3. The Oriental Insurance Co. Limited Through Divisional Manager, Office 1st Floor, Rama Trade Center, In Front Of Rajive Plaza, Old Bus Stand, Tahsil And District Bilaspur, Chhattisgarh
4. Smt. Bhagwati Bai Sahu W/o Darash Ram Sahu Aged About 35 Years R/o Village- Madanpur, P.S. Madanpur, Tahsil And District Bilaspur, Chhattisgarh
5. Smt. Harbati Bai Sahu W/o Shri Nirmal Sahu Aged About 25 Years R/o Nearby Apollo Hospital, Rajkishore Nagar, P.S. Sarkanda, Tahsil And District Bilaspur, Chhattisgarh

---- Respondents

MAC No.1353 of 2014

For Appellant	: Shri Raj Awasthi, Advocate.
For Respondents No.1 to 4	: Shri Rajesh Jain, Advocate.
For Respondent No.5	: None
For Respondent No.6	: Shri C.J.K. Rao, Advocate
For Respondents No.7 & 8	: None

MAC No.338 of 2015

For Appellants	: Shri Rajesh Jain, Advocate.
For Respondent No.1	: None
For Respondent No.2	: Shri C.J.K. Rao, Advocate
For Respondent No.3	: Shri Pankaj Agrawal, Advocate
For Respondents No.4 & 5	: None

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

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

23.09.2020

1. These two appeals are closely interlinked. The first one i.e. MAC No.1353 of 2014 has been filed by the Insurer of the offending vehicle, who has been held liable to satisfy the amount of compensation awarded by the Tribunal, whereas the other one i.e. MAC No.338 of 2015 has been

preferred by the Claimants seeking enhancement of compensation in respect of the death of the deceased occurred in a road traffic accident.

2. The pleadings and proceedings are referred to as given in MAC No.1353 of 2014.

3. On 18.06.2012, the deceased, by name, Rajaram Sahu was travelling in a private jeep bearing No.CG-10/ZD/1790 along with another person, namely, Nirmal Kumar, driven by the 5th Respondent, owned by the 6th Respondent and insured by the Appellant-Insurer. When the vehicle reached the place of occurrence, because of rash and negligent driving on the part of the driver, the Jeep turned turtle, causing fatal injuries to the deceased Rajaram Sahu, which led to the claim petition preferred by three sons and one minor daughter, arraying the married daughters in the party array as Respondents No.7 and 8.

4. The owner and driver did not choose to contest the matter and were set *ex parte*. The claim was mainly contested from the part of the Appellant-Insurer pointing out that, there was no liability for the Insurer to satisfy the same, insofar as the deceased was travelling in a private vehicle, which was covered by only an 'Act only Policy' and no additional premium was collected from the owner/insured to cover the risk in respect of any such passenger.

5. On conclusion of the trial, the Tribunal found that the accident was because of the negligence on the part of the 5th Respondent/driver of the jeep. Reckoning a sum of Rs.3,000/- as the notional monthly income and after deducting 1/3rd towards his personal expenses, multiplier of 9 (deceased who have crossed the age of 60 years) was applied, whereby the loss of dependency was worked out as Rs.2,16,000/-. Awarding a

further sum of Rs.9,000/- towards funeral expenses and Rs.5,000/- towards loss of estate, the total compensation was fixed at Rs.2,30,000/-, which was required to be satisfied with interest at the rate of 7.5% per annum from the date of filing of claim application till satisfaction. Turning down the objection raised by the Appellant-Insurer as to the absence of coverage under the policy, it was ordered to be satisfied by the Appellant-Insurer and hence the grievance.

6. It is stated on behalf of the Claimants that the total compensation awarded by the Tribunal is on the lower side and hence it is sought to be enhanced by filing MAC No.338 of 2015.

7. Heard the learned counsel for the respective parties on both the sides.

8. Coming to the appeal filed by the Insurance Company i.e. MAC No.1353 of 2014, it is pointed out by the learned counsel that in absence of any coverage, the liability ought not to have been mulcted on the Insurer.

9. We have gone through the policy produced before the Tribunal as well as before this Court as Annexure A/2, which clearly shows that it is a policy to cover the 'statutory risk' alone as envisaged under Section 147 of the Motor Vehicles Act, 1988. Apart from the basic third party premium of Rs.2,750/-, a further sum of Rs.100/- was collected towards personal accident for 'owner cum driver' and Rs.25/- towards the legally liability to the paid driver. No other amount was collected towards premium for satisfying the risk of any passenger and no coverage was provided in respect of any damage to the vehicle, to have it branded as 'Comprehensive/Package Policy'.

10. It is settled law that the statutory coverage under Section 147 of the Motor Vehicles Act, 1988 does not extend to cover the risk in respect of a

passenger in a private vehicle, unless wider coverage is provided on the basis of collection of additional premium. This being the position, the Tribunal went wrong in fastening the liability on the Appellant-Insurer instead of fixing it upon the driver and owner of the private jeep. As it stands so, the award passed by the Tribunal directing the Appellant in MAC No.1353 of 2014 (the Insurer) to satisfy the liability, stands set aside and the appeal (MAC No.1353 of 2014) is allowed to the said extent.

11. Coming to the appeal filed by the Claimants for enhancement of compensation, the Tribunal has reckoned the notional monthly income of the deceased as Rs.3,000/- per month. Since the accident was in the years 2012 and considering the fact that the deceased has crossed the age of 60 years, we find it appropriate to have it re-fixed as Rs.4,000/- per month.

12. The learned counsel for the Claimants submits that by virtue of the decisions rendered by the Apex Court in **Sarla Verma v. Delhi Transportation Corporation** reported in **(2009) 6 SCC 121** and the Constitution Bench in **National Insurance Company Limited v. Pranay Sethi & Others** reported in **(2017) 16 SCC 680**, 10% enhancement has to be provided towards 'future prospects' in respect of the persons above 50 years with no fixed income. We find it difficult to accept the said proposition. The future prospects can be given to persons above 50 years to an extent of 10% only “upto 60 years”. In the instant case, the deceased had crossed the age of 60 years and hence no future prospects can be reckoned.

13. The learned counsel for the Claimants submits further that the Tribunal has deducted 1/3rd towards the personal expenses of the deceased and

only 2/3rd has been reckoned as contribution to the family; whereas the deduction could have been only 1/4th as there were four dependents. Here again, it is to be noted that the decision rendered by the Apex Court with regard to an extent of deduction is with specific reference to the "number of dependents" in the family. Admittedly, the 1st Claimant was the married son of the deceased and was leading independent family of his own and as such, he cannot be treated as a dependent of the deceased at that relevant time. But at the same time, it is to be noted that even the 'married sons' are entitled to get compensation because of the loss of life of the deceased as the compensation will form part of the estate, which can be inherited by the persons concerned who are eligible for the same as held by the Apex Court in **National Insurance Company Limited v. Birender and Others** reported in **AIR 2020 SC 434**. This is equally applicable in the case of the married daughters, who are shown as Respondents No.7 and 8 in MAC No.1353 of 2014 and Respondents No.4 and 5 in MAC No.338 of 2015. As mentioned already, since the deduction towards personal expenses has to be considered with reference to the number of "dependents" in the family and further since the 1st Claimant cannot be treated as a dependent of the deceased as on the date of accident, the deduction made by the Tribunal to an extent of 1/3rd, reckoning only the balance of 2/3rd as contribution to the family is correct and no interference is warranted under this head. The Tribunal has reckoned the multiplier of '9', even after observing that he was 60 years of age as per the ruling rendered by the Apex Court in **Sarla Verma** (supra) and **Pranay Sethi** (supra). The multiplier of 9 is reckonable "upto 60 years". Once a person has crossed the age of 60 years, he will go to the next level. In the said circumstance, the multiplier has to be '7'. On re-working the actual compensation payable for the loss of life, it comes to

Rs.2,24,000/- (4000 x 12 x 2/3 x 7). Since the Tribunal has awarded only a sum of Rs. 2,16,000/- a balance sum of **Rs.8,000/-** is awarded under this head.

14. By virtue of the decisions rendered by the Apex Court as mentioned above, it stands settled that the Claimants are entitled to have compensation under the conventional heads, such as, funeral expenses and loss of estate at Rs.15,000/- each. Since the Tribunal has awarded only a sum of Rs.9,000/- towards funeral expenses, a balance amount of **Rs.6,000/-** is payable under this head. Since the Claims Tribunal has awarded only Rs.5,000/- towards loss of estate, a balance amount of **Rs.10,000/-** is payable under this head as well.

15. The scope of 'consortium' has been explained by the Apex Court in the subsequent verdict in **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram & Others** reported in **(2018) 18 SCC 130**. It can be of three types; **Parental consortium** (payable to children because of the death of parents); **Spousal consortium** (payable to the surviving spouse because of the death of the partner) and **Filial consortium** (payable to the parents because of the death of children). Since the Claimants are children of the deceased, there is no question of payment of 'Spousal Consortium'. The children i.e. Appellants No. 1 to 4 (three sons and one minor daughter) and Respondents No.4 and 5 (married daughters) together are entitled to get 'Parental consortium' and as such, a sum of **Rs.40,000/-** is awarded under this head. Thus, the total balance compensation payable comes to **Rs.64,000/-** (8000 + 6000 + 10,000 + 40,000) **(Sixty four thousand only)**.

16. The balance compensation awarded as above shall be paid with interest

@ 7% per annum from the date of the accident, till the date of deposit. Since we have already held that the risk of the passenger/deceased who was travelling in a private jeep covered by 'Act only Policy', is not liable to be compensated by the Insurer of the private jeep, the additional compensation ordered as above is required to be satisfied by the Driver and Owner of the jeep.

17. Incidentally, it is noted that when the appeal preferred by the Insurance Company i.e. MAC No.1353 of 2014, came up for consideration before the learned Single Judge on 23.12.2014, it was admitted and considering the I.A. No.1 (application for stay), following order was passed :

> “Since the amount awarded by the Tribunal is only 2,30,000/- the Insurance Company is directed to deposit the entire amount award by the Tribunal as ultimately if the Insurance Company succeeds and is exonerated from its liability it will have the liberty of getting the said amount recovered from the owner.”

It is reflected from the said order that though there was a direction to deposit the entire amount awarded by the Tribunal by the Insurer, there was no order for causing the amount so deposited to be released to the Claimants. In the said circumstance, we direct that the amount deposited shall be returned to the Appellant-Insurer in MAC No.1353 of 2014 immediately. If for any reason, the amount has already been released to the Claimants, the Appellant-Insurer shall be at liberty to get it recovered from the owner and driver of the jeep by pursuing appropriate steps in accordance with law.

18. It is made clear that the Claimants who are the Appellants in MAC No.338

of 2015 as well as Respondents No.4 and 5 (who are the non-applicants No.4 and 5 before the Tribunal and are the siblings of the Claimants) all the six children of the deceased are entitled to get the compensation including the additional compensation awarded by this Court in MAC No.338 of 2015 in an equal proportion. It is ordered accordingly. It is for the Claimants and Respondents No.4 and 5 in MAC No.338 of 2015 to approach the Tribunal for disbursement of the amount to the extent they are eligible. The appeal (MAC No.338 of 2015) stands allowed to the said extent.

Both the appeals are disposed of accordingly.

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

Anu