

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No.285/2014**

Bharti Axa General Insurance Co. Ltd. Aged About 25 Years Thru- Its
Legal Manager, Devendra Nagar Road, Chawla Complex, Tah. And Distt.
Raipur C.G., (Insurer/Respondent No.3)

---- Appellant**Versus**

1. Smt. Rambai Jangde, W/o Bhukhanlal Jangde Aged About 45 Years R/o Khatti, P.S. Mahasamund, Tah. And Distt. Mahasamund C.G.,
2. Bhukhanlal Jangde S/o Late Lalji Aged About 50 Years R/o Khatti, P.S. Mahasamund, Tah. And Distt. Mahasamund C.G.,
3. Ku. Kumari Bai D/o Bhukhan Lal Aged About 17 Years Minor, Thru- Mother Smt. Ram Bai, R/o Khatti, P.S. Mahasamund, Tah. And Distt. Mahasamund C.G.,
4. Ku. Anusuiya D/o Bhukhan Lal Aged About 14 Years Minor, Thru- Mother Smt. Ram Bai, R/o Khatti, P.S. Mahasamund, Tah. And Distt. Mahasamund C.G., (Claimants)
5. Narayan S/o Babulal Aged About 44 Years Profession- Driver, Employed By Shri- Rajesh Kant Jha, S/o D.N. Jha, R/o Rajendra Nagar, Jagdalpur, Distt. Bastar C.G., (Driver)
6. Rajesh Kant Jha S/o D.N. Jha Aged About 41 Years R/o Sakin- Rajendra Nagar, Jagdalpur, Distt. Bastar C.G., (Owner)

---- Respondents

For Appellant	:	Shri Bhavesh Acharya, Advocate
For Respondents No.1 to 5:	:	None, though served.
For Respondent No.6	:	Shri Praveen Kumar Tulsyan, Advocate

**D.B: Hon'ble the Chief Justice &
Hon'ble Shri Justice Sanjay S. Agrawal**

Award/Order on Board**Per Sanjay S. Agrawal, J.****16.10.2020**

1. Bharti Axa General Insurance Company Limited has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act, 1988) questioning the legality and propriety of the award dated 29.10.2013

passed in claim case No.28/2012, whereby the learned Tribunal, while fastening the liability upon the appellant/insurance company, has allowed the claim in part by awarding a total amount of compensation to the tune of Rs.5,57,000/- with 6% interest per annum from the date of filing of the claim petition till the date of actual payment. The parties to this appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that on 19.02.2012 at 5:00 pm, the deceased Netram @ Retram, while driving the motorcycle, was going along with his friends Chandrasekhar and Kashiram from village Uparawara to Chote Urla. At the relevant time, his vehicle was hit vehemently from its opposite side by the offending vehicle "Truck" bearing registration No.C.G.-17-H-0709 owing to the rash and negligent driving by its driver Narayan, as a result of which, said Netram and Chandrasekhar died, while Kashiram sustained grievous injuries, giving rise to the institution of the claim petition by the legal representatives of deceased Netram. According to them, the deceased, 20 years old, was a supervisor in brick-kiln and used to earn Rs.400/- per day and thus have claimed compensation of Rs.22,00,000/- under various heads.

3. The Non-applicants have contested the claim petition. According to the appellant/insurance company, the alleged offending vehicle was being driven by its driver without holding the effective and valid driving licence, and therefore, no liability could be fastened upon it.

4. After considering the evidence led by the claimants, it has been held by the Tribunal that the alleged accident occurred due to rash and negligent driving by the driver of the alleged offending vehicle resulting into the sad demise of Netram and Chandrasekhar while Kashiram sustained injuries. It held further while considering the driving licence of the said driver seized vide seizure memo (Ex.P.4) that he was holding the effective and valid driving licence and in

consequence, while disbelieving the defence of the insurer and by considering the income of the deceased to the tune of Rs.3,000/- per month, awarded the aforesaid amount of compensation along with its interest, as mentioned herein above.

5. According to the learned counsel for the appellant, the finding of the Tribunal holding that the driver of the alleged offending vehicle was possessing the effective and valid driving licence is apparently contrary to law. It is contended further that the deceased was unmarried son, yet the Tribunal has deducted 1/3rd of his income towards personal and living expenses of him instead of deducting half of it. The award impugned is, therefore, liable to be set aside and/or modified.

6. The main contention of the appellant/insurance company herein is that since the driver of the alleged offending vehicle was not possessing the effective and valid driving licence and was being used as such in violation of the policy, and therefore, no liability ought to have been fastened upon it. In order to get its exoneration, the burden to establish the alleged breach was upon the insurance company. However, no evidence was led in order to establish the same. That apart, from perusal of the seizure memo (Ex.P.4), the driving licence of the driver of the alleged offending vehicle was recovered from him, yet no effort was made in order to ascertain its genuineness from the concerned Licensing Authority. In absence thereof, the Tribunal has not committed any illegality in fastening the liability upon the insurance company.

7. It is true that the deceased was unmarried son, and therefore, half of his income is to be deducted, instead of one-third, towards his personal and living expenses in order to determine the actual amount of compensation towards the dependency, as contended by the learned counsel for the appellant. However,

from perusal of the award impugned, it appears that while determining the amount of compensation, future prospects of his income has not been taken into consideration for assessing the actual amount of compensation in order to provide just and fair compensation payable to the claimants. Under such circumstances, it would not be appropriate to disturb the said finding of the Tribunal in view of the benevolent provisions of the Act, 1988.

8. In view of above, the appeal, being devoid of merit, is accordingly dismissed. No order as to costs.

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

Sd/-
(Sanjay S. Agrawal)
Judge