NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.207 of 2014

1. Usha W/o Thakur Ram Patil, Aged About 30 Years.
2. Dinesh @ Deenu S/o Thakur Ram Patil Aged About 8.
3. Ku. Aarti D/o Thakur Ram Patil Aged About 5 Years.
4. Deepak S/o Thakur Ram Patil Aged About 3 Years.
5. Chainu S/o Late Ranjan Patil Aged About 52 Years.
6. Triveni W/o Chainu Patil Aged About 50 Years.

Appellant Nos.2, 3 & 4 are minor, through natural guardian Mother-Usha, All are R/o- Village- Borsi, P. S. Berla, Civil & Revenue Distt. Durg C.G.

---- Appellants/Claimants

Versus

1. Manjeet Singh S/o Hazara Singh Kathmaar Permanent R/o- Khadka Chowk, Gadkari Nagar, National Highway No. 6, Bhusawal, P. S. Bazaar Pethu, Bhusawal, Distt. Jalgaon (Maharashtra), At Present R/o- Bombay Giids Transport, Tatibandh, Raipur, P.S. Amanaka, Raipur, Civil & Revenue Distt. Raipur C.G. (Owner & Driver of Truck No.MH19-Z-0654).
2. Shri Ram General Insu. Co. Ltd. Thru- Divisional Manager, Shri Ram General Insu. Co. Ltd., Plot No.1, Fourth Floor, Maruti Heights, Near Maruti Dealership, G.E. Road, Raipur, Civil & Revenue Distt. Raipur C.G.

--- Respondents

For Appellants	:	Mr. Amiyakant Tiwari, Advocate.
For Respondent No.1	:	Mr. R. K. Pali, Advocate.
For Respondent No.2	:	Mr. S.S Rajput, Advocate.

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

Per Parth Prateem Sahu, J

21/08/2020

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by learned 4th Additional Motor Accident Claims Tribunal, Raipur vide award dated 03.01.2014 passed in Claim Case No.36/2012.

2. Facts relevant for disposal of this appeal are that on 19.02.2011, at about 10:00 pm Truck bearing registration No. MH/19/Z/0654 (for short 'the offending vehicle), driven by non-applicant No.1/respondent No.1/owner-driver rashly and negligently dashed bicycle of Thakur Ram Patil (deceased) on account of which, he fell down and sustained grievous injuries over his person. He was taken to Mekahara Hospital at Raipur where during the course of treatment, he scummed to the injuries suffered by him. Accident was reported to Police Station- Gadhiyari based on which crime bearing No.81/11 for the offence under Sections 279, 337 & 304A of the IPC was registered against respondent No.1/owner-driver.

3. Claimants, who are widow and parents of deceased, filed an application under Section 166 of the Act of 1988 before the Tribunal claiming Rs.11,90,000/- as compensation on the ground that on the date of accident, deceased was working in a factory and thereby earing Rs.6,000/- per month.

4. Non-applicant No.1/owner-driver of offending vehicle submitted reply to application and denied all pleadings made therein against him. He further pleaded that on the date of accident, deceased was riding bicycle under influence of liquor and, as such, he himself was responsible for the accident. It was also pleaded that on the date of accident, offending vehicle was insured with Insurance Company, hence, he is not liable for payment of the amount of compensation.

5. Respondent No.2/Insurance Company also filed its reply and denied the pleadings made in application. It was pleaded that on the date of accident, offending vehicle was insured within conditions mentioned in

the Insurance Policy. It was further pleaded that there was breach of condition of Insurance Policy as on the date of accident, respondent No.1/owner-driver was not possessing valid and effective driving license to drive offending vehicle. Even there was no valid permit in respect of offending vehicle. In these circumstances, Insurance Company is not liable to indemnify the insured.

6. On appreciation of pleadings and evidence placed on record by respective parties, the Tribunal allowed claim application in part, awarded a sum of Rs.4,72,800/- as compensation in a death case, alongwith interest @ 6% p.a by holding that late Thakur Ram Patil died in the accident occurred due to rash & negligent driving of offending vehicle by non-applicant No.1 and that offending vehicle was plied on road without valid permit. The Tribunal has exonerated the Insurance Company from its liability on the ground of breach of condition of Insurance Policy and fastened liability upon respondent No.1/owner-driver.

7. Mr. Amiyakant Tiwari, learned counsel for the appellants submits that the Tribunal committed error in assessing income of deceased only as Rs.3,000/- per month, ignoring the pleadings and evidence placed on record by claimants with regard to the income of deceased as Rs.6,000/- per month. He further submits that the Tribunal erred in not awarding any amount towards future prospects and the amount awarded under other conventional heads is also on lower side. On the aforesaid grounds, he prays that the amount of compensation awarded to claimants be enhanced suitably by modifying the impugned award. He lastly submits that even if the Tribunal arrived at a finding that there was breach of conditions of Insurance Policy for want of permit, a direction to pay and

recover against respondent No.2/Insurance Company should have been issued to protect the interest of third party.

8. Per contra, Mr. Rajkumar Pali, learned counsel for respondent No.1/owner-driver submits that the Tribunal committed error in exonerating the Insurance Company from its liability as on the date of accident, offending vehicle was having valid permit, which could not be placed before the Tribunal, but the same is filed before this Court alongwith an application under Order 41 Rule 27 of CPC. A glance of which would clearly shows that on the date of accident, offending vehicle was having valid permit. He also submits that cross- appeal/objection was also filed by the respondent No.1/owner-driver challenging the finding with regard to the breach of conditions of Insurance Policy but said appeal/objection came to be dismissed on account of non-submission of receipt of statutory deposit as provided under Section 173 of the Act of 1988. Alternatively, he submits that impugned award passed by the Tribunal is just and proper and it does not call for any interference.

9. Shri S.S Rajput, learned counsel for respondent No.2/Insurance Company submits that the Tribunal after considering the materials available on record and looking to the provisions of law, recorded the finding that there was breach of conditions of Insurance Policy and exonerated the Insurance Company from its liability. He further submits that though respondent No.1/driver-owner appeared before the Tribunal but not placed copy of permit, if any available on the date of accident, which is sufficient to hold that on the date of accident, there was no valid permit in favour of offending vehicle to ply it in the State of Chhattisgarh. He also submits that documents placed before this Court alongwith an

application under Order 41 Rule 27 of the CPC cannot be accepted as evidence. He further points out that alongwith said application respondent No.1/driver-owner has also placed on record two receipts, which are of the same date, and said receipts are with regard to imposition of penalty upon offending vehicle. The imposition of penalty may be for not having valid permit on the date of accident to ply it in the State of Chhattisgarh. He prays that submission of learned counsel for respondent No.1/owner-driver cannot be accepted.

10. We have heard learned counsel for the parties and also perused the records.

11. So for as the first argument raised by the learned counsel for the appellants with regard to the income of deceased is concerned, claimants pleaded in their application that on the date of accident, deceased was working in a factory and thereby earning Rs.6,000/- per month. However, claimants failed to produce any documentary evidence on record to prove income of deceased as pleaded by them. In such a situation, it will be proper to assess monthly income of deceased on notional basis. Looking to nature of work of deceased, as pleaded before the Tribunal, and considering the wage rate prevailing in Distt- Raipur at the time of accident, income of deceased can be assessed at Rs.4,000/- per month on notional basis, presuming him to be engaged as a 'manual labour. Accordingly, we fix the monthly income of deceased as Rs.4,000/-.

12. Coming to the next argument advanced by learned counsel for appellants/claimants that the Tribunal committed error in not awarding any amount towards future prospects. Issue with respect to award of

future prospects has been dealt with and decided in the matter of **National Insurance Co. Ltd. v. Pranay Sethi & Ors**[1] wherein Hon'ble Supreme Court has held that in case the deceased below the age of 40 years and not in permanent employment, an addition of 40% of actual income of deceased towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads thus :-

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

13. Perusal of record would show that claimants have not adduced any cogent and documentary evidence on record with respect to age of deceased. However, in application they have pleaded age of deceased as 34 years whereas in the post-mortem report age of deceased is mentioned as 38 years. Thus, in absence of any specific documentary evidence with regard to the age of deceased, we find it appropriate to accept age of deceased as 38 years, as mentioned in application and post-mortem report.

14. Perusal of impugned award reveals that the Tribunal had deducted 1/3 from income of deceased towards his personal and living expenses. In the case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and Anr**[2]**,** it was held by Hon'ble Supreme Court that where

1 (2017) 16 SCC 680
2 (2009) 6 SCC 121

number of dependent is 4 to 6, 1/4 is to be deducted towards personal and living expenses from income of deceased. In case at hand, appellant No.5 (father of deceased) is shown to be 52 years of age on the date of filing of application, whereas, as per Post-Mortem report, deceased was 38 years of age. It is difficult to accept that father of deceased ie appellant No.5 was dependent on the income of deceased. In such a situation, total numbers of dependent would become 4, and being so deduction towards personal and living expenses of deceased would be ¼ and not 1/3 as done by the Tribunal. Accordingly, we hold that ¼ is to be deducted from income of deceased towards his personal and living expenses.

15. Perusal of impugned award reveals that multiplier of 16 is applied by the Tribunal is incorrect in the given facts and circumstances of the case. In view of the age of deceased, which was 38 years as per post-mortem report, the Tribunal should have applied multiplier of 15, as has been held by the Hon'ble Supreme Court in the matter of **Sarla Verma's case (supra)** that where the deceased is between the age group of 36 to 40 years, multiplier of 15 is to be taken for the purpose of computation of loss of dependency. Therefore, proper multiplier to be applied for assessing loss of dependency would be 15 and not 16 as applied by the Tribunal.

16. The Tribunal has awarded a total sum of Rs12,000/- under other conventional heads, which in the opinion of this Court is on lower side and the same is required to be enhanced in view of the decision of Supreme Court in the case of Pranay Sethi (supra) and **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhuru Ram**[3].

3 2018 18 SCC 130

17. For the foregoing reasons, we proposed to recompute the amount of compensation awarded by the Tribunal.

18. **I**ncome of deceased is taken as Rs.4,000/- per month as held above, and by adding 40% of income towards future prospects, in view of the guidelines issued by the Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra), which comes to Rs.1,600/- (40% of 4000), total monthly income of deceased is assessed at Rs.5600/- (4000 +1600) and accordingly yearly income of deceased comes to Rs.67,200/- (5600X12). After deducting ¼ towards personal & living expenses from income of deceased i.e Rs.16,800/- (1/4 of 67200), yearly dependency would come to Rs.50,400/- (67200-16800). By applying multiplier of 15, total loss of dependency will come to Rs.7,56,000/- (50400 X15).

19. The Hon'ble Supreme Court in the case of **Pranay Sethi** (supra) has held that the loss of consortium for spouse to be awarded as Rs.40,000/- as per the dictum of the supreme Court in the case of **Magma General Insurance Co. Ltd** (supra), the children will be entitled for loss of parental consortium of Rs.40,000/-, Rs. 40,000/- towards loss of filial consortium to the aged parents, Rs, 15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

20. Now appellants/claimants will be entitled for a total sum of **Rs.9,06,000/-** instead of **Rs.4,72,800/-** as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

21. Now, we will deal with the submission made by learned counsel for respondent No.1/owner-driver with regard to the application under Order 41 Rule 27 of CPC.

22. On perusal of the said application, particularly page No.10, it is apparent that in-charge officer of Transport Flying Scott, Bilaspur had imposed fine of Rs.1500/- upon respondent No.1/owner-driver on 03.02.2011. Said fine has been imposed under Section 200 of the Act of 1988 for violating the provisions of Sections 177, 178, 179, 180, 182, 183, 184, 186, 191, 192, 194, 196, 198 of the Act of 1988.

23. Section 177 prescribes for general provisions for punishment of offences, respondent No.1/owner-driver though represented by an Advocate before the Tribunal and submitted reply, but he became ex-parte and not placed on record alogwith the reply, the copy of permit.

24. The Tribunal has taken note off, that after the accident, the police seized several documents from the possession of respondent No.1/owner-driver, one permit was also seized from his possession, which was valid for the period from 23.05.2011 to 22.05.2012, but copy of permit, as placed on record within an application under Order 41 Rule 27 of CPC, was not seized. If there was a permit of offending vehicle for the period on which the accident took place, the same would have been filed. However, respondent No.1/owner-driver, after filing of reply became ex-parte and did not enter into the witness box to prove his case.

25. In view of above materials available on record and particularly looking to the fact that about 6 documents were seized by the police from possession of respondent No.1/owner-driver relating to offending vehicle but not the permit of the period of accident, we do not find any error in the

finding recorded by the Tribunal with regard to a breach of condition of Insurance Policy. We also do not find any reason to consider the application under Order 41 Rule 27 and the same is hereby rejected.

26. Looking to the fact that this is an appeal filed by the claimants and they have also challenged exoneration of Insurance Company from its liability and submitted before this Court that atleast a direction to pay and recover be issued so that interest of the claimants can be protected, we have perused the policy conditions and the risk covered under the policy.

27. In case at hand, Insurance Policy covering risk of a third party therein is not disputed by the Insurance Company. The dispute is to the effect that there was no valid permit in respect of offending vehicle, which amounts to breach of condition of Insurance Policy.

28. The Hon'ble Supreme Court in the case of **Amrit Paul Singh and another v. Tata AIG General Insurance Company**[4] has considered the issue with regard to the breach of conditions of Insurance Policy on account of not having valid permit with the offending vehicle on the date of accident, and held as under :-

> "24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a

4 (2018) 7 SCC 558

> permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh, National Insurance Co. Ltd. v. Swarn Singh (2004) 3 SCC 297 and Lakhmi Chand, Laxmi Chand v. Reliance General Insurance (2016 3 SCC 100) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. ..."

29. In the aforementioned case, the Hon'ble Supreme Court in a very categorical term held that plying a vehicle in public place without permit is a fundamental statutory infraction, but has further held that for such cases the direction to pay and recover can be issued and the same will be inconsonance with the principles stated by the Hon'ble Supreme Court in its earlier judgment in case of **National Insurance Company v. Swarn Singh & Ors[5].**

30. Taking support of the aforementioned law laid down by the Supreme Court in case of **Amrit Paul Singh (supra),** we direct the respondent/Insurance company to first deposit the entire amount of compensation alongwith interest and thereafter recover the same from respondent No.1/owner-driver. It is made clear that for the purpose of

5 2004 3 SCC 297

recovery of amount of compensation so deposited, Insurance Company will not be required file a separate suit but and it can file an application for execution in the very same proceedings.

31. In the result, appeal is allowed in part and the impugned award stands modified to the extent as indicated herein-above.

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

Jamal/-