NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 567 of 2018

Oriental Insurance Company Limited, Laxman Avenue Medical College Road, Jagdalpur, District Bastar (C.G.)
Policy No. 192091/31/2016/1066, Motorcycle No. C.G. 27-B-0996, Validity 09.12.15 to 08.12.16. (Insurer) --- **Appellant**

versus

1. Smt. Anita wd/o Ramnayak, aged about 23 years, caste Banjara, R/o Village Mohlai, School para, Post Mohlai, Police Station and District Kondagaon (C.G.) (Claimant)

2. Sominath, S/o Panku Korram, aged about 22 years, R/o village Bade Kurusnar, Police Station Mardapal, Tahsil and District Kondagaon (C.G.) (Driver of offending motorcycle No. C.G. 27-B-0996)

3. Sonadhar, S/o Maehsh Ram Lohar, aged about 25 years, R/o village Paroda, Post Matwal, Police Station Mardapal, District Kondagaon (C.G.) (owner of offending motorcycle No. C.G. 27-B-0996)

4. Ghasiram, S/o Ghassuram, aged about 40 years, R/o village & post Mohlai, Tahsil and District Kondagaon (C.G.) (Owner-cum-Driver of offending motorcycle No. C.G. 17-E-6428) **--- Respondents**

For Appellant : Shri Raj Awasthi, learned counsel.

Hon'ble Shri Justice Sanjay S. Agrawal

Order / Award on Board

26.06.2020

1. This Appeal has been preferred by the Appellant/Oriental Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the legality and propriety of the award dated 03.01.2018 passed by the Motor Accident Claims Tribunal, Kondagaon (C.G.) in Claim Case No.69/2017, whereby, the Claims Tribunal, while exonerating the insurance company and by applying the principles of pay and recover, allowed the claim in part and awarded a total sum of Rs.7,12,600/- with 9% interest per annum from the date of failing

of the claim petition till its realisation. 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 07.12.2016 at 3:30 PM, the deceased Ramnayak was returning from Kondagaon to village Mohlai along with his friend Ghasiram on his motorcycle while sitting as a pillion rider and as soon as they reached near the village Jampadar, it was dashed vehemently from its opposite side by the offending vehicle (another motorcycle) bearing its registration No.C.G.-27-B-0996 owned by Non-Applicant No.2 Sonadhar, which was insured with the appellant/insurance company. At the relevant time, the alleged offending vehicle was being driven rashly and negligently by its driver Sominath, as a result of which, the deceased sustained serious multiple injuries and expired in the Hospital on the same date.

3. On account of the aforesaid accident, the claimant being widow of the deceased, instituted a claim petition under Section 166 of the Act of 1988 by submitting, inter alia, that her husband Ramnayak, a 27 years old, was a Coolie (labourer) by profession and used to earn Rs.200/- per day and thus total amount of compensation to the tune of Rs.15,00,000/- has been claimed under various heads.

4. The Non-Applicants have contested the aforesaid claim and the Tribunal, while considering the evidence led by the parties, allowed the claim in part by awarding total amount of compensation, as observed herein above. It held further while entertaining the issue No.4 that the driver of the offending vehicle was not possessing the effective and valid driving license and in consequence, while exonerating the insurance company from its liability, has applied the principles of pay and recover by directing the appellant/insurance

company to first pay the said amount of compensation payable to the claimant and then to recover the same from the owner and driver of the alleged offending vehicle. The direction of the Tribunal as such has been questioned by way of this appeal.

5. Shri Raj Awasthi, learned counsel appearing for the appellant submits that once having held that the vehicle in question was being used in violation of the insurance policy, the direction as such ought not to have been issued. According to him, the Tribunal has committed an illegality in applying the principles of pay and recover while directing as such.

6. I have heard learned counsel for the appellant and perused the entire record carefully.

7. The contention as raised herein above by the learned counsel for the appellant, however, remains no more *res integra,* in view of the principles laid down by the Supreme Court in the matter of ***Manager, National Insurance Company Limited*** vs. ***Saju P. Paul and Another*** reported in **(2013) 2 SCC 41** wherein at paragraphs 20 & 26, it has been observed as under:-

> **20.** The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (respondent no. 2 herein).
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> **26.** The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in *Baljit Kaur (National Insurance Co. Ltd. v. Baljit Kaur, (2004) 2 SCC 1)* and *Challa Upendra Rao (National Insurance Co. Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517)* should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years' old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court

> passed on 01.08.2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along-with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in the case of *Challa Upendra Rao."*

8. Applying the aforesaid principles to the case in hand, the Tribunal has not committed any illegality in applying the principles of pay and recover while passing the award impugned.

9. Consequently, the appeal, being devoid of merit, is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-

(**Sanjay S. Agrawal)**
Judge

Anjani