NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 948 of 2012

1. Vishal Ratnani, S/o Gopal Ratnani Aged About 23 Years R/o Katora Talab, Gali No.5, Thana Civil Lines, Raipur, Chhattisgarh (**Owner**)
2. Dharampal Kurrey S/o Salikram Kurrey R/o Village Pirda, Thana Mandir Hasaud, Dist. Raipur C.G. (**Driver**)

---- Appellants

Versus

1. Smt. Neema, W/o Tamanlal Sahu Aged About 42 Years
2. Tankesh Kumar Sahu, S/o Late Tamanlal Sahu Aged About 21 Years

   Both R/o Village Piprod, Thana Gobranawapara, District : Raipur, Chhattisgarh
3. National Insu. Co. Ltd. Mobin Mahal , Raipur Tah. and District : Raipur, Chhattisgarh(**Insurer**)

-----Respondents

For Appellants	:	Shri SS Rajput, Advocate
For Respondents 1 and 2	:	Shri AL Singraul, Advocate
For Respondent- 3	:	None appears.

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J
09.06.2020

1. This appeal has been filed by the owner and driver of Dumper bearing No.CG-04G-5301 (for short, 'offending vehicle') challenging impugned award dated 30.07.2012 passed by the Chief Motor Accident Claims Tribunal, Raipur (CG) (for short, 'Claims Tribunal') in Claim Case-151 of 2011, wherein learned Claims Tribunal allowed claim application filed by the respondents-1 and 2/claimants in part and awarded a sum of Rs.3,76,104/- as compensation to claimants/respondents-1 and 2 herein, with interest @ 6% from the date of filing of claim application till its realisation, fastening liability upon appellants /non-applicants 1 and 2.

2. Facts relevant for disposal of this appeal are that on 15.06.2011 at about 5.30 am, when Tamanlal Sahu was riding a Bullock-cart, offending vehicle driven by non-applicant 1 dashed Bullock-cart. In the said accident, Tamanlal Sahu suffered grievous injuries over his person and succumbed to the injuries during the course of treatment.

3. Claimants, who are widow and son of deceased-Tamanlal Sahu filed claim application before learned Claims Tribunal claiming Rs.22,00,000/- as compensation mentioning therein that deceased was an able person and earning Rs.300/- per day as agriculture labour and they were dependent on him.

4. Non-applicants 1 and 2 submitted their reply to the claim application jointly and pleaded that there was negligence on the part of deceased, who was riding Bullock-cart. Offending vehicle was insured with NA3 and liability if any, of satisfying the amount of compensation, would be on the Insurance Company amongst other grounds.

5. Non-applicant 3/Insurance Company submitted reply to the claim application pleading therein that non-applicant 1/driver of offending vehicle was not possessing valid and effective driving license with him on the date of accident; there was no valid permit and fitness certificate of offending vehicle to ply it on the road; and there was contributory negligence of deceased in the accident amongst other.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties, held that death of deceased was on account of rash and negligent driving of offending vehicle by non-

applicant 1. It was also held that non-applicant 1 failed to prove that he was possessing valid and effective driving license on the date of accident. Learned Claims Tribunal while awarding a sum of Rs.3,76,104/- to the claimants, exonerated Insurance Company from its liability to satisfy the amount of compensation and fastened the liability upon non-applicants 1 and 2/ appellants herein.

7. Learned counsel for the appellants submits that driver of offending vehicle was having valid and effective driving license on the date of accident and learned Claims Tribunal erred in exonerating the Insurance Company from its liability to satisfy the award. It is also pointed out that Insurance Company has not lead any evidence to prove the defence taken by the Company that driver of offending vehicle was not possessing valid and effective driving license. He points out that it is the burden of Insurance Company to prove the fact asserted by it. He also submitted that the amount of compensation awarded by learned Claims Tribunal is on higher side.

8. Per contra, Shri AL Singraul, learned counsel for respondents/claimants submits that he also filed cross-objection challenging inadequate amount of compensation awarded by learned Claims Tribunal. He further submits that learned Claims Tribunal erred in assessing income of the deceased; in not awarding any amount towards future prospects; and further, very meagre amount was awarded on other conventional heads. Looking to the fact that claimants are poor persons and doing labour work, a direction ought to have been issued of pay and recover, protecting the interest of claimants.

9. Shri Rajput, learned counsel for the appellants/owner and driver of offending vehicle opposes the submissions of enhancement of award made by learned counsel for the claimants and submits that the award passed by learned Claims Tribunal is just and proper in the facts and circumstances of the case, which do not call for interference by this Court.

10. We have heard learned counsel for the respective parties and perused the record.

11. So far as the ground raised by the appellants/owner and driver of offending vehicle, that driver of offending vehicle was possessing valid and effective driving license is concerned, it is liable to be rejected at the threshold as the appellants though appeared and represented through their advocate before learned Claims Tribunal, they have not placed driving license on record in support of their pleadings. Perused documents of Claim Case, copy of final report along with copy of FIR, MLC, Death Certificate, Post-mortem report and Seizure memo prepared by investigating agency. FIR was lodged on the same day of accident ie on 15.06.2011, within an hour of the accident in which, driver of offending vehicle has been shown as accused. During the course of investigation, Police seized documents namely, Registration Certificate of offending vehicle, fitness certificate, permit, Insurance from the possession of driver, who was driving the offending vehicle but NA1/driver has not submitted or placed copy of driving license before the investigating agency. Apart from above, appellants appeared before learned Claims Tribunal, submitted reply to the claim application, participated in the proceedings as NAW1 and 2, also produced and marked copies of RC

Book, Insurance Policy, fitness certificate and permit as Ex.D1A, D2A, D3A and D4A respectively, but they have not produced copy of driving license of driver/ NA1.

12. This appeal has been filed challenging impugned award dated 05.10.2012 before this Court but subsequent to filing of this appeal, till date, appellants have not placed copies of license before this court also to support their contention.

13. In view of above facts emerging from the record, we are unable to accept submissions made by learned counsel for the appellants that it is the burden of Insurance Company to prove the defence taken by them that driver of offending vehicle was not having valid and effective driving license. When owner and driver appeared before learned Claims Tribunal and represented by advocate, primarily it was burden upon the appellants to place copy of license as evidence of NA1 was having the license and it is only thereafter, the burden will shift upon Insurance Company to prove that it was not valid and effective. In this case, copy of license is not available on record nor seized by Police.

14. Unless and until copy of license is submitted by the appellants, burden of proof cannot be shifted upon Insurance Company. The burden is upon owner and driver of offending vehicle to prove that on the date of accident, driver of offending vehicle was having valid and effective driving license with him.

15. In view of above, submission made by learned counsel for the appellants with regard to driving license is not acceptable and is hereby repelled.

16. The other ground raised by learned counsel for the appellants that amount of compensation awarded to claimants is on higher side, we will consider this ground along with cross-objection/cross appeal filed by the claimants.

17. The respondents/claimants have filed cross-objection for enhancement of the award on the ground that the income of deceased assessed by learned Claims Tribunal is on lower side. In these facts of the case, we are deciding the ground raised by appellant that compensation to be on higher side taken in appeal and the ground of inadequacy of the compensation taken in cross-objection by claimants together.

18. So far as submission made by learned counsel for the respondent that learned Claims Tribunal erred in assessing income of deceased, which is on lower side except the pleading and oral submission made by the witnesses examined on behalf of the claimants, there is no other material available on record to prove income of deceased. When income of deceased could not be proved by placing cogent and admissible piece of evidence, then, proper course for assessing income of deceased is to assess it on 'notional basis', keeping in mind the price index, cost of living and wage structure on the date of accident ie 15.06.2011. Treating the engagement of deceased as ordinary manual labour, we deem it fit and

proper to assess income of deceased as Rs.4,000/- per month, instead of Rs.3,000/-, as assessed by learned Claims Tribunal.

19. Learned Claims Tribunal held the age of deceased as 45-50 years, based on the post-mortem report. There will be an addition of 25% of assessed income towards future prospects of deceased, which makes total monthly income of deceased to the tune of Rs.5,000/- {4000 + (4000 x 25/100)} per month for the purpose of assessing compensation to the claimants.

20. Learned Claims Tribunal awarded only Rs.2,000/- towards funeral expenses, Rs.5,000/- towards loss of consortium to the spouse and Rs. 5,000/- towards love and affection to the child, thereby awarding total sum of Rs.12,000/- towards other conventional heads, which, in the opinion of this Court, is on lower side in view of law laid down by Hon'ble Supreme Court in the matters of **National Insurance Company Limited Vs Pranay Sethi and others** reported in 2017(16)SCC680 and **Magma General Insurance Company Vs Nanu Ram @ Chuhru Ram and others** reported in 2018 (18) SCC 130.

21. In view of above facts and circumstances of the case, impugned award passed by learned Claims Tribunal requires re-consideration and re-calculation.

22. As we have assessed income of deceased as Rs.4,000/- per month, and by adding 25% of established income towards future prospects, monthly income of deceased comes to Rs.5,000/- and yearly income would be Rs.60,000/- (5000 x 12). By deducting 1/3rd of income of

deceased towards personal and living expenses of deceased, yearly dependency would come to Rs.40,000/- {60000 – (60000 x 1/3)}. On the date of accident, deceased was between 45-50 years of age, therefore, appropriate multiplier is 14.

23. By multiplying yearly loss of dependency with multiplier of 14, total loss of dependency comes to Rs.5,60,000/- (40000 x 14). Apart from this amount, claimants will be further entitled to Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate, Rs.40,000/- towards spousal consortium, Rs.40,000/- towards parental consortium and Rs.10,000/- towards pain and suffering, though death of deceased was instantaneous.

24. Now appellants/claimants are entitled for a total sum of Rs.6,80,000/-(Rupees six lakh eighty thousand), instead of Rs.3,64,104/- as assessed by learned Claims Tribunal.

25. Amount of compensation will carry interest @ 7% per annum from the date of filing of claim application till its realisation. Other conditions imposed by learned Claims Tribunal shall remain intact.

26. The last submission made by learned counsel for the cross-objectors/claimants that claimants are poor persons and they have not received the fruits of impugned award till date and prays for a direction to be issued against respondent-Insurance Company to pay and recover.

27. We have given our deep consideration towards the above submission of learned counsel for the claimants and considering the

object of 'Motor Vehicle Act, 1988', which is a beneficial piece of legislation as also the provision of Section 147 and 149 of Motor Vehicles Act, 1988 for granting compensation to the claimants, so that livelihood of dependants of deceased can be compensated suitably and they must receive the compensation at the earliest.

28. Learned Claims Tribunal has exonerated Insurance Company only on the ground that driver of offending vehicle was not having a valid and effective driving license as the appellants herein failed to prove their pleading that driver was possessing effective and valid driving license with him on the date of accident, there is is no dispute with regard to Insurance Policy of the offending vehicle on the date of accident.

29. The doctrine of pay and recover has been considered by the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Challa Bharathamma and others**[1]. Relevant portion of the said judgment reads as under:-

> “13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending

[1] **(2004) 8 SCC 517**

vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

30. In another judgment of Hon'ble Supreme Court in the matter of **Manuara Khatun and others v. Rajesh Kumar Singh and others; and Mamoni Saikia Mohanty and others v. Rajesh Kumar Singh and others[2],** held thus:-

"19. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in *National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41*. Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in *Saju P. Paul's Case* (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in *Saju P. Paul's Case (supra)*. That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.

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21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Co. Ltd. (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in

[2] **(2017) 4 SCC 796**

causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Co. Ltd. respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of *Saju P. Paul's* case quoted supra.

22. Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that respondent No. 3-United India Insurance Company Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter respondent No. 3 - United India Insurance Company Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending Vehicle (Tata Sumo)-respondent No.1 in these very proceedings by filing execution application against the insured."

31. Recently, in the matter of **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others[3],** Hon'ble Supreme Court while dealing with the similar issue has held thus:-

"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 (supra) and Lakhmi Chand (supra) 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. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are

[3] **(2018) 7 SCC 558**

in consonance with the principles stated in Swarn Singh (supra) and other cases pertaining to pay and recover principle."

32. In the light of the above law laid down by Hon'ble Supreme Court and facts and circumstances of present case, we direct the Insurance Company to satisfy the entire amount of compensation and then to recover the same from owner of offending vehicle. Recovery proceeding of amount of compensation so deposited by the Insurance Company can be initiated in this very proceeding by filing an application for execution of impugned award and no separate suit or proceeding is required for the same.

33. In view of above discussions, the appeal filed by owner and driver of offending vehicle, appellants herein is dismissed. Cross-objection filed by claimants for enhancement of compensation awarded by learned Claims Tribunal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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