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HIGH COURT OF CHHATTISGARH, BILASPUR**M.A(C) No.557 of 2016**

1. Maan Bai W/o Late Kariya Baiga, Aged About 32 Years R/o Mangla, Bilaspur, Police Station- Civil Line, Tahsil And District- Bilaspur, Chhattisgarh, Chhattisgarh
2. Shyamkali D/o Late Kariya Baiga, Aged About 3 Years Minor, Represented Through Legal Guardian Mother Maan Bai W/okariya Baiga, Aged About 32 Years, R/o Mangla, Bilaspur, Police Station- Civil Line, Tahsil And District- Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh
3. Sukli Bai W/o Aghariya Baiga, Aged About 50 Years R/o Mangla, Bilaspur, Police Station- Civil Line, Tahsil And District- Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh
4. Aghariya Baiga S/o Late Chaitu Baiga, Aged About 55 Years R/o Mangla, Bilaspur, Police Station- Civil Line, Tahsil And District- Bilaspur, ChhattisgarhClaimants, District : Bilaspur, Chhattisgarh

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1. Jal Singh @ Dallu S/o Tihar Singh, Aged About 20 Years R/o Village- Bijra Kachhar, Police Station- Lormi, District- Mungeli, ChhattisgarhDriver Of Tractor Engine No. C.G.-04-L/2335 And Trolley No. C.G.-04-L/2381, Chhattisgarh
2. Birjhumam Baiga S/o Dheeraj Baiga, Aged About 26 Years R/o Village- Mauhamacha, Police Station- Lormi, District- Mungeli, ChhattisgarhOwner Of Tractor Engine No. C.G.-04-L/2335 And Trolley No. C.G.-04-L/2381, District : Mungeli, Chhattisgarh
3. Branch Manager, Royal Sunderam Allianz Insurance Company Limited, Branch Office- Rama Trade Centre, In Front Of Rajeev Plaza, Old Bus Stand, Bilaspur, Tahsil And District- Bilaspur, ChhattisgarhInsurer Of Tractor Engine No. C.G.-04-L/2335 And Trolley No. C.G.-04-L/2381, Chhattisgarh

---- Respondents

Shri Avinash Chand Sahu along with Shri Shantanu Parmanand, Counsel for the Appellants.

None for Respondents No.1 & 2, though served.

Shri Rohitashva Singh, counsel for Respondent No.3.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J
Award On Board

29.01.2020

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988')

questioning the legality and propriety of the award dated 24.02.2016 passed by the 6th Additional Motor Accidents Claims Tribunal, Bilaspur (CG) (for short 'the Claims Tribunal') in Claim Case Nos.783/2014 whereby, the Claims Tribunal, while allowing the claim in part, awarded a total amount of compensation to the tune of Rs.4,67,000/- with 7.5% interest per annum from the date of filing of the claim Petition till its realization, while exonerating the Insurance company from its liability. The parties to this Appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated, the facts of the case are that on 25.04.2014, deceased Kariya Baiga was traveling along with others in a tractor attached with its trolley bearing its Registration Nos.CG 04 L 2335 and CG 4 L 2381 respectively, owned by Non-Applicant No.2-Birjoram Baiga and insured with Non-Applicant No.3-Royal Sundaram Allianz Insurance Company Limited. At the relevant time, the vehicle in question was being driven in a rash and negligent manner by its driver, Non-Applicant No.1-Jal Singh @ Dallu, as a result of which, it turned turtle, owing to which, the deceased got injured badly and died during the course of his treatment.

3. On account of the aforesaid accident, a Claim Petition enumerated under Section 166 of the Act of 1988 has been made by the Claimants being legal representatives of the deceased alleging therein that the deceased was a labourer by profession and used to earn Rs.6,000/- per month and thus, a total amount of compensation to the tune of Rs.21,68,000/- has been claimed under various heads.

4. Non-Applicants No.1 & 2 were proceeded *ex parte*, while Non-Applicant No.3, the insurer has contested the claim mainly on the ground that the vehicle in question which was insured for agricultural purposes, was being used other

than its purposes and even its driver was also not holding the valid and effective license, therefore, no liability could be fastened upon it.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 25.04.2014 due to rash and negligent driving of the driver of the offending vehicle, resulting into the sad demise of Kariya Baiga. It held further that the deceased and others were traveling in the alleged offending vehicle “tractor” attached with its “trolley” in violation of the insurance policy and in consequence, the Claims Tribunal, while exonerating the Insurance Company from his liability, has awarded the amount of compensation as observed hereinabove.

6. Being aggrieved, the Claimants have preferred this Appeal. Learned Counsel for the Appellants submits that the award as passed by the Claims Tribunal is extremely on the lower side. The Tribunal, while assessing the amount of compensation, ought to have taken into consideration the future prospects of the income of the deceased. Having failed so, the Claims Tribunal has erred in not awarding the just and proper compensation payable to the Claimants. It is contended further that the Tribunal, on finding that the vehicle in question was being used in violation of the insurance policy, ought to have applied the principles of 'pay and recover' as held in the matter of “National Insurance Ltd. vs. Swaran Singh and others” reported in **(2004) 3 SCC 297**. The award impugned is therefore, liable to be modified.

7. On the other hand, Shri Rohitashva Singh, learned Counsel for Non-Applicant No.3/Insurance Company, while supporting the award impugned, submits that since the deceased was not a third party as he was travelling in the alleged vehicle along with others, the Claims Tribunal has, therefore, rightly not applied the principles of 'pay and recover'.

8. I have heard learned Counsel for the parties and perused the entire record carefully.

9. From perusal of the record, it appears that the alleged accident occurred on 25.04.2014 when deceased Kariya Baiga was traveling along with others in the offending vehicle i.e. tractor attached with its trolley. It appears further from perusal of the record that Non-Applicants No.1 & 2 have failed to produce the driving license and after considering the said fact and considering further that the vehicle in question insured for agricultural use was being used other than its purposes, the Tribunal has rightly exonerated the Insurance Company from its liability. It appears further that after considering the monthly income of the deceased as Rs.3,000/-, yearly Rs.36,000/-, and by deducting 1/4th of it towards his personal and living expenses, the Tribunal has awarded a total amount of compensation as observed hereinabove by applying the multiplier of 16.

10. In absence of any documentary evidence showing the income of the deceased, the Tribunal has rightly assessed his monthly income, which, therefore, deserves to be and is hereby affirmed. However, while awarding the amount of compensation, the Claims Tribunal ought to have assessed the future prospects of the income of the deceased in awarding just and fair compensation payable to the Claimants in view of the principles laid down in the matter of National Insurance Company Limited vs. Pranay Sethi and Others reported in **(2017) 16 Supreme Court Cases 680**. That apart, a sum of Rs.35,000/- alone has been awarded towards conventional heads which also appears to be on the lower side in view of the principles laid down in the aforesaid judgment of the Supreme Court.

11. Considering the facts and circumstances of the case and considering

further the monthly income of the deceased as Rs.3,000/-, yearly Rs.36,000/- and by deducting 1/4th of it, i.e. Rs.9,000/-, yearly dependency would thus arrive at Rs.27,000/-. Since the deceased was 35 years old at the time of the accident, therefore, an addition of 40% of the income of the deceased i.e. Rs.10,800/- (Rs.27,000/- x 40%) towards future prospects is to be made while determining the income of the deceased in the light of the decision rendered in the matter of National Insurance Company Limited vs. Pranay Sethi and Others (supra). As such, the actual income of the deceased would be Rs.37,800/- (Rs.27000/-+ 10,800/-). As the age of the deceased at the time of the accident was 35, the multiplier applicable would be 16 as rightly held by the Tribunal. By applying the multiplier of 16, the total dependency would thus arrive at Rs.6,04,800/-(Rs.37,800/- x 16). In addition to this, the Claimants shall be entitled to a sum of Rs.2,00,000/-, instead of Rs.35,000/- as assessed by the Claims Tribunal, towards conventional heads as under:-

	Mode of Compensation	Amount Rs.
i.	For loss of consortium to wife	40,000/-
ii.	For funeral expenses	15,000/-
iii.	For loss of estate	15,000/-
iv.	For loss of filial consortium to parents @ Rs.40,000/- each	80,000/-
v.	For loss of love and affection to minor daughter	50,000/-
	Total	2,00,000/-

12. Thus, the Claimants would be entitled to a total amount of compensation to the tune of Rs.8,04,800/-, instead of Rs.4,67,000/- as held by the Tribunal, with 7.5% interest per annum from the date of filing of the claim Petition till its realization.

13. As far as the question regarding the principles of 'pay and recover' is concerned, the said issue is however, no more *res integra* in view of the principles laid down in the matter of National Insurance Co. Ltd. vs. Swaran Singh and others (supra). In the said matter, it was contended by the Insurance Company that once the defence taken by the insurer is accepted by the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle. However, it was held that even if the insurer succeeds in establishing its defence, the Tribunal can direct the Insurance Company to pay the award amount to the Claimants and, in turn, recover the same from the owner of the vehicle. At paragraph 107, it was observed as under:-

“107. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage.”

14. In the present case, the vehicle in question was undisputedly insured with Royal Sunderam Allianz Insurance Company Limited, Non-Applicant No.3. Applying the dictum in ***National Insurance Co. Ltd. vs. Swaran Singh and others*** (Supra), in order to subserve the ends of justice, Non-Applicant No.3-Insurance Company is hereby directed to pay the claim amount i.e. Rs.8,04,800 /- (Eight Lacs Four Thousand and Eight Hundred only) along with its interest @ 7.5% per annum from the date of filing of the claim Petition till its realization in the first instance to the Claimants, with liberty to recover the same from the driver and owner (Non-Applicant Nos.1 & 2, respectively) of the vehicle in question in accordance with law.

15. The Appeal is allowed in part with the aforesaid observation. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge