

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 1064 of 2013**

(Arising out of award dated 30.08.2013 passed in Claim Case No.112 of 2013 by the Additional Motor Accident Claims Tribunal, (FTC) Korba, (C.G.)

1. Sukhram S/o Late Mohar Sai Thakur, aged about 40 years.
 2. Amritlal S/o Late Mohar Sai, aged about 35 years,
 3. Shyamlal S/o Late Mohar Sai, aged about 30 years.
 4. Dharam Singh S/o Late Mohar Sai, aged about 25 years,
- All are resident of Village Baloda, Tahsil Baloda, Civil & Revenue District Janjgir-Champa (C.G.).

---- Appellants**Versus**

1. Kumar Das Mahant S/o Hiradas Mahant, R/o Village Kera, Tahsil Sheorinarayan, District Janjgir-Champa (C.G.).
2. Noushad Khan S/o Jaman Khan R/o Balco Nagar Korba (C.G.).
3. Reliance General Insurance through Branch Manager Anil Dhirubhai Ambani Group Shop No. 412, 413, 414 Jai Stambh Chowk Raipur (C.G.).

---- Respondents

For Appellants	: Shri Shiv Kumar Shrivastava on behalf of Shri Ravish Verma, Advocate
For Respondents	: None

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment On Board**Per Parth Prateem Sahu, Judge****09.07.2020**

1. This appeal was listed for hearing on 06.07.2020 with note "targeted for hearing and disposal", but could not be taken up on 06.07.2020

due to non-availability of the Bench. Notice was issued mentioning that the cases listed on 06.07.2020 will be taken up on next opening day, thereafter, this case was listed for hearing on 09.07.2020. Today, when the case is called up for hearing, no one appeared on behalf of the respondents. Taking note of the fact that this appeal is filed by the claimants for enhancement of amount of compensation, which is to be considered and decided in accordance with the dictum of the Hon'ble Supreme Court for assessing the income, deductions, multipliers, award of future prospect and other conventional heads, we have taken up this case for hearing in absence of the respondents.

2. Appellants/claimants have questioned the legality and propriety of the impugned award dated 30.08.2013 passed by the Additional Motor Accident Claims Tribunal (FTC), Korba, C.G. (hereinafter referred to as 'Claims Tribunal') in Claim Case No.112 of 2013 whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.1,43,000/- as compensation to the claimants in a death case.
3. Facts relevant for disposal of this appeal, are that, on 02.02.2011 at about 5 A.M., Mohar Sai was travelling on a bus bearing registration No.CG-12/9732 (hereinafter referred to as 'offending bus') and going towards Korba, on the way, when the offending bus reached near Madwarani station, it met with an accident with a tree standing on the side of the road. In the said accident, Mohar Sai suffered grievous

injuries over his person and succumbed to those injuries. The matter was reported to the concerned Police Station, based upon which, Crime No. 146/2011 was registered.

4. Appellants/claimants have filed claim application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') pleading therein that deceased Mohar Sai was their father, he was doing the work of agricultural labour and thereby earning Rs.4000/- per month. In their claim application, they have claimed a total sum of Rs.14,15,000/- as compensation.
5. Non-applicants No.1 and 2 who are driver and owner of the offending bus submitted reply to the claim application while denying the pleadings of claim application, they have pleaded that deceased Mohar Sai died on account of his own negligence. The amount of compensation claimed by the claimants is highly exaggerated. Non-applicants are in possession of all relevant documents, which were valid. It was further pleaded that offending bus was insured with respondent No.3/Insurance Company and the liability, if any, would be primarily upon the Insurance Company to pay the amount of compensation.
6. Respondent No.3/Insurance Company submitted reply to claim application and denied all the adverse pleadings made therein. It was pleaded that deceased Mohar Sai was not earning any amount; on the date of accident, driver of the offending bus was not possessing

valid and effective driving licence and offending bus on the date of accident was plied in breach of conditions of insurance policy.

7. The learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties, held that the accident occurred on account of rash and negligent driving of the offending bus by its driver/respondent No.1/non-applicant No.1 and death of Mohar Sai was on account of motor accidental injuries suffered by him; there was breach of conditions of the insurance policy and while exonerating the insurance company from its liability, fastened the liability to pay the amount of compensation upon non-applicants No.1 & 2 (driver and owner of offending bus) of Rs.1,43,000/-.
8. Shri Shiv Kumar Shrivastava, learned counsel for the appellants/claimants submits that learned Claims Tribunal while assessing the amount of compensation has erroneously assessed the income of the deceased as Rs.3000/- per month ignoring the pleadings made in the claim application and the evidence of claimants that deceased Mohar Sai was working as labour and earning Rs.5,000-6,000/- per month. It is further contended that learned Claims Tribunal in absence of specific evidence with regard to age of deceased instead of assessing the age of the deceased on the basis of postmortem report (Ex.P/7), held the age of the deceased as 62 years only on the basis of presumption and surmises and applying the multiplier of 7, which is not sustainable. He further

contended that learned Claims Tribunal erred in awarding meager amount towards other conventional heads. He also submits that there was live insurance policy on the date of accident and exoneration is on the ground of not having valid permit, then in these circumstances a direction to pay and recover be issued to the Insurance Company.

9. No one appeared on behalf of the respondents.
10. We have heard the learned counsel for the appellants and perused the record.
11. The grounds taken in the appeal for enhancement of the impugned award is assessing income of the deceased on lower side, non-award of future prospects and deduction towards personal and living expenses. The appellants has also taken the ground of award of meager amount towards other conventional heads. The Hon'ble Supreme Court has already settled the issues raised in this appeal as to how the assessment of compensation is to be made in the matters of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another¹**, **National Insurance Co. Ltd. v. Pranay Sethi²** and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others³**.
12. The claimants have pleaded in their claim application that on the date of accident, the deceased was doing the work of agricultural labour and in absence of any proof with regard to the income, learned

¹ (2009) 6 SCC 121

² (2017) 16 SCC 680

³ (2018) 18 SCC 130

Claims Tribunal ought to have taken the income on notional basis taking into consideration the price index and cost of living and such other aspects, but learned Claims Tribunal has taken the income as Rs.3,000/- per month only, which in the opinion of this Court is on the lower side. Taking into consideration, price index, cost of living and wage structure, we find it appropriate to take the income of deceased Mohar Sai on notional basis as Rs.4,000/- per month and Rs.48,000/- per annum taking into consideration the date of accident i.e. 02.02.2011. The Claims Tribunal deducted 50% amount towards personal and living expenses, which cannot be said to be on the higher side. The percentage of deduction towards personal and living expenses cannot be governed by any rigid rule, but it is to be applied based on facts of the each case. In the case at hand, the deceased was aged person of 50 to 55 years, and as such, he may require other expenses towards medical ailments etc., and therefore, we are of the view that the learned Claims Tribunal has not committed any error in deducting 50% of the assessed income towards personal and living expenses. After deducting 50% towards his personal and living expenses, appellants/claimants will be entitled for the rest of the amount of 50% as being expenditure towards family members of the deceased i.e. Rs.24,000/- ($48,000 / 2 = 24,000$). On the date of accident, the deceased was shown to be 60 years of age as per postmortem report (Ex.P/7), which is the document prepared by the experts, therefore, for assessing the age of the deceased, the age

mentioned in the postmortem report will be relevant document. In view of above, age of the deceased is taken as 60 years instead of 62 years as held by learned Claims Tribunal and the appropriate multiplier would be 9 as applicable to the age group of 56 to 60 as held by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.)** (supra) and not 7, as applied by learned Claims Tribunal. By applying the multiplier of 9, the amount of compensation will come to Rs.2,16,000/- (24,000 x 9). Apart from above, the claimants will be further entitled for a sum of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. The appellants will be entitled for Rs.40,000/- towards parental consortium as held by Hon'ble Supreme Court in the matter of **Magma General Insurance Company Limited** (supra).

13. The appellants are entitled for total compensation of **Rs.2,86,000/-** (2,16,000 + 15,000 + 15,000 + 40,000) instead of Rs.1,43,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. The other conditions imposed by learned Claims Tribunal shall remain intact.
14. Now the question arises whether in the facts of the case the breach of policy condition is on account of not having valid permit of route whether a direction for pay and recover can be issued against Insurance Company ?

15. The doctrine of pay and recover in cases of no valid permit has been considered by the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Challa Bharathamma and others**⁴. 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 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

4 (2004) 8 SCC 517

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.”

16. Recently, in the matter of **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others**⁵, Hon'ble Supreme Court while dealing with the similar issue has held thus :

“24.....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 *National Insurance Co. Ltd. v. Swaran Singh*, (2004) 3 SCC 297 and *Lakhmi 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

5 (2018) 7 SCC 558

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

17. In the light of above case law, if facts of the case at hand are considered, the insurance policy was not disputed. Exoneration of Insurance Company was ordered only on the ground that there was no valid permit. In these circumstances, we find it appropriate to issue direction of pay and recover to Insurance Company. In view of above, the Insurance Company being insurer of vehicle is directed to first pay the amount of compensation and thereafter will be at liberty to recover the amount of compensation so deposited from respondents No.1 and 2 in the very same proceeding by filing application for execution.

18. For the foregoing reasons, appeal is allowed in part and impugned award passed by learned Claims Tribunal is modified accordingly to the extent indicated herein-above.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh