NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.864 of 2020

- National Insurance Company Limited Through The Local Branch/ Divisional Office, Priyadarshani Nagar, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh (Non-applicant No.3) **---- Appellant**

Versus

1. Smt. Parvati Kherwar, Wife Of Late Mohan Ram Badaik Aged About 29 Years Resident Of Village And Post- Girla, Tahsil And District- Jashpur Chhattisgarh.,
2. Chhotu Ram, Son Of Late Bhola Aged About 9 Years (Minor), Represented Through Next Friend Respondent No. 1 Smt. Parvati Khaerwar, Resident Of Village And Post- Girla, Tahsil And District- Jashpur Chhattisgarh.,
3. Chintamuni Bai, Wife Of Late Bhola Aged About 6 Years (Minor), Represented Through Next Friend Respondent No. 1 Smt. Parvati Khaerwar, Resident Of Village And Post- Girla, Tahsil And District- Jashpur Chhattisgarh.,
4. Bhikhu Badaik, Son Of Late Raghunandan Badaik Aged About 70 Years Resident Of Village And Post- Girla, Tahsil And District- Jashpur Chhattisgarh.,
5. Nanhu Ram, Son Of Late Nakul Ram (Vehicle Owner) Resident Of Village - Girla, Post- Pilkhi, Tahsil And District- Jashpur Chhattisgarh.,
6. Budru Ram, Son Of Late Nakul Ram (Vehicle Driver) Aged About 25 Years Resident Of Village - Girla, Post- Pilkhi, Tahsil And District- Jashpur Chhattisgarh., **---- Respondents**

For Appellant : Shri Ashish Gupta, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal

Order / Award on Board

05.08.2020

1. The National insurance Company Limited has preferred this appeal questioning the legality and propriety of the award impugned dated 22.01.2020 passed in claim case No. 19/2019, whereby the Tribunal while awarding total amount of compensation to the tune of Rs.23,54,800/- with 6%

interest per annum from the date of filing of Claim Petition till its realisation, has directed the insurer to pay the same to the claimants with a further direction for its recovery from the owner and driver of the offending vehicle. 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 27.12.2017, the deceased Mohan Badaik was returning to his village along with one Budru Ram by a motorcycle bearing registration No.CG-14-MG-5325 owned by Non-Applicant No.1 Nanhu Ram, while sitting as a pillion rider. At the relevant time, it was being driven by said Budru Ram in a rash and negligent manner, as a result of which, he lost his control over the same and owing to which, the deceased fell down and sustained serious multiple injuries and expired during the course of his treatment on 30.12.2017.

3. A claim under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act, 1988) has, therefore, been made by the claimants, who are the legal representatives of the deceased by submitting, inter alia, that the deceased, 28 years old, was a *Raj Mistry* by profession and used to earn Rs.12,000/- per month, and therefore, total amount of compensation of Rs.33,25,000/- has been claimed.

4. The aforesaid claim was resisted by the appellant insurance company alone as the owner and driver of the alleged offending vehicle were proceeded ex parte. According to the insurance company, the driver of the alleged offending vehicle was not possessing any kind of driving licence, and therefore, no liability could be fastened upon it.

5. After considering the evidence led by the parties, it has been held by the Tribunal that the alleged accident occurred due to rash and negligent

driving by the driver of the alleged offending vehicle, who was driving the same without holding a driving licence. In consequence, while exonerating the insurance company from its liability, the aforesaid direction of pay and recover has been issued.

6. According to the learned counsel for the appellant, once it has been held by the Tribunal that the vehicle in question was being used in violation of the policy, no direction as such ought to have been issued by the Tribunal.

7. The aforesaid contention of the counsel appearing for the appellant insurance company, however, remains no more *res integra*. As I notice, it was the subject-matter of several decisions of Supreme Court rendered by three-Judge Bench and two-Judge Bench in the past, such as, ***National Insurance Co. Ltd.*** v. ***Baljit Kaur, National Insurance Co Ltd.*** v. ***Challa Upendra Rao, National Insurance Co. Ltd.*** v. ***Kaushalaya Devi, National Insurance Co. Ltd.*** v. ***Roshan Lal*** and ***National Insurance Co. Ltd.*** v. ***Parvathneni*** reported respectively in **(2004) 2 SCC 1, (2004) 8 SCC 517, (2008) 9 SCC 246, (2017) 4 SCC 803** and **(2009) 8 SCC 785.**

8. The said question also fell for consideration in ***Manager, National Insurance Company Limited*** vs. ***Saju P. Paul and Another*** reported in **(2013) 2 SCC 41** wherein the Supreme Court took note of entire previous case law on the subject mentioned above and examined in the context of Section 147 of the Act. While allowing the appeal filed by the insurance company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as “gratuitous passenger” and hence, the insurance company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, the Supreme Court keeping in view the benevolent object of the Act

and other relevant factors arising in the case, issued the directions against the insurance company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "*pay and recover*". Paragraphs 20 & 26 are relevant for the said purpose, which read 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 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 *Challa Upendra Rao."*

9. The aforesaid principles have been reiterated in the matter of ***Anu Bhanvara and Ors.*** vs. ***IFFCO Tokio General Insurance Company Limited and Ors.,*** reported in **2019 ACJ 2802** as relied upon by the Tribunal while adopting the said principles of pay and recover and based upon such a legal proposition, I do not find any infirmity in the same.

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

Sd/-

(**Sanjay S. Agrawal)**
Judge

Anjani