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HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 876 of 2013

(Arising out of order dated 15.03.2013 passed in Claim Case No.64 of 2012 by the 2nd Additional Motor Accident Claims Tribunal, Raipur, C.G.)

1. Ganesh Ram, S/o Late Man Singh Dhritlahare, age 60
2. Smt. Rama Bai W/o Ganesh Ram, age 55

   Both R/o Nayapara, Simga, P.S. Simga, Raipur, District Raipur, Chhattisgarh

---- Appellants

Versus

1. Paras Satnami, Son of Chintaram Satnami, Resident of Rawanbhatha P.S. Khamtarai, Tahsil and District Raipur, Chhattisgarh
2. M/s Amit Minerals Through Incharge Officer/Competent Officer, M/s Minerals, Rathor Chowk Ramsagarpara, Raipur, Tahsil and District Raipur, Chhattisgarh
3. Ifkyo-Tokiyo General Insurance Company Limited Through Branch Officer, The Ifkyo-Tokiyo General Insurance Company Limited, 3rd Floor, 345-347 Lalganga Shopping Mall, G.E. Road, Raipur, District Raipur, Chhattisgarh

---- Respondents

For Appellants	:	Shri Amiyakant Tiwari, Advocate
For Respondents No.1 and 2	:	None
For Respondent No.3	:	Shri K. Rohan, Advocate

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

Judgment On Board

Per Parth Prateem Sahu, Judge
11.06.2020

1. Challenge in this appeal is to the impugned award dated 15.03.2013 passed by the 2nd Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.64 of 2012, whereby learned Claims Tribunal allowed the

claim application in part and awarded a total sum of Rs.3,00,000/- as compensation, fastening liability upon respondents No. 1 and 2 to satisfy the amount of compensation.

2. Brief facts relevant for disposal of this appeal, are that, on 13.10.2011 at about 6.00 PM, a Truck bearing registration No.CG-04/J/1233 (hereinafter referred to as 'offending Truck') driven by respondent No.1 met with an accident with a Tractor bearing registration No.CG-04/DM/9357 and Trolley bearing registration No.CG-04/DM/9358. In the aforementioned accident, driver of the Tractor, other occupants and conductor of Truck Nand Kumar suffered grievous injuries. Nand Kumar succumbed to the accidental injuries on the spot.

3. Parents of the deceased Nand Kumar filed an application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') claiming compensation of Rs.4,20,000/- mentioning therein that on the date of accident, the deceased was aged about 18 years and earning Rs.3,000/- per month from his employment i.e. Conductor of offending Truck.

4. Respondent No.1 did not choose to appear before the learned Claims Tribunal and was proceeded *ex parte*.

5. Respondent No.2 submitted reply to the claim application and pleaded that claim application is not maintainable on account of non-joinder of necessary party i.e. driver, owner and Insurance Company of the Tractor Trolley involved in the accident, Tractor and Trolley was

driven in breach of conditions of insurance policy as on the date of accident, driver of the Tractor and Trolley was not possessing valid and effective driving license. It was further pleaded that on the date of accident, the offending Truck was insured with respondent No.3/Insurance Company and respondent No.1/non-applicant No.1 was possessing valid and effective driving license to drive the offending Truck, hence, the liability, if any, to pay the amount of compensation would be on the Insurance Company.

6. Respondent No.3/Insurance Company also submitted separate reply to the claim application and pleaded that the deceased was not doing any work and thereby not having any source of income. It was further pleaded that compensation claimed is highly exaggerated. It was also pleaded that there was contributory negligence and the liability should be fastened equally between the two vehicles, there was no valid and effective driving license with respondent No.1, there was no valid fitness and permit of the offending Truck on the date of accident, the driver of offending Truck was not having valid and effective driving licence and thereby there was breach of conditions of insurance policy.

7. The learned Claims Tribunal on appreciation of pleadings and evidence available on record held that Bankarlal Kosale died on account of motor accident between Truck bearing registration No.CG-04/J/1233 and Tractor bearing registration No.CG-04/DM/9357 and Trolley bearing registration No.CG-04/DM/9358, there was breach of

conditions of insurance policy as on the date of accident, respondent No.1 was not possessing valid and effective driving license and awarded a total sum of Rs.3,00,000/- as compensation. Liability to satisfy the award was fastened upon Respondents No.1 and 2 (owner and driver).

8. Shri Amiyakant Tiwari, learned counsel for the appellants submits that exoneration of Insurance Company from its liability is illegal and erroneous as breach of conditions of insurance policy has not been proved. The driver was having valid license and it got renewed within time. In alternate, it is contended that even if there is breach of conditions of insurance policy, then also, the Claims Tribunal ought to have directed the Insurance Company to satisfy the award granting right of recovery. He further submits that the award passed by learned Claims Tribunal is on the lower side. It is submitted that no amount has been awarded towards future prospects, the deduction and multiplier applied is erroneous and meager amount has been awarded towards other conventional heads, which is required to be enhanced suitably.

9. Per contra, Shri K. Rohan, learned counsel for respondent No.3/Insurance Company submits that the award passed by the learned Claims Tribunal is just and proper, the finding recorded by learned Claims Tribunal with regard to issue No.3 that there is breach of conditions of insurance policy is based on evidence. It is further contended that on the date of accident, in fact, the driver of offending

Truck was not possessing valid and effective driving license as its validity period expired much before the date of accident i.e. 20.06.2010, whereas the accident took place on 13.10.2011, driving license was renewed only on 03.11.2011 for a period of three years upto 02.11.2014. It is contended that the award passed is just and proper and needs no interference. As the Claims Tribunal recorded a finding of breach of policy conditions, no liability can be fastened upon the Insurance Company.

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

11. So far as the submission of learned counsel for the appellants that the learned Claims Tribunal erred in holding that there was breach of conditions of insurance policy on the ground that driving license was not renewed within time is concerned, the learned Claims Tribunal has clearly recorded in paragraph-13 after considering the statement of Rajesh Bhargava (NAW-2), Clerk of Regional Transport Office, Raipur that the license was not effective from 21.06.2010 to 02.11.2011, the validity period of license expired about more than one year three months prior to the date of accident and after date of the accident, application for renewal was made only on 02.11.2011.

12. Section 15 of M.V. Act prescribes for 'Renewal of driving licences', relevant portion of which is reproduced herein below:-

> "**15. Renewal of driving licences.** —(1) Any licensing authority may, on application made to

> it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry:
>
> Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:
>
> Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8, and the provisions of sub-section (4) of section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learner's licence."

13. The proviso appended to sub-section (1) of Section 15 of M.V. Act very specifically prescribes that if application for renewal of a licence is made after lapse of period of thirty days from its expiry, then the driving licence shall be renewed with effect from the date of its renewal only, meaning thereby that the application for renewal of license is being made more than thirty days after expiry of validity period of license, then its renewal will not from the last date of validity period expired, but the date of its renewal only.

14. In the instant case, Rajesh Bhargava (NAW-2), Clerk of Regional Transport Office, Raipur has specifically stated in his evidence that license of respondent No.1 was not renewed from 20.06.2010 to 02.11.2011 and the said license was renewed only from 03.11.2011 to 02.11.2014. From the evidence of Rajesh Bhargava (NAW-2), it is apparent that from 20.06.2010 to 02.11.2011, there was no driving license.

15. The issue of renewal of license has been considered by Hon'ble Supreme Court in the matter of **Ram Babu Tiwrai v. United India Insurance Company Limited and Others**[1], in which, Hon'ble Supreme Court held as under:-

> "18. It is beyond any doubt or dispute that only in the event an application for renewal of licence is filed within a period 30 days from the date of expiry thereof, the same would be renewed automatically which means that even if an accident had taken place within the aforementioned period, the driver may be held to be possessing a valid licence. The proviso appended to sub-section (1) of Section 15, however, clearly states that the driving licence shall be renewed with effect from the date of its renewal in the event the application for renewal of a licence is made more than 30 days after the date of its expiry. It is, therefore, evident that as, on renewal of the licence on such terms, the driver of the vehicle cannot be said

1 **2008 AIR SCW 6512**

to be holding a valid licence, the insurer would not be liable to indemnify the insured.

The second proviso appended to sub-section (4) of Section 15 is of no assistance to the appellant. It merely enables the licensing authority to take a further test of competent driving and passing thereof to its satisfaction within the meaning of Sub-section (3) of Section 9. It does not say that the renewal would be automatic. It is, therefore, a case where a breech of the contract of insurance is established. This aspect of the matter has been considered by this Court in National Insurance Co. Ltd. v. Kusum Rai & Ors. [(2006) 4 SCC 250] holding :

> "11. It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence."

It was furthermore held :

> "14. This Court in National Insurance Co. Ltd. v. Swaran Singh and Others [(2004) 3 SCC 29] clearly laid down that the liability of the Insurance Company vis-a-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle."

It was opined :

> "16. In a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not."

19. The principle laid down in Kusum Rai (supra) has been reiterated in Ishwar Chandra & Ors. v. Oriental Insurance Co. Ltd. & Ors. [(2007) 10 SCC 650], referring to sub-section (1) of Section 15 of the Act, this Court stated the law, thus :

> "9. From a bare perusal of the said provision, it would appear that the licence is renewed in terms of the said Act and the rules framed thereunder. The proviso appended to Section 15 (1) of the Act in no uncertain terms states that whereas the original licence granted despite expiry remains valid for a period of 30 days from

> the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal. The accident took place on 28-4-1995. As on the said date, the renewal application had not been filed, the driver did not have a valid licence on the date when the vehicle met with the accident."

16. In view of aforementioned specific provisions of M.V. Act and authoritative pronouncement of Hon'ble Supreme Court as well as the facts and circumstances of the case at hand where the license of respondent No.1 was not renewed from 20.06.2010 to 02.11.2011 and the accident took place on 13.10.2011, we do not find any error in the finding recorded by learned Claims Tribunal that on the date of accident, respondent No.1 was not possessing valid and effective driving license leading to breach of conditions of insurance policy and exonerating the Insurance Company from its liability.

17. So far as the submission of learned counsel for the appellants that a direction can be issued to the Insurance Company to first satisfy the amount of compensation and thereafter recover the same from the driver and owner of the offending Truck, we do not find any force in the said submission because the insured has not paid any amount of premium covering the risk of any employee or Conductor. There was no contractual liability between the insurer and insured to indemnify the risk of other person than driver travelling in goods vehicle. For the

aforementioned reasons, the submission made by learned counsel for the appellants, is hereby rejected.

18. Now, considering the ground raised by learned counsel for the appellants with regard to enhancement of amount awarded, the learned Claims Tribunal has taken into consideration the income as pleaded by the claimants in their claim application as Rs.3,000/- per month. Perusal of award would show that the learned Claims Tribunal has not awarded any amount towards future prospects and only Rs.12,000/- has been awarded towards other conventional heads, which in the opinion of this Court, is on the lower side.

19. For the aforementioned reasons, the impugned award passed by learned Claims Tribunal requires reconsideration and recalculation, which is in the following terms :

The income of the deceased as assessed by learned Claims Tribunal at Rs.3,000/- per month i.e. Rs.36,000/- per annum. On the date of accident, deceased Nand Kumar was aged about 18 years, therefore, there will be addition of 40% of established income for assessing the total income of deceased in view of the law laid down by Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others**[2]. By adding 40% towards future prospects i.e. Rs.14,400/- (36,000 x 40%), the annual income comes to Rs.50,400/- (36,000 + 14,400). On the date of accident, the deceased was unmarried, therefore, there will be a

2 **AIR 2017 SC 5157**

deduction of 50% towards his personal and living expenses i.e. Rs.25,200/- (50,400 / 2) in view of the law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[3], the yearly dependency of the claimants' comes to Rs.25,200/-. At the time of accident, the age of the deceased has been taken by learned Claims Tribunal as 17 years, therefore, multiplier of 18 would be applicable in the present case. After applying the multiplier of 18, the total loss of dependency comes to Rs.4,53,600/- (25,200 x 18).

20. Apart from above loss of dependency, the claimants will be further entitled for a sum of Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of filial consortium (payable to the parents because of the death of children) in view of the dictum of Hon'ble Supreme Court in the matter of **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others**[4]. Though the death was instantaneous, we award a further sum of Rs.10,000/- towards pain and suffering.

21. On the basis of above recalculation, now the claimants will be entitled for a total compensation of Rs.5,33,600/- (4,53,600 + 15,000 + 15,000 + 40,000 + 10,000) instead of Rs.3,00,000/- as awarded by the learned Claims Tribunal. The enhanced amount of compensation will carry interest at the rate of 7% per annum from the date of filing of the claim application till its realization. The liability to satisfy the

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3 **(2009) 6 SCC 121**
4 **(2018) 18 SCC 130**

amount of compensation would be on respondents No.1 and 2. The other conditions imposed by learned Claims Tribunal including award of Advocate's fee shall remain intact.

22. In the result, the appeal is allowed in part and the impugned award passed by learned Claims Tribunal is modified to the extent indicated above.

Sd/-	Sd/-
(P. R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

Yogesh