NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.69 of 2015

M/s Singh Stone Mines Dhaurabhata, Bilha, Thru- Its Director, Raghuraj Singh, S/o T.P. Singh, Age- 53 Yrs, R/o. Normal School Road, Singh House, Aadarsh Colony, P. S. Civil Lines, Bilaspur, Civil & Revenue Distt. Bilaspur C.G.

---- Appellant

Versus

1. Smt. Saroj Wadhwa W/o Late Malik Ram Wadhwa Aged About 50 Years, Caste-Punjabi, Occupation-Housewife.
2. Ku. Puja Wadhwa D/o Late Malik Ram Wadhwa Aged About 17 Years.
3. Taranjeet Singh Wadhwa S/o Late Malik Ram Wadhwa Aged About 14 Years.
4. Ku. Simaran Wadhwa D/o Late Malik Ram Wadhwa Aged About 12 Years. (wrongly mentioned as 17 years).

   Respondents No.2 to 4 being minors through -their Natural guardian Smt. Saroj Wadhwa. All are R/o. Opposite Sanjay Medical Stores, Bilha, Tah. Bilha, P.S. Chakrabhatha, Civil & Revenue District Bilaspur, C.G.
5. Narottam Markam S/o Bhagat Ram Markam Aged About 22 Years, Occupation Driver, R/o Dhaurabhatha, P.S. Hirri, Tah. Bilha, Civil & Revenue Distt. Bilaspur C.G.
6. Branch Manager Bajaj Alliance Insu. Co. Ltd., Divisional Office, Bilaspur, 3rd Floor, C.O. Gurukripa Tower, Besides, ICICI Bank, Vyapar Vihar, Bilaspur, Civil & Revenue Distt. Bilaspur C.G.

--- Respondents

For Appellants	:	Mr. Ali Asgar, Advocate.
For Respondent No.1 & 4	:	Mr. R.K. Agrawal, Advocate.
For Respondent No.5	:	None.
For Respondent No.6	:	Mr. S. S. Rajput, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

27/10/2020

1. Appellant -owner of truck bearing registration No.CG10/A/5666,has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the impugned award dated 06.09.2014 passed by learned 2nd Additional Member to the 1st Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.75/2013, whereby

the Tribunal allowed application under Section 166 of the Act of 1988 filed by the claimants in part and awarded Rs.6,70,500/- as compensation in a death case.

2. Facts relevant for disposal of this appeal are that on 07.12.2012 at about 7 pm, deceased Malik Ram Wadhwa was returning from the house of his elder brother Manjeet Singh situated at Keshla Road, Bilha to his own house as pedestrian. On the way near Bus stand, one Truck bearing registration No.CG10/A/5666, (for short 'offending vehicle') driven by non-applicant No.1 came from back side and hit Malik Ram Wadhwa and caused accident. In the aforementioned accident, he suffered grievous injuries and died on spot. Accident was reported to Police Station –Bilha based on which Crime No.112/2012 for the offence under Sections 304-A of the Indian Penal Code was registered against non-applicant No.1.

3. Claimants, who are widow and children of deceased, filed an application under Section 166 of the Act of 1988 before the Tribunal seeking compensation of Rs.76,70,000/- on the ground that on the date of accident, deceased -Malik Ram Wadhwa was aged about 55 years and engaged in the business of catering thereby earning Rs.30,000/- per month.

4. Non-applicant No.1 & 2, driver & owner of offending vehicle, submitted their reply to application and denied the fact of accident from offending vehicle. It was pleaded that false report has been lodged against non-applicant No1, accident has already taken place when non-applicant No.1 was crossing the place of accident, deceased himself was responsible for the accident. On the date of accident, non-applicant No.1 was possessing valid and effective driving license; offending vehicle was

insured with non-applicant No.3/Insurance Company, therefore, liability, if any, to satisfy the amount of compensation would be of non-applicant No.3.

5. Non-applicant No.3/Insurance Company submitted its reply to application under Section 166 of the Act of 1988 and denied the pleadings made therein. It was pleaded that fact of accident is false and fabricated, the offending vehicle was not involved in accident and deceased himself was responsible for the accident. On the date of accident, non-applicant No.1 was neither having valid and effective driving license nor was there valid permit or fitness certificate of offending vehicle. Registration of offence under Section 66/192 & 56/192 of the Act of 1988 against non-applicant driver is sufficient to show that offending vehicle was plied in breach of condition of Insurance Policy. Hence, Insurance Company is not liable to indemnify the insured.

6. On appreciation of pleadings and evidence placed on record by respective parties, the Tribunal held that non-applicant No.1 while driving the offending vehicle rashly and negligently dashed the deceased from backside and caused accident resulting into his death. Offending vehicle was plied without valid permit, thus, there was breach of condition of Insurance Policy. The Tribunal allowed application in part, awarded a sum of Rs.6,70,000/- as compensation along with interest @ 7% p.a., fastened liability to pay the amount of compensation upon Non-applicants No.1 & 2/driver and Owner.

7. Learned counsel for the appellant submits that the Tribunal erred in exonerating the Insurance Company from its liability ignoring the fact that on the date of accident non-applicant No.1 was possessing valid and

effective driving license. He submits that non-availability of valid permit or fitness certificate will not amount to fundamental breach of policy conditions. He further submits that the Tribunal has awarded excessive amount of Rs.2,25,000/- under other conventional heads, which is contrary to the law laid down by the Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi[1].** Further the Tribunal has erroneously deducted ¼ instead of 1/3 and assessed income of deceased as Rs.4,500/- per month without any admissible piece of evidence in this regard. He further submits that amount of compensation is on higher side and exoneration of Insurance Company from its liability is erroneous.

8. Learned counsel for respondent No.1 to 4/claimants submits that claimants have very specially pleaded that on the date of accident, deceased was doing business of catering and thereby earing Rs.30,000/- per month but the Tribunal has assessed monthly income of deceased as Rs.4,500/- on notional basis, which cannot be said to be on higher side. He further submits that though the Tribunal has awarded Rs.2,25,000/- towards other conventional heads but erred in not awarding any amount towards future prospects. In these facts of the case, even if some extra amount has been awarded on other conventional heads does not call for any interference and amount of compensation awarded to the claimants is just and proper.

9. Learned counsel for the respondent No.6/Insurance Company submits that findings recorded by the Tribunal that on the date of accident, offending vehicle was not having valid permit and certificate though it is a transport vehicle ie 'heavy goods vehicle', has not been controverted by

1 (2017) 16 SCC 680

the appellant/owner of offending vehicle by placing copy of permit and fitness certificate even before this Court. Therefore, said finding recorded by the Tribunal is based on the material and evidence available on record. He further submits that the Hon'ble Supreme Court has considered the issue with regard to breach of policy condition in absence of permit in case of **National Insurance Co. Ltd. v. Challa Bharathamma and others**[2] and recently in the matter of **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others**[3]. In view of the law laid down by the Hon'ble Supreme Court exoneration of Insurance Company is in accordance with law.

10. I have heard the learned counsel for the respective respondent and perused the record of claim case.

11. So far as the first ground raised by the learned counsel for the appellant with regard to the exoneration of Insurance Company from its liability is concerned, admittedly the appellant -owner of offending vehicle has not placed on record copy of permit of offending vehicle. Offending vehicle is a truck (goods carriage vehicle) and policy was issued for goods carriage, public career/commercial vehicle and as liability only policy. Seizure memo, which is placed on record as Ex.P-2, shows seizure of registration book/certificate, copy of policy and driving license of non-applicant No.1. Police during the course of investigation has not seized copy of permit and fitness certificate and even before this Court the appellant has failed to place on record copy of permit and fitness certificate of offending vehicle. The requirements of permit is envisaged in Section 66 of the Act of 1988, which reads as under :-

2 (2004) 8 SCC 517
3 (2018) 7 SCC 558

"66. **Necessity for permits.**— (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not:

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2). The holder of a goods carriage permit may use the vehicle, for the drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed:

[Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailor.]"

12. The Hon'ble Supreme Court in case of **Amrit Paul Singh (supra)** has considered the issue with regard to the breach of conditions of Insurance Policy on account of not having valid permit to ply the offending vehicle on the date of accident, and held as under :-

"24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of

> the Act, needless to emphasis, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. 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 license or a fake license or a license 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, National Insurance Company Limited versus Swarn Singh (2004) 3 SCC 297 and Lakhmi Chand, Laxmi 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 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..."

13. In the aforementioned case, the Hon'ble Supreme Court in a very categorical term held that plying a vehicle in public place without permit is a fundamental statutory infraction.

14. In view of above, submission made by the learned counsel for the appellant that absence of permit will not amount to a fundamental breach of condition of Insurance Policy is not sustainable and it is hereby repelled.

15. Coming to the next ground raised by the learned counsel for the appellant with regard to award of excessive amount of compensation under other conventional heads. Issue with regard to award of compensation towards other conventional heads has been considered by the Hon'ble Supreme Court in case of **Pranay Sethi** (supra). In the aforementioned judgment the Hon'ble Supreme Court has held that under which conventional heads the amount of compensation is to be

awarded and the quantum of amount on those heads is also fixed. It has been held that widow of deceased is entitled for amount of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

16. In case of **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhuru Ram**[4] the Hon'ble Supreme Court has further considered and explained the different types of consortium and held that children are entitled for loss of parental consortium and parents of deceased are entitled for loss of filial consortium apart from loss of consortium to wife.

17. In case at hand, claimants are widow and children of deceased, hence, total amount on other conventional heads for which they are entitled for is **Rs.1,10,000/-** ie Rs.40,000/- towards spousal consortium, Rs.40,000/- towards loss of parental consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

18. As this Court is considering the quantum of amount of compensation and submission of learned counsel for the appellant to scale down the amount of compensation awarded on other conventional heads, the compensation for which claimants are entitled require reconsideration.

19. For the foregoing reasons, we propose to recompute the amount of compensation awarded by the Tribunal. This is because of object of the Act of 1988 that the claimants who lost their bread winner, to be awarded just and proper amount of compensation.

20. Income of deceased taken by the Tribunal as Rs.4,500/- per month, there will be addition of 10% towards future prospects as deceased being 55 years of age on the date of accident, which comes to Rs.450/- (10% of

4 2018 18 SCC 130

4500). Total monthly income of deceased is assessed at Rs.4,950/- (4500+450) and accordingly yearly income of deceased comes to Rs.59,400/- (4950X12). After deducting ¼ towards personal and living expenses annual loss of dependency comes to Rs.44,550/- (59400 – 1/4). The Tribunal has accepted the age of deceased as 55 years as per the post -mortem report therefore correctly applied multiplier of 11. By applying multiplier of 11 total loss of dependency will come to Rs.4,90,500/- (44500 X14).

21. Apart from this, claimants are also entitled for a sum of Rs.40,000/- towards spousal consortium, Rs.40,000/- towards loss of parental consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

22. Now claimants will be entitled for a total sum of **Rs.6,00,050/-** instead of **Rs.6,70,500/-** as awarded by the Tribunal. This amount of compensation shall carry interest @ 7% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

23. In the result, appeal is allowed in part and the impugned award stands modified to the extent as indicated herein-above. Amount of compensation is to be paid by the appellant/owner of offending vehicle.

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-