

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1010 of 2015**

- National Insurance Company Limited, Gir Complex, near Gurudwara, Station Road, Durg, through Division Manager, Division Office, Akash Ganga Parisar, Supela, Bhilai, Tahsil and District- Durg C.G.

-----Appellant/ Non-applicant 3**VERSUS**

1. Shail Bai W/o Renu Devdas, aged about 42 years, R/o Ganjpara, Durg, Tahsil and District Durg C.G. **-----Claimant**
2. Arvind Singh S/o Savindar Singh, aged about 53 years, R/o Shakti Nagar, Durg, Tahsil and District-Durg C.G. **----Driver**
3. Pawan Kumar Rajput S/o Deepchand Rajput, R/o Ganjpara, Durg, Tahsil and District-Durg C.G. **-----Owner**

---- Respondents

For Appellant	:	Mr. Qamrul Aziz, Advocate
For Respondent 1	:	Mr. P.R. Patankar, Advocate.
For Respondent 3	:	Mr. Uttam Pandey, Advocate

Hon'ble Shri Parth Prateem Sahu, Judge**Order on Board****28/10/2020**

1. Non-applicant 3 (appellant herein)/ Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") challenging the impugned award dated 12.03.2015 passed by learned Second Additional Motor Accident Claims Tribunal, District Durg C.G. in claim case no. 28/2015 whereby learned Claims Tribunal allowed the application under Section 166 of the Act of 1988, awarded Rs. 1,79,600/- as compensation in a fatal accident case.
2. Facts relevant for disposal of this appeal are that 02.02.2007 at about 08:30 am when Rajim Bai was waiting for a bus near Ganjpara, Durg, at that relevant time, one truck bearing registration no. CG 07/ 0663 (hereinafter referred to as "offending truck"), driven by non-applicant 1 rashly and negligently dashed Rajim Bai and caused accident. In the said accident,

Rajim Bai suffered grievous injuries over her person, she was taken to District Hospital, Durg, where during the course of treatment, she died. Accident was reported to concerned police station based upon which crime bearing no. 17/07 was registered against non-applicant 1.

3. Respondent 1/ claimant filed an application under Section 166 of the Act of 1988 pleading therein that the deceased Rajim Bai was her maternal grand mother, the claimant is the only legal heir of the deceased, mother of the claimant by name late Purna Bai was only child of late Rajim Bai. Mother of applicant was pre-deceased and hence, she was brought up by maternal grand mother. On the date of accident, deceased was working as labourer in a rice mill and earning Rs. 3,000/- per month. It was pleaded that deceased Rajim Bai was residing with claimant/ Respondent 1 and sought compensation of Rs. 3,00,000/- from non-applicants therein.
4. Non-applicant 2/ owner of the offending truck submitted reply to the claim application, while denying the pleadings made therein further pleaded that the accident was a result of negligence on the part of deceased herself. Non-applicant 2 is not liable to pay any amount of compensation. On the date of accident, offending truck was insured with non-applicant 3/ insurance company for a period from 17.11.2006 to 16.11.2007, road tax was also paid up to 30.04.2007 and there was valid permit and fitness of the offending truck. Liability to pay any amount of compensation would be upon non-applicant 3/ Insurance Company.
5. Non-applicant 3/ Insurance Company, submitted its reply pleading therein that the offending truck was insured with the company from 17.11.2006 to 16.11.2007. Claimant/ Respondent 1 is not legal heir of the deceased, she has not filed any document to show her relationship with the deceased Rajim Bai. Driving licence no. A-1556/R was not issued from RTO, Raipur, hence, it is proved that the driving licence possessed by the driver of the offending truck was forged and fabricated. There was no valid permit of the offending truck.

6. Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties, arrived at a finding that late Rajim Bai died on account of motor accidental injuries suffered by her on 02.02.2007. Claims Tribunal further held that the claimant/ Respondent 1 is legal heir of late Rajim Bai. Breach of policy conditions was not found to be proved and awarded Rs. 1,79,600/- as total compensation.

7. Mr. Qamrul Aziz, learned counsel for the appellant/ Insurance Company submits that the Claims Tribunal erred in passing the impugned award holding that Respondent 1/ claimant is maternal grand child of deceased Rajim Bai, hence, she is not entitled for any amount of compensation. In support of his above contention he places his reliance upon the case of **Manjuri Bera v. Oriental Insurance Co. Ltd.** reported in **(2007) 10 SCC 643**. It is further contended that non-applicant 1 driver of the offending truck was possessed with two sets of driving licence, hence, the Insurance Company is not liable to satisfy the amount of compensation. On the date of accident, non-applicant 1/ driver of the offending vehicle was not possessed with valid and effective driving licence because the licence possessed by him was renewed from 23.05.2007 to 23.05.2010 for a period of 3 years whereas the accident took place on 02.02.2007. Perusal of driving licence and the evidence of witnesses examined, it is clear that prior to 23.05.2007, there was no valid and effective driving licence with non-applicant 1, as such, there was breach of policy conditions. He further contended that Respondent 1/ claimant is not entitled for any amount of compensation.

8. Per contra, Mr. P.R. Patankar, learned counsel for Respondent 1/ claimant submits that Respondent 1 is only legal heir of the deceased being maternal grand child, she was being brought up by deceased Rajim Bai as Respondent 1 lost her mother at her very tender age. Deceased was residing with respondent 1 about 6-7 years prior to her accidental death. Claims Tribunal has rightly arrived at a finding that Respondent 1 is entitled for the

compensation on account of death of Rajim Bai being her maternal grand mother. He further pointed out that the case of **Manjuri Bera (supra)** will not be applicable to the facts of the present case because in case of **Manjuri Bera (supra)** claimant therein was residing with her husband separately. He lastly submits that the appellant-Insurance Company has deposited the entire amount of compensation before the Claims Tribunal and the same was withdrawn.

9. Mr. Uttam Pandey, learned counsel representing Respondent 3 submits that Respondent 3 is working as Transporter, offending truck was owned by him and he has engaged Arvind Singh as driver of the offending truck. He further contended that the offending truck was running under the valid permit and non-applicant 1 driver of the offending truck was possessed with valid and effective driving licence on the date of accident. He referred the document Ext. D-8C to prove the fact that Respondent 2 was possessed with valid and effective driving licence on the date of accident. There was no breach of policy conditions and Claims Tribunal was perfectly justified in fastening the liability upon the appellant-Insurance Company.
10. I have heard learned counsel for the respective parties and also perused the record of the claim case.
11. So far as, the first submission made by the learned counsel for the appellant with regard to the entitlement to get the amount of compensation to Respondent 1/ claimant on the ground that claimant was a married maternal grand child. Perusal of the record would show that the claimant/ Respondent 1, in her claim application, has very categorically pleaded that she was brought up by her maternal grand mother, after death of her mother, deceased was residing with her since last about 6-7 years. Claimant/ Respondent 1 is the only legal heir of the deceased. In support of pleadings made in claim application, claimant examined herself as AW-1; Motiram Sinha, Sarpanch of Village Panchayat, Chitod as AW-2; Raghuveer Sahu, Ex-Sarpanch as AW-3

and one Mangalram as AW-4 who is eye witness to the accident. Perusal of the evidence brought on record by the claimant and herself would show that the claimant in her evidence has stated that she was residing at Ganjpara, Durg and the deceased was also residing with her on the date of accident. AW-2, Motiram Sinha has also stated that deceased Rajim Bai was residing with the claimant since last 6-7 years, she was working in Rice mill while residing with claimant. In cross-examination he admits that he has not brought any certificate showing him to be the Sarpanch of village. He further stated that deceased was widow of Sundarlal who was not survived by any siblings or legal heirs. Similarly, AW-3 Raghuveer Sahu has also stated that in document Ext. P-21 issued by him, there is no mention of house number of deceased in it. He admits that document Ext. P-21 placed on record is dated 05.08.2009 which bears the signature of Rajim Bai.

12. From the aforementioned evidence brought on record by Respondent 1/ Claimant and also looking to the place of accident ie. Ganjpara, address of the claimant ie. Ganjpara, Durg, the submission made by the learned counsel for Respondent 1 appears to be correct that on the date of accident deceased was residing with Respondent 1/ claimant. So far as the ruling of the Supreme Court relied upon by the learned counsel for the appellant ie. **Manjuri Bera (supra)** is of a married lady but she was residing along with her husband. In that case, deceased was not residing with the claimant therein. In the case at hand, the facts are little different from that. Deceased on the date of accident was residing with Respondent 1, hence, this case is having different facts than what was considered by Supreme Court in **Manjuri Bera (supra)**, the same will not be applicable to the facts of the present case.

Recently, Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. v. Birender and others** reported in **AIR 2020 SC 434** has considered the issue with regard to entitlement of compensation towards dependency of married sons having their own source of income and decided

the same in favour of the claimants and held thus:

“15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/- and Rs. 1,50,000/- per annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.”

13. Taking support of the aforementioned judgment passed by Supreme Court in the case of **Birendra (supra)** and further considering the facts of the case where the deceased was residing with her maternal grand child on the date of accident, I am of the considered view that Respondent 1/ claimant is entitled for the amount of compensation and the Claims Tribunal has not committed any error in awarding the amount of compensation of Rs. 1,79,600/- in the facts of the case.
14. Sofar as the second ground raised by the learned counsel for the appellant with regard to licence, I have perused the record of the claim case. Along with claim application, appellant-Company has placed on record documents of the criminal case, Ration card in the name of deceased Rajim Bai. Appellant-Insurance Company has placed on record Ext. D1, Insurance policy; Ext. D2, extract of driving licence and Ext. D-8C, copy of register of RTO, Raipur. In Ext. D-8C, renewal dates of licence is mentioned as 30.6.1989 to 29.06.1992, 18.11.1992 to 17.11.1995, 16.06.1996 to 15.06.1999, 24.05.2000 to 23.05.2003 and 24.05.2004 to 23.05.2007, thereafter, it was renewed up to 23.05.2010. Document Ext. D-8C was proved by witness NAW-4, Satendra

Kumar Soni, AG-III in Additional Regional Transport Office, Durg. In his evidence, he admitted that the licence of non-applicant 1 was renewed for LMV and HGV from 23.05.2007 to 23.05.2010. In the note of evidence of this witness, Claims Tribunal has mentioned that after perusal of original records of the driving licence none of the parties are having any objection. In view of the above, Ext. D-8C has been proved in whole.

15. Perusal of document Ext. D-8C as discussed above, the last renewal of the licence has been mentioned to be from 23.05.2007 to 23.05.2010. Appellant-Insurance Company has not brought any evidence to show that prior to 23.05.2007 there was no licence with non-applicant 1 but from perusal of document Ext. D-8C it would show that non-applicant 1 was possessed with licence for a period of 3 years from 24.05.2004 to 23.05.2007. In view of the aforementioned evidence available on record ie. licence register recorded in the name of non-applicant 1, it is apparent that on the date of accident ie. 02.02.2007, non-applicant 1 was possessed with valid and effective driving licence as prior to it, renewal of licence shown in the register is of 24.05.2004 to 23.05.2007. In view of the above discussion the second submission made by the learned counsel for the appellant that on the date of accident non-applicant 1 was not possessed with valid and effective driving licence is also not sustainable and it is hereby repelled.
16. For the foregoing reasons, I do not find any merit in this appeal which is liable to be and is hereby dismissed accordingly.

Sd/-
(Parth Prateem Sahu)
 Judge