AFR

HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No.1388 of 2014

1. Smt. Janki Bai …...(**Died and Deleted as per Court's order dated 18.09.2020**)
2. Vinodpuri S/o Lata Makhanpuri Goswami, aged about 23 years
3. Manojpuri S/o Late Makhanpuri Goswami, aged about 26 years

All Resident of Village Mohgaon, P.S. Pandatarai, Tahsil Pandariya, District Kabirdham, Chhattisgarh

---- Appellants

Versus

1. Sandeep Kumar S/o Mohanlal Gedam, aged about 24 years, R/o Ward No.8, Budha Mahadeo Ward, Kawardha, P.S. Kawardha, Tahsil and District Kabirdham, Chhattisgarh
2. Gyandarshan Education Private Limited C/o Gurukul School Mahrajpur 19/5 First Floor, Abhiyan Complex, Near Chauhan Hotel, Tahsil and District Kabirdham, Chhattisgarh
3. Branch Manager, The Oriental Insurance Company Limited (192590), Branch Kawardha, Tahsil and District Kabirdham, Chhattisgarh

---- Respondents

M. A. (C) No. 211 of 2015

Branch Manager, The Oriental Insurance Company Limited (192590), Branch Kawardha, Tahsil and District Kabirdham, Chhattisgarh

---- Appellant

Versus

1. Janki Bai ….(**Died and Deleted as per Court's order dated 02.09.2020**)
2. Vinodpuri S/o Lata Makhanpuri Goswami, aged about 23 years
3. Manojpuri S/o Late Makhanpuri Goswami, aged about 26 years

   All three Resident of Village Mohgaon, Thana Pandatarai, Tahsil Pandariya, District Kabirdham, Chhattisgarh
4. Sandeep Kumar S/o Mohanlal Genam, aged about 24 years, R/o Ward No.8, Budha Mahadeo Ward, Kawardha, Thana Kawardha, Tahsil and District Kabirdham, Chhattisgarh
5. Gyandarshan Education Private Limited C/o Gurukul School Mahrajpur 19, 5 First Floor, Abhiyan Complex, Near To Chauhan Hotel, Tahsil and District Kabirdham, Chhattisgarh

---- Respondents

M. A. (C) No. 238 of 2015

Gyandarshan Education Private Limited C/o Gurukul School Mahrajpur, through President Ramesh Chopra, S/o Shri Late F.C. Chopra, aged about 55 years, R/o Sarafa Line, Kawradha, Police Station Kawardha, Civil and Revenue District Kabirdham, Chhattisgarh

---- Appellant

Versus

1. Smt. Janki Bai ….(**Died and Deleted as per Court's order dated 18.09.2020**)
2. Vinodpuri S/o Lata Makhanpuri Goswami, aged about 23 years
3. Manojpuri S/o Late Makhanpuri Goswami, aged about 26 years
   All Resident of Village Mohgaon, P.S. Pandatarai, Tahsil Pandariya, District Kabirdham, Chhattisgarh
4. Sandeep Kumar S/o Mohanlal Gedam, aged about 24 years, R/o Ward No.8, Budha Mahadeo Ward, Kawardha, P.S. Kawardha, Tahsil and District Kabirdham, Chhattisgarh
5. Branch Manager, The Oriental Insurance Company Limited (192590), Branch Kawardha, Tahsil and District Kabirdham, Chhattisgarh

---- Respondents

MAC No.1388 of 2014

For Appellants	: Shri Devesh Chandra Verma, Advocate
For Respondent No.1	: None
For Respondent No.2	: Shri Ajit Singh, Advocate
For Respondent No.3	: Shri Sudhir Agrawal, Advocate

MAC No.211 of 2015

For Appellant	: Shri Sudhir Agrawal, Advocate
For Respondents No.1 to 3	: Shri Devesh Chandra Verma, Advocate
For Respondent No.4	: None
For Respondent No.5	: Shri Ajit Singh, Advocate

MAC No.238 of 2015

For Appellant	: Shri Ajit Singh, Advocate
For Respondents No.1 to 3	: Shri Devesh Chandra Verma, Advocate
For Respondent No.4	: None
For Respondent No.5	: Shri Sudhir Agrawal, 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

12.10.2020

1. All the three appeals are arising out of award dated 09.12.2014 passed by the Additional Motor Accident Claims Tribunal, Kabirdham (Kawardha), Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.76 of 2014, hence, they are being disposed of by this common judgment.

2. MAC No.1388 of 2014 is filed by claimants challenging the finding recorded by learned Claims Tribunal with regard to contributory negligence to the extent of 50% on the part of deceased Makhanpuri Goswami and for enhancement of amount of compensation on the ground mentioned therein. MAC No.211 of 2015 is filed by Insurance Company challenging the direction issued to the Insurance Company to satisfy the amount of compensation and thereafter to recover the same from non-applicant No.2-owner. MAC No.238 of 2015 is filed by owner of offending vehicle challenging the finding recorded by learned Claims Tribunal with regard to breach of policy conditions on account of driver of offending vehicle was not possessed with valid and effective driving licence on the date of accident.

3. Facts relevant for disposal of these appeals, are that, on 17.09.2013, at about 7.30 AM, Makhanpuri Goswami was going

Lohara from Kawardha on motorcycle, when he reached near Vindhyavashini Temple at Lohara Road, non-applicant No.1 while driving Bus bearing No.CG-09/B/5007 (hereinafter referred to as 'offending vehicle') rashly and negligently dashed the motorcycle of Makhanpuri Goswami and caused accident. In the aforementioned accident, Makhanpuri Goswami suffered grievous injuries over his person. He was taken to Government Hospital, Kawardha where he was declared dead. The accident was reported to concerned Police Station, based on which, Crime No.338 of 2013 was registered against non-applicant No.1.

4. Claimants, who are widow and children of deceased Makhanpuri Goswami filed an application under Section 166 of the M.V. Act pleading therein that on the date of accident, deceased aged about 45 years was working as Lineman with the Electricity Department. He was earning Rs.40,796/- per month as salary and claimed Rs.90,22,384/- as compensation on different heads.

5. Non-applicants No.1 and 2, who are driver and owner of offending vehicle submitted joint reply to claim application, while denying the pleadings made therein, further pleaded that deceased under the influence of liquor drove his motorcycle rashly and negligently and dashed with offending vehicle; on the date of accident, offending vehicle was insured with non-applicant No.3, non-applicant No.1 was possessed with valid and effective driving licence to drive offending vehicle, as such, liability, if any, to satisfy the amount of compensation would be upon the Insurance Company.

6. Non-applicant No.3/Insurance Company submitted reply to claim application, while denying the pleadings made therein, pleaded that offending vehicle was being driven in breach of policy conditions; it was not proved from the documents that non-applicant No.1 was driving the vehicle within the conditions of insurance policy as non-applicant No.1 was not possessed with valid and effective driving licence. He was holding 'Learner's Licence'. It was further pleaded that Insurance Company and owner of motorcycle was not impleaded as party non-applicants, hence, claim application is not maintainable on account of non-joinder of necessary party. There was contributory negligence.

7. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal arrived at a finding that both the drivers to be contributory negligent to the extent of 50%; there was breach of policy conditions and awarded Rs.15,15,294/- as compensation. Learned Claims Tribunal in paragraph-16 of the award issued a direction to Insurance Company to first pay the amount of compensation and then to recover the same from non-applicant No.2 in accordance with law.

8. Shri Devesh Chandra Verma, learned counsel for the claimants submits that learned Claims Tribunal erred in arriving at a finding that deceased was equally liable for contributory negligent in the accident overlooking the evidence placed on record by the claimants. He further submits that claimants have examined one independent witness who is resident of area where accident took

place. He was an eyewitness of the accident, who specifically stated in his evidence that accident was on account of rash and negligent driving of offending vehicle by non-applicant No.1 and further clarified that deceased was driving his motorcycle on his own side. It is contended that learned Claims Tribunal while calculating the amount of compensation has not added any amount towards future prospects in the monthly salary of deceased. Placing reliance in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**, he submits that learned Claims Tribunal ought to have added 30% of established income of deceased as he was in permanent employment working with the Electricity Department of Chhattisgarh State. It is further contended that learned Claims Tribunal has not awarded appropriate amount of compensation towards other conventional heads as per dictum of Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**.

9. Per contra, Shri Ajit Singh, learned counsel for the owner of offending vehicle submits that learned Claims Tribunal erred in arriving at a finding that non-applicant No.1 contributed in the accident to the extent of 50%. Accident was a result of sole negligence of the deceased himself. Owner of offending vehicle has challenged the finding of contributory negligence as well as breach of policy conditions in appeal bearing MAC No.238 of

2015. It is contended that owner of offending vehicle in reply to claim application has taken a specific plea that deceased was driving his motorcycle under the influence of liquor and by coming towards wrong side, dashed with offending vehicle, but learned Claims Tribunal ignoring this specific plea and statement made by non-applicant No.1/driver of offending vehicle, erroneously recorded a finding of contributory negligence equally upon the deceased and non-applicant No.1. It is further contended that non-applicant No.1/driver of offending vehicle and employee of non-applicant No.2 (who was employed for driving school bus for carrying students) was possessed with valid and effective driving licence. He also argued that licence particulars issued by the Licensing Authority, Kabirdham clearly shows the validity period of licence was from 12.09.2013 to 11.03.2014, whereas date of accident was 17.09.2013, which is within the validity period of licence. Though the licence was a Learner's Licence, but even a person holding Learner's Licence is authorized under it to drive the category of motor vehicle mentioned therein. He places reliance on the judgment passed by Hon'ble Supreme Court in case of **National Insurance Company Limited v. Swaran Singh** reported in **(2004) 3 SCC 297**, **National Insurance Company Limited v. Bhagwani and Others** reported in **(2004) 3 SCC 347**, **United India Insurance Company Limited v. Raimun and others** reported in **2014(1) C.G.L.J. 324** and **Shiv Kumar Soni v. Rita Kushwaha and Others** reported in **2013 (3) MPLJ 255** in support of his contention. It is further contended that aforementioned judgments supports his claim because it is not a case where the licence possessed by non-applicant No.1/driver of offending vehicle was fake or forged or a case of no licence, but non-applicant No.1/driver of offending vehicle was possessed with valid and effective driving licence issued by the office of Licensing Authority, Kabirdham. The amount of compensation calculated is just and proper.

10. Shri Sudhir Agrawal, learned counsel for the Insurance Company submits that learned Claims Tribunal has rightly recorded a finding that there was breach of policy conditions. There is no dispute that the driver of offending vehicle was possessed of Learner's Licence. AS per Rule 3(b) of the Central Motor Vehicles Rules, 1989, person driving the vehicle under Learner's Licence should be accompanied by instructor holding valid and effective driving licence, but in the case, there is no averment of the driver or owner in this regard. The vehicle driven by the person with Learner's Licence should be affixed with letter '**L**' on front side as well as on the rear side, which was not there. Claims Tribunal even after recording a finding that there was breach of policy conditions has directed the Insurance Company to first pay the amount of compensation and then to recover the same from owner of the offending vehicle, which is erroneous. The Insurance Company has separately filed an appeal against the direction issued for pay and recover.

11. We have heard learned counsel for the respective parties and perused the record carefully.

12. We will first deal with the ground raised by the claimants and owner of offending vehicle with regard to contributory negligence. Learned Claims Tribunal taking into consideration head on collision and the spot map (Ex.P/4) arrived at a conclusion that there was contributory negligence to the extent of 50% upon driver of both the vehicles. The submission of learned counsel for owner of offending vehicle that learned Claims Tribunal has not considered the pleadings made in reply to claim application wherein they have specifically pleaded with regard to driving of motorcycle by deceased under the influence of liquor and further that the place where accident took place was a wide road.

13. To appreciate the submission of learned counsel for owner of offending vehicle, we have perused the record of claim case. Copy of First Information Report is placed on record as Ex.P/3, which was lodged by one Hussain Ali within one hour of the accident. The contents of First Information Report (Ex.P/3) would show that allegation of rash and negligent driving was levelled against the driver of offending vehicle i.e. non-applicant No.1. Police submitted Final Report/charge-sheet (Ex.P/1) against non-applicant No.1/driver of offending vehicle under Sections 279, 337 and 304A of IPC. Lodger of First Information Report (Ex.P/3) has been shown to be resident of Ward No.4 in front of Vindhyavashini Temple, which is a place of accident. From the address of

informant as mentioned in First Information Report, it appears that First Information Report (Ex.P/3) was lodged on the information given by an eyewitness. Spot map (Ex.P/4) would show that on both sides of road, shops and residential accommodations are constructed. The house of informant is shown just on the road. Upon going through the postmortem report (Ex. P/3), it would show that doctor who conducted postmortem has not mentioned of presence of alcohol. In absence of which, pleadings with regard to consumption of alcohol by deceased or driving the motorcycle under the influence of liquor or alcohol is not supported by any material.

14. In view of aforementioned facts, particularly, the contents of First Information Report (Ex.P/3), place of accident and contents of postmortem report (Ex.P/3), submission made by learned counsel for owner of offending vehicle that learned Claims Tribunal erred in holding non-applicant No.1/driver of offending vehicle to be contributory negligent to the extent of 50% is erroneous and not sustainable. The submission of learned counsel for owner of offending vehicle that it is sole negligence of deceased for the accident is hereby rejected.

15. Now, we will consider the ground raised by learned counsel for the claimants with regard to contributory negligence as held against the deceased to the extent of 50%, spot map (Ex.P/4) would show that place of accident is situated within the town area and on both sides of road, shops and houses including one of the Temples i.e.

Vindhyavashini Temple are constructed. First Information Report (Ex.P/3) lodged by one eyewitness resident of nearby place of accident clearly mentions that it is offending vehicle driven by non-applicant No.1 rashly and negligently, dashed the motorcycle of deceased. Claimants have examined one Raja Tiwari son of Girdhari Prasad Tiwari who is resident of "**in front of Vindhyavashini Temple, Kawardha**" as AW-2, who in his evidence stated that when he was standing in front of his house, offending vehicle driven by non-applicant No.1 rashly and negligently dashed the deceased upon going to wrong side. Deceased was travelling on his own side. This witness was extensively cross-examined. In cross-examination, he stated about width of road at place of accident is 25 feet. He further clarifies that deceased was travelling/driving his motorcycle on his own side; adding that, there was 3 feet open space on both sides of road.

16. Upon considering the entire material and evidence available on record showing the manner in which accident took place, place of accident, time on which the accident took place i.e. day time and particularly, looking to the contents of First Information Report (Ex.P/3) lodged by eyewitness resident of place of accident as well as evidence of Raja Tiwari (AW-2) other eyewitness who is also resident of same place, we find some force in the submission of learned counsel for the claimants that learned Claims Tribunal erred in arriving at a finding that there was contributory negligence

of drivers of both the vehicles to the extent of 50% on the ground that there was head on collision.

17. Learned Claims Tribunal has not discussed the contents of First Information Report (Ex.P/3) lodged by eyewitness and evidence of Raja Tiwari (AW-2) as another eyewitness examined before Claims Tribunal. There is no difference in the picture canvassed by them and the manner in which accident took place. In the said circumstances, contents of First Information Report (Ex.P/3) and evidence of Raja Tiwari (AW-2) cannot be overlooked and disbelieved. But, at the same time, percentage of contributory negligent has to be determined based on the spot map (Ex.P/4) and width of road wherein it has been stated that there was 25 feet wide road and after road, there was 3 feet wide pathway on both sides of road. Even if, there was rash and negligent driving of non-applicant No.1 as stated by informant of First Information Report (Ex.P/3) and evidence of Raja Tiwari (AW-2), then also, there may be an opportunity for the deceased to avoid the accident, but that opportunity has not been availed. Learned Claims Tribunal upon taking into consideration the fact that the point of accident was about 8 feet from its right side and 16 feet from the left side of the Bus. In evidence of Raja Tiwari (AW-2) eyewitness, he admitted that width of road was 25 feet, there was 3 feet pathway down the road on both side. Spot map shows that the place where accident took place was not the extreme corner of the road, but there was some space available to the width of

the road on left side of motorcycle. Taking into consideration the overall facts and circumstances of the case, particularly, evidence of Raja Tiwari (AW-2) eyewitness to accident, contents of First Information Report (Ex.P/3) and also the spot-map, we are of the view that learned Claims Tribunal erred in holding that the deceased was contributory negligent to the extent of 50%.

18. The Hon'ble Supreme Court while considering the ground of contributory negligence in case of **Pramodkumar Pasikbhai Jhaveri v. Karmasey Kunvargi Tak and others** reported in **(2002) 6 SCC 455,** has considered that whether there was an opportunity to escape the accident or deceased took proper precaution or not and held thus :

> “8. …...The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as “negligence.” Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence" it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an "author of his own wrong."

19. Taking into consideration the aforementioned law laid down by Hon'ble Supreme Court and considering the entire facts and

material available on record, in our considered opinion, we are of the view that it is not a case of sole negligence of any of the party, but in view of contents of First Information Report (Ex.P/3) and evidence of Raja Tiwari (AW-2) that non-applicant No.1/driver of offending vehicle drove his vehicle rashly and negligently, we are of the view that learned Claims Tribunal erred in holding driver of both the vehicles to be contributory negligent to the extent of 50%, which is not sustainable in the eyes of law and it is hereby set aside. In the facts and circumstances of the case, particularly, the involvement of two vehicles, place and time of accident, we find it appropriate to hold that the deceased was contributory negligent to the extent of 20%.

20. Now, we will consider the quantum of compensation challenged by the claimants, learned Claims Tribunal has assessed the income of deceased based on the salary slip placed on record as Ex.P/8. In the said document, gross salary of deceased has been shown as Rs.40,796/- and after deductions mentioned therein, net salary has been mentioned as Rs.28,972/- per month and Rs.3,47,664/- per annum.

21. The deductions from the salary of Government Servant has been dealt with by Hon'ble Supreme Court in case of **Vimal Kanwar and others v. Kishore Dan and others** reported in **(2013) 7 SCC 476**, in which, Hon'ble Supreme Court has held thus :

> "19. The aforesaid issue fell for consideration before this Court in *Helen C.*

Rebello v. Maharashtra SRTC, (1999) 1 SCC 90. In the said case, this Court held that Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a “pecuniary advantage” receivable by the heirs on account of one’s death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as “pecuniary advantage” liable for deduction. The following was the observation and finding of this Court: (SCC pp. 111-12, para 35).

> “(35). Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs

after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy amount is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly, any cash, bank balance, shares, fixed deposits, etc. though all are pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction? When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, *inter se,* between them

> and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act? The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

22. In the aforementioned case law, Hon'ble Supreme Court has held that deductions towards General Provident Fund, House Rent Allowance, Pension, Insurance, etc. to be the income of deceased and benefit for the family members. In view of above, only the income tax is to be deducted from the gross salary for the purpose of assessing net income of deceased on the date of accident. Upon assessing the income of deceased on the date of accident as Rs.40,796/- per month, yearly income will come to Rs.4,89,552/-. As per ruling rendered by Hon'ble Supreme Court

in case of **Pranay Sethi** (supra), there will be an addition of 30% of established income towards future prospects as deceased being in a permanent employment. After adding 30% in the established yearly income of deceased, total income of deceased will come to Rs.6,36,418/- (4,89,552 x 30% =1,46,865.6 rounded off to 1,46,866/- and 4,89,552 + 1,46,866). From this total yearly income, there shall be deduction of income tax as per slab prevailing in financial year 2013-14. In the year 2013 according to income tax slab, income upto Rs.2,00,000/- is exempted and on the income exceeding Rs.2,00,001/- to 5,00,000/- is taxable @ 10% and 20% for income exceeding Rs.5 Lakhs to Rs.10 Lakhs.

23. In view of above, from the yearly income of deceased, after deducting Rs.2,00,000/- as non-taxable, tax @ 10% payable on income of Rs.3,00,000/-, which makes the tax as Rs.30,000/-. There will be further tax @ 20% on Rs.1,36,418/-, which makes the tax as Rs.27,283.6 rounded off to Rs.27,284/-. After deducting total income tax i.e. Rs.57,284/- (30,000 + 27,284), net income of deceased will be Rs.5,79,134/- (6,36,418 – 57,284). Deceased was survived by his widow and two children, hence, there will be a deduction of 1/3rd towards personal and living expenses of the deceased. After deducting 1/3rd towards personal and living expenses i.e. Rs. 1,93,044.6 (5,79,134 / 3), rounded off to Rs.1,93,045/-, annual loss of dependency of claimants will come to Rs.3,86,089/- (5,79,134 – 1,93,045). On the date of accident, age of the deceased is shown to be 45 years, therefore, in view of

law laid down by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, appropriate multiplier will be 13. By applying the multiplier of 13, the amount of compensation will come to Rs.50,19,157/- (3,86,089 x 13).

24. Apart from above amount of compensation, the claimants are entitled for a sum of Rs.40,000/- towards parental consortium to children (payable to children because of the death of parents), Rs.40,000/- towards spousal consortium to widow (payable to the spouse because of the death of the partner) in view of law laid down by Hon'ble Supreme Court in the matter of **Magma General Insurance Company Limited** (supra), Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of funeral expenses. We find it appropriate to award loss of spousal consortium though appellant No.1/widow of deceased has been shown to be dead, but she died after passing of impugned award by learned Claims Tribunal, during the pendency of this appeal on 09.08.2017. As we are considering award of compensation passed by learned Claims Tribunal to the claimants to be just compensation or not, hence, Rs.40,000/- towards loss of spousal consortium to widow is to be awarded.

25. On the basis of above recalculation, now the claimants will be entitled for a total compensation of Rs.51,29,157/- (50,19,157 + 40,000 + 40,000 + 15,000 + 15,000). As we have held the deceased to be contributory negligent to the extent of 20% i.e.

51,29,157 x 20% = 10,25,831.4, rounded off to Rs.10,25,831/- is to be deducted towards contributory negligence on the part of deceased, which makes the amount of compensation to Rs.41,03,326/- (51,29,157 – 10,25,831).

26. Now, we will deal with the ground raised by learned counsel for the Insurance Company with regard to direction issued to Insurance Company to first pay and then recover from owner even after recording a finding that there was breach of policy conditions as well as the ground raised by owner of offending vehicle that learned Claims Tribunal erred in arriving at a finding that there was breach of policy conditions. Claims Tribunal in paragraph-13 of impugned award has considered the reason for recording a finding that there was breach of policy conditions. In the said paragraph, learned Claims Tribunal has considered that on the date of accident, non-applicant N.1/driver of offending vehicle was possessed with 'Learner's Licence', which is placed on record as Ex.NA/5 proved by non-applicant No.1/witness No.1. Learner's Licence (Ex.NA/5) extract of particulars of licence is shown to be in the name of Sandeep Kumar Gedam (non-applicant No.1) issued by the Licensing Authority, Kabirdham. The validity period of licence was for a period of six months i.e. from 12.09.2013 to 11.03.2014. Other document which is available on record i.e. licence of non-applicant No.1 placed on record as Ex.NA/3-1 clearly showed the same licence number and validity period to be expired of Learner's Licence. One Rajesh Dewangan, Clerk of

District Transport Office, Kabirdham was examined by non-applicant No.3/Insurance Company to prove the licence, who in his evidence has stated that Licence No.CG-09/0005413/2013 was a Learner's Licence issued in the name of Sandeep Kumar Gedam for a period from 12.09.2013 to 11.03.2014. He further stated that holder of Learner's Licence can drive class of vehicle mentioned therein under the guidance of experienced Instructor. There shall be mention of letter '**L**' in red on front and rear side of the vehicle with white background.

27. Learned counsel for the Insurance Company has referred to Section 3 of the M.V. Act and Rule 3 of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as 'Rules of 1989'). Section 3 of the M.V. Act is extracted below for ready reference :

> “**3. Necessity for driving licence.-**(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle other than [a motor cab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of Section 75] unless his driving licence specifically entitles him so to do.
>
> (2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor

vehicle shall be such as may be prescribed by the Central Government."

Rule 3 of the Rules of 1989 reads as follows :

"**3. General.-**The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as—

(a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;

(b) such person is accompanied by an instructor holding an effective driving License to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle; and

(c) there is painted, in the front and the rear or the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on a white background as under :

L

Note.—The painting on the vehicle or on the plate or card shall not be less than 18 centimeters square and the letter "L" shall not be less than 10 centimeters high, 2 centimeters thick and 9 centimeters wide at the bottom.

Provided that a person, while receiving instructions or gaining experience in driving a motorcycle (with or without a side-car attached), shall not carry any

> other person on the motorcycle except for the purpose and in the manner referred to in clause (b)."

28. Section 3 of the M.V. Act mentions that no person shall drive motor vehicle in any public place unless he holds an effective driving licence. Section 8 of the M.V. Act envisaged grant of Learner's Licence, which is to be granted subject to provisions of Section 7. Section 7 of the M.V. Act prescribes for licence shall not be granted to a person below the age of 18 years and Learner's Licence not to be granted to drive 'Transport Vehicle' unless applicant is holding licence to drive 'Light Motor Vehicle' for at least one year. Learner's Licence is to be granted subject to Rule 3 of the Rules of 1989. Under Rule 3, it is specifically provided that he can drive a vehicle, but such person to be accompanied by an Instructor holding an effective driving licence and further such Instructor is sitting in such a position to control or stop the vehicle and further 'L' sign/mark painted in front and rear side of the vehicle.

29. Now, upon considering the contents of licence (Ex.NA/3-1), it would show that licence was issued on 12.09.2013 and accident took place on 17.09.2013 within five days from issuance of licence. In evidence of Sandeep Kumar (NAW-1(1&2), has categorically stated that at the time of accident, offending vehicle was vacant and he is travelling on offending vehicle along with one additional person i.e. Conductor.

30. From the aforementioned evidence of non-applicant No.1/driver of offending vehicle, it is apparent that non-applicant No.1/driver of offending vehicle who was holding Learner's Licence was not accompanied with Instructor. In absence of Instructor accompanying him, he was not authorised to drive offending vehicle.

31. The case law relied upon by learned counsel for owner of offending vehicle in support of his contention that licence possessed by non-applicant No.1/driver of offending vehicle to be valid and effective is on the different facts.

32. The Hon'ble Supreme Court in case of **Swaran Singh** (supra) in paragraph-93 of the judgment has dealt with Learner's Licence. It is considered by Hon'ble Supreme Court that whether holder of Learner's Licence to be a duly licence or not and held that it cannot be said that holder of Learner's Licence is not entitled to drive the Bus. In the preceding line of same paragraph, it has been held that vehicle being driven by a Learner subject to conditions mentioned in the licence. Learner's Licence is issued under Section 8 of the M.V. Act. Learner's Licence is issued in Form-3 under Rule 3(a) and 13. Form-3 clearly mentions that person named in licence is authorised to drive throughout India as a Learner subject to provisions of Rule 3 of the Rules of 1989. In Form-3, there is a warning appended in bottom of the Form, which reads as under :

"**Warning**. –The attention of the holder

> of this licence is drawn to Rule 3 of the Central Motor Vehicles Rules, 1989, which prohibits him from driving any motor vehicle unless he has besides him a person duly licensed to drive the vehicle and in every case, the vehicle carries "L" plates both in the front and in the rear of the vehicle"

33. Upon considering the contents of Form-3 in which Learner's Licence is issued and further considering the provisions of Rule 3 of the Rules of 1989, we are of the considered view that though non-applicant No.1/driver of offending vehicle was possessed with valid Learner's Licence, but at the time of accident, he was not authorised to drive offending vehicle as he was not accompanied with Instructor having valid and effective driving licence and that too sitting in such a position to control offending vehicle. The finding recorded by learned Claims Tribunal with regard to breach of policy conditions is based on the evidence and is in consonance with the provisions of law and the law laid down by Hon'ble Supreme Court in case of **Swaran Singh** (supra).

34. In view of above, submission made by learned counsel for owner of offending vehicle that learned Claims Tribunal erred in holding that there was breach of policy conditions is not sustainable in the eyes of law and it is hereby repelled. As there was breach of policy conditions, Insurance Company cannot be held liable to satisfy the amount of compensation. The liability to satisfy the amount of compensation shall be upon non-applicants No.1 and 2

i.e. driver and owner of offending vehicle.

35. At this stage, learned counsel for the claimants again pointed out that even if, there is no liability upon the Insurance Company to satisfy the amount of compensation, then direction of pay and recover be issued. This submission was opposed by learned counsel for the Insurance Company.

36. The doctrine of pay and recover in cases of no valid licence has been considered by Hon'ble Supreme Court in case of **Shamanna and Another v. Divisional Manager, Oriental Insurance Company Limited and Others** reported in **(2018) 9 SCC 650**, in which, Hon'ble Supreme Court has held thus :

> “2. ….......Since the driver of the jeep had no valid driving licence at the time of the accident and since there was violation of the terms of the insurance policy, the Tribunal directed the insurance company to pay the compensation to the claimants and granted liberty to the insurance company to recover the same from the owner of the offending vehicle.
>
> 13. Since the reference to the larger bench in *National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785* has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in *National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297* followed in *National Insurance Co. Ltd. v.*

> *Laxmi Narain Dhut, (2007) 3 SCC 700* and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in *Swaran Singh (supra)* and *Laxmi Narain Dhut (supra)* cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored."

37. Further, in case of **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others** reported in **(2018) 7 SCC 558**, Hon'ble Supreme Court while dealing with the issue of breach of policy condition on account of no permit 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 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.”

38. The Hon'ble Supreme Court in case of **Amrit Paul Singh** (supra) has very specifically held that in case of breach of policy conditions, direction for pay and recover can be issued and the

same will be in consonance with the judgment passed by Hon'ble Supreme Court in case of **Swaran Singh** (supra).

39. The Claims Tribunal has correctly held that there was breach of policy conditions, given direction to the Insurance Company to pay and then to recover the same from non-applicant No.2-owner. The Claims Tribunal erred in holding that the Insurance company failed to prove that the owner was having the knowledge that non-applicant No.2 was not having effective driving licence. This finding of learned Claims Tribunal is erroneous and not sustainable, because it is the duty of the owner of the vehicle to engage any person having valid and effective driving licence. The occupation of non-applicant No.2 is not of a driver's training school, but he has to engage a trained driver. Driver with Learner's Licence cannot be engaged as a driver. The finding recorded by the Claims Tribunal in paragraph-16 of the award holding the appellant-Insurance Company liable to satisfy the amount of compensation is set aside. But as we have held breach of policy condition on the ground of licence, the Insurance Company shall first deposit the entire amount of compensation with interest and then to recover the same from owner of offending vehicle in accordance with law.

40. In view of law laid down by Hon'ble Supreme Court in the aforementioned judgments and taking into consideration the facts and circumstances of the case, we find it appropriate to affirm the direction issued to Insurance Company to first deposit the entire

amount of compensation before learned Claims Tribunal and thereafter, to recover the amount so deposited by it from non-applicant No.2 i.e. owner of offending vehicle. It is made clear that for recovery of amount of compensation so deposited by the Insurance Company, there will be no requirement of filing separate proceeding, but the Insurance Company will be at liberty to file an application for execution in the very same proceeding for recovery of amount from non-applicant No.2 i.e. owner of offending vehicle in accordance with law.

41. In the result :

(i) MAC No.1388 of 2014 filed by the claimants is allowed in part and the claimants are held entitled for Rs.41,03,326/- as compensation instead of Rs.15,15,294/-. The amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

(ii) MAC No.211 of 2015 filed by the Insurance Company is allowed in part. Non-applicant No.3/Insurance Company is exonerated from its liability to satisfy the amount of compensation. It is directed that Insurance Company shall first deposit the entire amount of compensation along with interest before Claims Tribunal and thereafter to recover the amount so deposited by it from non-applicant No.2 i.e. owner of offending vehicle in accordance with law. For recovery of amount of compensation, Insurance Company is not required to file separate suit or proceeding, but can make an application in the very same proceeding for recovery of amount so deposited by it.

(iii) MAC No.238 of 2015 filed by the owner of offending vehicle is dismissed.

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

Yogesh