NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 829 of 2014

1. Smt. Satkunwar bai Wd/o Lt. Jagdev Sinha aged about 38 years.
2. Miss Menka D/o Late Jagdev Sinha, aged about 19 years (now)
3. Miss Tomin D/o Late Jagdev Sinha, aged about 15 years
4. Master Ritesh Kumar S/o Late Jagdev Sinha, aged about 13 years

   Appellants No. 3 and 4 are minor through their mother Smt. Satkunwar

   All are residence of Village Bankal P.S. Basantpur District Rajnandgaon, C.G.

----Appellants/claimants

VERSUS

1. Ravindra Kumar S/o Balaram Sahu aged about 23 years Residence of Village Aliwara P.S. Gendatola District Rajnandgaon C.G. **---- Driver**
2. Savita R. Sahu W/o Rikhiram Sahu aged about 40 years R/o Yogi Arvind Nagar Opposite Hanuman Temple Plot No. 1246 Post Atpalwadi P.S. Yashodhara nagar Kamathi Road Nagpur M.H. **--------Owner**
3. Shri Ram General Insurance Co. Ltd. through Branch office 215034 T 5 harda House Third Floor 345 Kingsave Nagpur M.H. Head Office E-8 Industrial Area Ricko Seetapura Jaipur (Rajasthan) 302022 **--------Insurer**
4. Smt. Lalita Bai Wd/o Jagdev Sinha, aged about 33 years.
5. Nitesh S/o Jagdev Sinha aged about 9 years
6. Miss Bhumika D/o Jagdev Sinha, aged about 7 years,

   Respondent No. 4 to 6 are co claimants, they are residence at Village Bankal Post Paneka Basantpur District Rajnandgaon C.G.

-------**Respondents/Non-applicants**

For Appellants	:	Mr. P.K. Tulsyan, Advocate
For Respondent No. 3	:	Mr. Deepak Gupta, Advocate
For Respondent No. 1,2, 5 & 6	:	None.

Hon'ble Shri Justice Parth Prateem Sahu

Judgement on Board

20/02/2020

1. Correctness and sustainability of the impugned award dated 16-05-2014 passed by Second Additional Motor Accident Claims Tribunal, Rajnandgaon, in Claim Case

No. 09/2012, is put to challenge by the appellants-claimants in this appeal, wherein the learned Claims Tribunal allowed the claim application in part and awarded Rs. 3,45,000/- as compensation along with interest @ 6% from the date of filing of Claim application till its realization and at the same time, exonerated the Insurance Company from its liability.

2. Facts of the case are that on 01-02-2012, Jagdev Sinha (now deceased) was traveling on his motor cycle at about 7:00 P.M. and going towards his village Bankal from Rajnandgaon. When he reached near village Basantpur road, at that relevant time, one truck bearing No. M.H.31 CB 4588 (hereinafter “offending truck”) driven by respondent No. 1/ non-applicant No. 1-driver, dashed the motor cycle of the deceased, due to which he came under the wheel of the offending truck and suffered grievous injuries over his person and succumbed to those injuries on spot. The claimants who are widow and children of the deceased filed claim application before the competent Claims Tribunal claiming Rs. 10,50,000/- as compensation on the ground mentioned therein.

3. Respondent No. 4 to 6 moved an application before the competent Claims Tribunal under order 1 Rule 10 CPC for impleading them as respondent-party as dependents of deceased.

4. Respondent No. 1/ Non-applicant No. 1 driver of the offending truck submitted his reply to the claim application and denied all the adverse pleadings made in claim application and further pleaded that on the date of accident, he was possessing valid and effective driving licence and further on the date of accident, the offending truck was insured with respondent No. 3/ non-applicant No. 3-Insurance Company.

5. Respondent No. 2/ non-applicant No. 2 owner of the offending truck did not submit reply to the claim application.

6. Respondent No. 3/ non-applicant No. 3-Insurance Company submitted its reply to the claim application separately and pleaded that the income of the deceased has

been shown exaggeratedly, on the date of accident respondent No. 1/ non-applicant No.1 driver of the offending vehicle, on the date of accident, was not possessing valid and effective driving licence, there was no valid fitness and permit of the vehicle. The accident took place on account of the negligence on the part of the deceased himself. Lastly respondent No. 3/ non-applicant No. 3 pleaded that respondent No. 4/ non-applicant No. 4 being not a married wife and respondent No. 5 & 6 are the legitimate children, are not entitled for any amount of compensation.

7. Respondent No. 4 to 6/ non-applicant No. 4 to 6 have submitted their reply to the claim application and pleaded that they are also legal heirs of the deceased. They have earlier filed the claim application before the learned Claims Tribunal which was withdrawn and after withdrawal of their application, they have filed an application in this Claim application for impleading them as non-applicants. They have also pleaded that along with the claimants therein, non-applicants No. 4 to 6 be also awarded amount of compensation.

8. On appreciation of the pleadings and evidence placed on record by the respective parties, the learned Claims Tribunal arrived at a finding that the deceased died due to accidental injuries suffered by him in a motor accident with offending truck driven by respondent No. 1/ non-applicant No. 1. The learned Claims Tribunal also arrived at a finding that there was violation of conditions of insurance policy and while exonerating the Insurance Company from its liability, the Tribunal awarded a total sum of Rs. 3,45,000/- as compensation and awarded the amount of compensation to appellant No. 1 to 4 as well as respondent No. 5 and 6 and distributed as per award.

9. The learned counsel for the appellants-claimants submits that the learned Claim Tribunal committed error in awarding a meagre amount of compensation by assessing the income of the deceased as Rs. 3,000/- per month only on notional

basis without taking note of date of accident and also the nature of the engagement of the deceased as Mason. He further pointed that the learned Claims Tribunal further erred in not adding any amount towards future prospects in the income of the deceased for the purpose of calculating the amount of loss of dependency. He also contended that the deduction towards personal and living expenses of the deceased has been made by the learned Claims Tribunal as 1/3rd, overlooking to the number of claimants who are six excluding the major married daughter and also second wife and her children. He submits that the appropriate deduction would be of 1/4th instead of 1/3rd. The next ground raised by the learned counsel for the appellants is that the learned Claims Tribunal committed error in exonerating the Insurance Company from its liability as the offending truck was having permit for plying the vehicle at Maharashtra and therefore, it cannot be said that the offending truck was plying on road without any permit. In alternate, he also submits that even if the Tribunal arrived at a finding that the offending truck was plying without any proper permit within the State of Chhattisgarh then as per ruling of Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. v. Challa Bharathamma and others*** reported in (**2004) 8 SCC 517** and ***Amrit Paul Singh and another v. Tata AIG General Insurance Company*** reported in **(2018) 7 SCC 558,** the learned Claims Tribunal ought to have directed the Insurance Company for paying the amount of compensation first and thereafter to recover it from respondent No. 2-owner of the offending truck.

10. The learned counsel appearing for Respondent No. 1 supported the impugned award passed by the learned Claims Tribunal.

11. The learned counsel appearing for respondent No. 3-Insurance Company submits that the learned Claims Tribunal has rightly exonerated the Insurance Company as there was violation of conditions of insurance policy. He further submits that for the purpose of plying the offending truck in the State of Chhattisgarh, it will be deemed

to be the vehicle plying without any permit and therefore no interference is warranted in the finding recorded by the learned Claims Tribunal that there was violation of conditions of insurance policy and further exonerating the Insurance Company from its liability to satisfy the amount of compensation. He also contended that the claimants failed to prove income of the deceased and the Claims Tribunal was justified in assessing the income on notional basis. The amount of compensation is just and proper.

12. I have heard learned counsel for the respective parties and also perused the record.

13. Sofar as the submissions made by the learned counsel for the appellants with respect to the quantum of compensation, perusal of award would show that the learned Claims Tribunal for want of proof of income of the deceased has taken into consideration the income of the deceased on notional basis as Rs. 3,000/- per month. The claimants have pleaded in their claim application that on the date of accident, deceased was engaged and working as Mason which remains uncontroverted. In view of the aforementioned pleadings and oral evidence made by the witnesses of the claimants, the deceased could be treated as the 'skilled labour'.

14. Looking to the date of accident i.e. on 01-02-2012 and also considering the wage rate prevailing at that time and also the price index, in the opinion of this Court, the proper income of the deceased can be taken as Rs. 4,500/- per month. The deceased, on the date of accident, as mentioned in the post mortem report, was aged 40 years, as per the pleadings made in the claim application, the deceased was shown to be aged about 40 years and therefore, there will be an addition of 25% of the established income of the deceased, in view of the law laid down by the Hon'ble Supreme Court in the matter of ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680.** The number of persons who are

entitled for the amount of compensation are 4 (four) appellants and 2 (two) respondents as per the award passed by the learned Claims Tribunal and therefore there are total 6 (six) dependents of the deceased as held by the learned Claims Tribunal. In view of the law laid down by the Supreme Court in the matter of ***Sarla Verma & others v. Delhi Transport Corp. & Anr*** reported in **(2009) 6 SCC 121,** the appropriate deduction will be of 1/4th instead of 1/3rd. The other ground as raised by the learned counsel for the appellants that the learned Claims Tribunal committed error in exonerating respondent No. 3/ non-applicant No. 3- Insurance Company is concerned. Section 66 of the Motor Vehicles Act, 1988 provides for necessity of permits which reads as under:

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

15. Perusal of sub-section 1 of Section 66 of the M.V. Act, 1988 itself makes it mandatory that every vehicle which is being used as transport vehicle in any public place in accordance with the conditions of the permit granted or counter signed by the regional or State transport authority or any authority authorising him to use the vehicle in that place in the manner in which the vehicle is being used. Admittedly,

in the instant case, respondent No. 2-owner of the offending vehicle did not appear before the Claims Tribunal and before this Court as well. The respondent No. 3-Insurance Company filed an application in a prescribed formate notice to produce documents under Order 11 Rule 19 of CPC for production of copy of permit. No copy of the permit is made available on record but the learned Claims Tribunal has recorded in para 11 of the award that the permit which has been produced before the Tribunal was a permit valid for the State of Maharashtra only whereas the accident took place within the territorial jurisdiction of Chhattisgarh State and on that basis, the Insurance Company has been exonerated from its liability of satisfying the amount of compensation as there was no permit to ply the vehicle on public road of Chhattisgarh State, it will be deemed that the vehicle was running without valid permit, sofar as this claim is concerned. The issue with respect to the vehicle running on public road without any valid permit has been considered by the Supreme Court in the matter of **Challa Bharathamma (supra)** and held thus:

> "12. The High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed on a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of the insurer. The High Court was, therefore, not justified in holding the insurer liable.
>
> 13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. ... "

Recently, the Hon'ble Supreme Court in the matter of **Amrit Paul Singh**

(supra) has considered the issue of permit and held thus:

> "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 an 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 emphasise, 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 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 *Swaran Singh (2004) 3 SCC 297* and *Lakhmi Chand (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 not 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 that 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 that same from the owner and the driver. The said directions are in consonance with the principles stated in *Swaran Singh* and other cases pertaining to pay and recover principle."

16. In view of the facts available on record and also in the light of the law laid down by the Supreme Court with respect to the running of the vehicle on public road without any permit, the respondent No. 3- Insurance Company will be under obligation and liability to satisfy the amount of compensation at the first instance and then recover the same from respondent No. 2- owner of the offending vehicle.

17. For the foregoing reasons, the award requires reconsideration and recalculation which this Court calculates as under.

18. As in the preceding para, the income of the deceased is assessed as Rs. 4,500/-

per month i.e. Rs. 54,000/- per annum. By adding 25% of the established income towards future prospects, the total yearly income of the deceased will come to Rs. 67,500/- [Rs. 54,000 + 25% of 54,000]. Looking to the number of claimants to be six, there will be deduction of 1/4th towards personal and living expenses and after deducting 1/4th, the yearly loss of dependency of the deceased will come to Rs. 50,625/-. On the date of accident, deceased was aged about 42 years, therefore, appropriate multiplier will be of 14. By applying multiplier of 14 with the loss of yearly dependency, the total loss of dependency will come to Rs. 7,08,750/-. Apart from the aforementioned amount of compensation, the claimants will further be entitled for a total sum of Rs. 75,000/- towards other conventional heads. Now, the appellants-claimants as well as Respondent No. 5 & 6 will be entitled for a total sum of **Rs.7,83,750/-** towards compensation along with interest @ 6% p.a. from the date of filing of claim application till its realization. Respondent No. 3-Insurance Company will deposit the entire amount of compensation before the Claims Tribunal at the first instance and thereafter, the Insurance Company will be at liberty to recover the said amount of compensation deposited by it from Respondent No. 2- owner of the offending vehicle in the same proceeding by filing application for execution. Other conditions imposed by the learned Claims Tribunal will remain intact.

19. Consequently, the appeal is allowed in part and the impugned award is modified to the extent as indicated hereinabove.

Sd/-
(Parth Prateem Sahu)
Judge

Pawan