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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A. (C) No. 344 of 2013

{Arising out of Award dated 14.01.2013 passed in Claim Case No. 20 of 2006 by the 1st Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-Champa (C.G.)}

The Oriental Insurance Company Limited, Branch Office Korba, District Korba, Chhattisgarh.

---- Appellant

Versus

1. Shankerdas S/o Bachchan Das Mahant, aged about 48 years.
2. Dev Kunwar W/o Shanker Das Mahant, aged about 45 years.

Both are resident of village Kothari, Tahsil and District Korba at present R/o village Khaira, Tahsil Sakti, District - Janjgir-Champa Chhattisgarh.

3. Amit Kumar S/o Satdev Singh, aged about 25 years, P.S. Charhi, District Hazari Bag, Bihar.
4. Smt. Indira Singh W/o Prabhat Singh R/o Tatibandh, Raipur, Chhattisgarh.
5. Santosh Kumar Jaiswal S/o Lakhan Lal Jaiswal, aged about 28 years, R/o Adbhar, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh.
6. Asha Wd/o Ravikumar Das Mahant, aged about 28 years, R/o In front of Railway Station, Tahsil Champa, District Janjgir-Champa, Chhattisgarh.
7. Alok Das S/o Ravikumar, aged about 3½ years (minor) through natural guardian mother Wd/o Ravikumar R/o In front of Railway Station, Tahsil Champa, District Janjgir-Champa, Chhattisgarh.

---- Respondents

M.A. (C) No. 550 of 2013

{Arising out of Award dated 14.01.2013 passed in Claim Case No. 48 of 2010 by the 1st Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-Champa (C.G.)}

The Oriental Insurance Company Limited, Through Divisional Manager, Oriental Insurance Company Limited, Division Office Geetanjali Bhawan, Bus Stand, Korba, District Korba, Chhattisgarh.

---- Appellant

Versus

1. Asha Wd/o Ravidas Mahant, aged about 28 years.
2. Alok Das S/o Ravidas Mahant, aged about 3½ years (Minor) through natural guardian mother Smt. Asha Bai Mahant W/o Shri Ravidas Mahant.

Both are R/o village Kothari, Tahsil and District Korba, Chhattisgarh.

3. Amit Kumar S/o Satyadev Singh, aged about 23 years, R/o Ramdin Bagan, Manifit, PS Telko District Purisingh Bhumi, at present R/o PS Hazaribag District Hazari Bag, Bihar.
4. Smt. Indira Singh W/o Prabhat Singh R/o Tatibandh, Raipur, District Raipur, Chhattisgarh.
5. Shankerdas S/o Bachan Das, aged about 60 years.
6. Smt. Devkunwar W/o Shanker Das Mahant, aged about 58 years.

No. 5 and 6 are resident of village Khaira, Tahsil Sakti, District Janjgir Champa, Chhattisgarh, at present R/o village Kothari, Tahsil and District Korba, Chhattisgarh.

---- Respondents

For Appellant/Insurance Company	: Shri Pankaj Agrawal, Advocate.
For Respondents No. 1 and 2 (In MAC No. 550 of 2013)	: Shri Amiya Kant Tiwari, Advocate.
For Other Respondents	: None

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

Judgment on Board

P.R. Ramachandra Menon, Chief Justice

20.05.2020

1. These appeals arise from a common award dated 14.01.2013 passed by the 1st Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-Champa in Claim Case No. 20 of 2006 and 48 of 2010.

2. Heard Shri Pankaj Agrawal, the learned counsel for the Appellant/Insurance Company in both the cases and Shri Amiya Kant Tiwari, the learned counsel appearing for the Respondents No. 1 and 2 in MAC No. 550 of 2013.

3. A person by name Ravi Kumar Mahant was driving a vehicle i.e. Marshall bearing registration No. CG-12-ZD/2170 on 21.10.2005 and while so, by late in the night, another vehicle i.e. Truck bearing registration No. CG-04-J/2168 insured by the Appellant dashed against the Marshall and caused serious

injuries to the driver of the Marshall, ultimately leading to his death. This led to a claim petition preferred by the parents as Claim Case No. 20/2006. Simultaneously, the widow and the child of the deceased also filed another claim case bearing No. 48/2010. Both the claim cases were tried together. A common defence was set up by the Appellant/Insurance Company; mainly with regard to absence of valid driving licence of the deceased driver of the Marshall and also for the driver of the Truck insured by them. The pleadings were sought to be substantiated by filing a petition to direct the owner and driver of the vehicles concerned to produce the driving licence, which however came to be rejected. On conclusion of the trial, the Tribunal held that the accident was only due to the rashness and negligence of the Truck driver. The liability was fixed accordingly and the Insurance Company was directed to satisfy the award amount of Rs. 4,94,000/- with interest. No right was granted to the Insurance Company to get it recovered from the driver or owner of the truck. No weightage was given to the contention of the Insurance Company that no compensation could have been awarded to the claimants, as the deceased was not having any driving licence and was negligent.

4. Coming to the appeals filed by the Insurance Company, the case of the Appellant is that the Tribunal ought not to have fixed the liability solely on the shoulders of the Insurance Company, more so when the IA filed to cause the production of the Driving Licence was rejected.

5. The learned counsel for the Respondents No. 1 and 2, Shri Amiya Kant Tiwari submits that the said aspect has been discussed in detail under 'Issue No. 3' and it has been held that no evidence was adduced with regard to the breach of the policy conditions.

6. During the course of hearing, it is conceded by the learned counsel for the Insurance Company that nobody was examined from the part of the Insurance Company. This means no evidence was adduced before the Tribunal to

substantiate that there was any breach or violation of any of the policy conditions in driving the vehicle without valid driving licence. This led to the finding/inference made by the Tribunal as to the lapse on the part of the Insurance Company as mentioned above, which is quite in order.

7. The next contention of the Insurance Company is that the deceased was not entitled to get compensation for not having valid licence. This does not persuade us in any manner, even if it is established that the deceased person was not having a valid driving licence. The driving of a vehicle without valid driving licence is of course an offence; but that by itself will not lead to an inference that wherever anybody is driving a vehicle without valid driving licence, negligence has to be inferred from such course of conduct. If a person is driving a vehicle without a valid driving licence on the given date (which may be due to various reasons, including expiry of the same and inspite of the skill of the person to drive the vehicle) it will not be a green card for dashing against the vehicle of the former, causing injuries or death and contend that the said person is not entitled to get any compensation. The Tribunal has analysed and appreciated the pleadings and available evidence on record and the quantification has been done accordingly, fixing the liability. Insofar as there is no dispute as to the involvement of the Truck and also as to the death of the person concerned and further since there is no challenge with regard to the quantum or as to any particular aspect where the Tribunal has gone wrong (other than the point which has already been discussed above), we are of the view that this is not a fit case for interference. In the said circumstances, both the appeals preferred by the Insurance Company are only to be dismissed.

8. As mentioned already, during pendency of the above appeals, a cross appeal has been filed by the parents (Respondents No. 1 and 2 in MAC No. 344 of 2013) of the deceased on 16.04.2015. There is a delay of 125 days in filing the cross appeal, IA No. 5 of 2019 has been filed on 12.07.2019. Considering the

particular facts and circumstances, and after hearing the parties concerned, we find it appropriate to condone the delay. It stands condoned.

9. Coming to the merit of the cross appeal, considering the fixation of quantum of compensation payable, there is no dispute that the deceased was driving a vehicle at the relevant time and in fact was returning on completing the task assigned to him. This is a pointer to the effect that the deceased was liable to be deemed as a skilled worker. Considering the year of accident and also the age of the deceased, we are of the view that the monthly income fixed by the income as Rs. 3000/- per month is on the lower side and the same is required to be re-fixed as Rs.4000/- per month. Applying the law declared by the Apex Court in ***Sarla Verma & Others v. Delhi Transport Corporation & Another***; {(2009) 6 SCC 121}, which stands affirmed by the Constitution Bench in ***National Insurance Company Ltd. v. Pranay Sethi***; {(2017) 16 SCC 680}, 40% has to be added in the case of self employed persons of the age group below 40 years towards future prospects. As such, the monthly income has to be reckoned as Rs.4000/- + Rs.4000/- X 40/100 = Rs.5,600/-. The re-worked dependency compensation comes to Rs. 5,600 X 12 X 2/3 X 17= Rs.7,61,600/-. After deducting the amount awarded by the Tribunal, i.e. Rs.4,59,000/-, the balance amount comes to **Rs. 3,02,600/-**.

10. Compensation payable under the conventional heads such as funeral expenses, loss of estate and loss of consortium are Rs.15,000/-, Rs.15,000/- and Rs.40,000/-, respectively in view of the verdict passed by the Constitution Bench in ***Pranay Sethi's*** case (*supra*). The Tribunal has awarded only Rs. 5,000/- towards funeral expenses, Rs. 5000/- towards loss of estate and another Rs.5000/- towards loss of consortium and hence, the Claimants are entitled to get a further sum of **Rs.55,000/-** under these heads (together).

11. In this context, it is relevant to note that the term 'consortium' has been explained by the Apex Court in a subsequent decision rendered after ***Pranay***

Sethi's case (*supra*) i.e. ***Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram****;* {(2018) 18 SCC 130} whereby it has been made clear that '**parental consortium**' is a compensation given to the children in respect of demise of the parents, '**spousal consortium**' to the living spouse because of the demise of the partner and the '**filial consortium**' payable to the parents on the demise of the children. In the said circumstance, we are of the view that the parents are entitled to get 'filial consortium' to an extent of Rs. 40,000/- and this is awarded in this cross appeal. An amount of Rs.20,000/- has already been awarded by the Tribunal towards loss of love and affection towards the spouse and child. In the light of the above verdicts of the Apex Court, we fix Rs.40,000/- as the 'spousal consortium' and another sum of Rs.40,000/- as 'parental consortium' to the child. After giving credit to the sum of Rs.20,000/- awarded by the Tribunal, the balance under this comes to **Rs.60,000**/-. We also find it appropriate to award an additional amount of **Rs.10,000**/- towards pain and suffering, even though the death occurred was instantaneous.

12. Thus, the total additional compensation payable comes to Rs.4,27,600/- (Rupees Four Lacs Twenty Seven Thousand Six Hundred Only). This is required to be satisfied with interest at the rate of 7% per annum from the date of filing of the claim petition till satisfaction. The Respondents No. 6 in the cross-appeal, who is the Insurer of the Truck, is directed to effect the deposit as above, as expeditiously as possible, at any rate within a period of 'two months' from today.

13. Now, the question arises before us as to how additional compensation awarded by us is to be apportioned between the Appellants (parents of the deceased) and Respondents No. 4 and 5 (widow and son of the deceased) in cross appeal.

14. Filing of two separate claim applications before the Claims Tribunal, one by parents and another by widow and son of deceased, shows that they are residing separately. The Claims Tribunal decided both the claim applications by

a common award and has apportioned the compensation so calculated between the parents, widow and child of the deceased. Out of total amount of compensation determined by the Claims Tribunal, a sum of Rs. 1,00,000/- has been awarded to the parents i.e. Rs. 50,000/- each and remaining amount has been awarded to widow and son of the deceased. The parents of deceased sought for enhancement of compensation by filing a cross-appeal in MA(C) No. 344 of 2013, filed by the Insurer before the High Court, impleading widow and son of the deceased as Respondents No. 4 and 5.

15. The Motor Vehicles Act, 1988 (*for short 'the Act of 1988'*) is a beneficial piece of legislation and all the legal heirs of deceased are required to be arrayed as party in claim application, as provided under Section 166 of the Act of 1988. Due to untimely death of Ravi Kumar Mahant, it is his widow and child who are most affected persons apart from his parents. Therefore, keeping in mind the object of the Act of 1988 and also considering that the Claims Tribunal has apportioned the amount of compensation between parents, widow and son of the deceased, we deem it fit and proper to direct that out of the enhanced amount of compensation, the parents (Appellants in Cross Appeal) will be entitled for a sum of Rs. 1,00,000/- plus interest thereon, and Respondents No. 4 and 5 i.e. the widow and son of deceased will be entitled for remaining amount of Rs.3,27,600/- plus interest thereon, equally. The share of Respondent No. 5 will be deposited in a fixed deposit scheme of any nationalised bank for a period of three years.

16. The appeals filed by the Insurance Company are dismissed. The cross appeal filed by the Claimants in MAC No. 344 of 2013 stands allowed to the said extent.

Sd/- Sd/-

(P.R. Ramachandra Menon)
Chief Justice

(Parth Prateem Sahu)
Judge

Amit