NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 410 of 2013

1. Usha Verma age 32 years Wd/o Manoj Kumar Verma
2. Ku. Vaishali age 09 years D/o Manoj Kumar Verma
3. Samir age 07 years S/o Manoj Kumar Verma
4. Lakhan age 60 years S/o Gend Lal Verma
5. Radha Bai age 59 years W/o Lakhan Verma **(Deleted)**

Appellants No. 2 and 3 are minor hence impleaded through their natural guardian mother Appellant No. 1

All R/o Village and Post Chandi, District Raipur C.G.

------Appellants/Claimants

VERSUS

1. Manoj Kumar S/o Budhe Lal Sonwani R/o Village Parkidih, P.S. Sohela, District Raipur C.G.
2. I.C.I.C.I. Lombard General Insurance Co. Ltd. through Divisional Officer/ Manager I.C.I.C.I. Lombard General Insurance Co. Ltd. Devendra Nagar, Raipur C.G.

-------Respondents

For Appellants	:	Mr. Amiykant Tiwari, Advocate.
For Respondent No. 2	:	Mr. K.Rohan, Advocate on behalf of Mr. Amrito Das, Advocate.

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

Per Parth Prateem Sahu, J.

20/05/2020

1. Appellants-claimants have challenged the legality and propriety of the impugned award dated 29-11-2012 passed by 6th Additional Motor Accident Claims Tribunal, Raipur C.G. in claim case No. 117/11 whereby learned Claims Tribunal allowed the claim application in part and while exonerating the Insurance Company from its liability awarded a total sum of Rs. 4,88,500/- as compensation.

2. Facts relevant for disposal of this appeal are that on 21-08-2010 at about 5:00 PM when Manoj Kumar Verma (deceased) was traveling on his motor cycle bearing Registration No. CG04 DA 3874 was dashed by a motor cycle bearing Registration No. CG04 DR 7840 (hereinafter referred to as “offending vehicle”)

which was driven by respondent No. 1/ non-applicant No. 1. In the said accident Manoj Kumar Verma suffered grievous injuries over his person and succumbed to those injuries. The accident was reported to police station Suhela district Raipur.

3. The claimants who are widow, children and parents of the deceased filed claim application before the Claims Tribunal under Section 163A of the Motor Vehicles Act, 1988 claiming Rs. 4,97,000/- as compensation on account of untimely, motor accidental death on the ground that they were dependent upon the deceased as he was bread winner of the family.

4. Respondent No. 1/ non-applicant No. 1 did not appear before the Tribunal and he was proceeded *ex parte.*

5. Respondent No. 2/ non-applicant No. 2 -Insurance Company submitted reply to the claim application and pleaded that on the date of accident, respondent No. 1/ non-applicant No. 1 driver of the offending vehicle was not having valid and effective driving licence to drive the vehicle and if in the accident Manoj Kumar succumbed to death then respondent No. 1/ non-applicant No. 1 is solely liable for the cause as on the date of accident offending vehicle was being driven in violation of conditions of insurance policy.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties arrived at a finding that deceased Manoj Kumar died due to rash and negligent driving of driver of the offending vehicle, there was no valid and effective driving licence with respondent No. 1/ non-applicant No. 1 and awarded a total sum of Rs. 4,88,500/- as compensation. Learned Claims Tribunal exonerated respondent No. 2/ non-applicant No. 2 Insurance Company on account of violation of conditions of insurance policy as on the date of accident respondent No. 1/ non-applicant No. 1 was driving the offending vehicle without licence.

7. Learned counsel appearing for the appellants submits that the Tribunal erred in exonerating the Insurance Company from its liability and fastening the liability of

payment of compensation upon respondent No. 1/ non-applicant No. 1 owner-cum-driver of the offending vehicle. Though, the learned counsel raised the ground of awarding the amount of compensation on lower side but he has not pressed much to them. The learned counsel also pointed out that in another claim application bearing claim case No. 238/11 filed by Deelip Dhritlahre who was the pillion rider of motor cycle of respondent No. 1/ non-applicant No. 1 which was allowed by the Tribunal and in that claim case Insurance Company was held liable for payment of amount of compensation and that finding of fastening liability upon the Insurance Company for payment of amount of compensation in the same accident was not challenged. The Company satisfied the amount of award.

8. Learned counsel for Respondent No. 2-Insurance Company opposes the submissions made by the learned counsel for the appellants herein and submits that, Respondent No. 1/ non-applicant No. 1 has not placed his driving licence before the Tribunal, in fact, he did not appear before the Tribunal even after service of notice and was proceeded *ex parte.* Learned counsel further submits that non-challenging of the award on violation of conditions of insurance policy in another claim case itself will not be a ground for the appellants herein to make contention that the Insurance Company to be liable in this case as well. It is further contended that award is to be passed in accordance with the law and it has to be considered in each case when the two claims have been decided separately out of which different appeals have been preferred.

9. We have heard learned counsel for the respective parties and also perused the record.

10. The only question/ ground raised by the learned counsel for the appellant in this appeal is with regard to exoneration of Insurance Company from its liability and fastening the liability to satisfy the amount of award upon the respondent No. 1/ owner of the offending vehicle only. There is no doubt that motor vehicle is to be driven by the person who is authorized person to drive the particular class of vehicle which can be driven only after getting the driving licence from the

competent authority. In view of the finding recorded by the learned Claims Tribunal that respondent No. 1/ non-applicant No. 1 was driving the vehicle without licence, the Insurance Company cannot held liable to pay amount of compensation under the law. Now the question arises before us that whether this Court can pass an order of pay and recover directing the Insurance Company to first pay the amount of compensation being insurer of the offending vehicle and then to recover it from the owner of the vehicle as prayed by learned counsel for the appellant. Motor vehicles Act is a beneficial piece of legislation. The object of the Act is to protect the interest of the injured or family member of the deceased of motor accident. The law in this regard has been crystallized by the Hon'ble Supreme Court in the matter of ***Manuara Khatun v. Rajesh Kumar Singh*** reported in **(2017) 4 SCC 796**; after taking into consideration its earlier judgment in the matters of ***National Insurance Company limited v. Baljit Kaur*** reported in **(2004) 2 SCC 1** and ***National Insurance Co. Ltd. v. Saju P. Paul*** reported in **(2013) 2 SCC 41** has held as under:

> "13. The only question, which arises for consideration in these appeals, is whether the appellants are entitled for an order against the insurer of the offending vehicle i.e. (Respondent 3) to pay the awarded sum to the appellants and then to recover the said amount from the insured (owner of the offending vehicle Tata Sumo) Respondent 1 in the same proceedings.
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> 14. The aforesaid question, in our opinion, remains no more res integra. As we notice, it was the subject-matter of several decisions of this court rendered by three-Judge Bench and two-Judge Bench in the past viz. *National Insurance Co. Ltd.* v. *Baljit Kaur, National Insurance Co. Ltd. v. Challa Upendra Rao,(2004) 8 SCC 517, National Insurance Co. Ltd. v. Kaushalaya Devi, (2008) 8 SCC 246, National Insurance Co. v. Roshan Lal, (2017) 4 SCC 803* and *National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785.*
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> 19. We find no merit in any of the submission. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in *Saju P. Paul Case,(National Insurance Co. Ltd. v. Saju P.Paul, 2013 2 SCC 41).* Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in *Saju P. Paul case,* It cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the

> argument regarding not granting of the relief of the nature claimed therein due to pendency of the reference to a larger Bench as would be clear from para 26 of the judgment in *Saju P.Paul case.* That apart, the learned counsel for the appellants stated at the Bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.
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> 21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Co. Ltd. (Respondent 3) -- they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Co. Ltd. Respondent 3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo) Respondent 1 in execution proceedings arising in this very case as per the law laid down in para 26 of *Saju P.Paul case*, (2013) 2 SCC 41 quoted supra.
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> 22. Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that Respondent 3 United India Insurance Co. Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter Respondent 3 United India Insurance Co. Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending vehicle (Tata Sumo) Respondent 1 in these very proceedings by filing execution application against the insured."

11. According to the facts of the case at hand, so far as, the deceased Manoj Kumar is a third party as he was not the occupant of the vehicle owned by the respondent No. 1 but was traveling on another motor cycle. Considering the object of the Motor Vehicles Act that the injured or the family member of the deceased should be compensated at the earliest and further considering the law laid down by the Supreme Court, we accept the submission made by the learned counsel for the appellant that respondent No. 2-Insurance Company to be directed to satisfy the amount of award first and thereafter to recover the same from Respondent No. 1/ owner of the offending vehicle.

12. In view of the above, we hold that though the Insurance Company is not having the liability under law to satisfy the award passed by the Tribunal but taking clue from the law laid down by the Supreme Court on this issue, we direct that the Insurance Company shall satisfy the amount of award at first instance and then

the Insurance Company can recover the amount so deposited from Respondent No. 1. It is made clear that for recovery of the amount so deposited by the Insurance Company, it is not require to file a separate suit but insurer can recover the amount in the same proceeding by filing an application for execution.

13. In view of the above, the impugned award stands modified to the extent indicated above.

14. Appeal is allowed in part. No order as to cost.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Pawan