AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 676 of 2014

- The Oriental Insurance Co. Ltd. through its Divisional Manager, Divisional office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur, Civil and Revenue distt. Bilaspur 495001

------Appellant

VERSUS

1. Ramkumar S/o late Malikram Shrivas, aged about 48 years
2. Amreekabai, W/o Ramkumar Shrivas, aged about 45 years

   Both are residents of village Godkhamhi, P.S. and Tahsil Lormi, Revenue Distt. Mungeli, Civil Distt. Bilaspur C.G.
3. Nandkumar S/o Phekuram Gond, aged about 34 years, Driver R/o Village Budhwara, P.s. and Tahsil Lormi, Revenue Distt. Mungeli, Civil Dist. Bilaspur C.G.
4. Suresh Kumar, S/o Shankarlal Agrawal, aged about 48 years, through Jindal Fuels, R/o Lormi P.S. and Tahsil Lormi, Revenue Distt. Mungeli Civil Distt. Bilaspur C.G.

----Respondents

WITH

MAC No. 743 of 2014

1. Ram Kumar S/o late Malik Ram Shriwas, aged about 45 years
2. Smt. Amrika Bai, aged about 42 years W/o Ramkumar

   Both R/o Village Gond Khamhi Thana and Tahsil Lormi District Bilaspur C.G. present District Mungeli C.G.

------Appellants

VERSUS

1. Nandkumar S/o Phekuram Gond, aged about 34 years, Driver R/o Village Budhwara, P.s. and Tahsil Lormi, Revenue Distt. Mungeli, Civil Dist. Bilaspur C.G. **-------Driver**
2. Suresh Kumar, S/o Shankarlal Agrawal, aged about 48 years, through Jindal Fuels, R/o Lormi P.S. and Tahsil Lormi, Revenue Distt. Mungeli Civil Distt. Bilaspur C.G. **–----Owner**
3. The Oriental Insurance Co. Ltd. Divisional Office Bilaspur C.G.

----Respondents

MAC No. 676 of 2014

For Appellant : Mr. R.N. Pusty, Advocate.
For Respondent No.1 & 2 : Mr. A.L. Singroul, Advocate
For Respondent No. 3 & 4 : Mr. Sachin Singh Rajput, Advocate

MAC No. 743 of 2014

For Appellants : Mr. A.L. Singroul, Advocate
For Respondent No. 1 & 2 : Mr. Sachin Singh Rajput, Advocate
For Respondent No. 3 : Mr. R.N. Pusty, 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.

26/08/2020

1. Both these appeals are arising out of common award dated 14-04-2014 passed by Additional Motor Accidents Claims Tribunal, Mungeli in claim case no. 232/2011 allowing the claim application filed by the claimant in part, hence both these appeals are being disposed of here by this common order.

2. Facts relevant for disposal of this appeal are that on 10-03-2011 at about 12:00 noon when on the instruction of Respondent 3/ Non-applicant 1, Punit Shrivas while working as helper on a tanker bearing registration no. CG 10 ZB 1716, mounted the tanker to check the water level in tanker, came into contact with high voltage electricity wire line lying over the tanker. On account of it, he suffered electric shock and fell down from tanker onto road, suffered grievous injuries over his person and became unconscious. He was taken to Community Health Centre Lormi where after giving primary treatment, injured Punit was referred to Mekahara Hospital, Raipur. During the course of treatment at Mekahara Hospital burn unit, injured Punit died on 13.03.2011. The accident was reported to concerned police station based upon which crime for offences under Sections 279, 304A of IPC was registered against Respondent 3/ Non-applicant 1 driver of the offending vehicle. Claimants who are parents of the deceased Punit filed claim application under Section 166 of the Motor Vehicle Act, 1988 seeking compensation of Rs. 13,80,000/- on the ground that on the date of accident Punit was aged about 16 years and earning Rs. 125 per day and Rs. 40 per day as daily allowance from the work of helper on the tanker.

3. Non-applicant 1 and 2/ Respondent 3 and 4 submitted reply to the claim application pleading therein that the accident took place on account of negligence of the deceased himself, false and fabricated case was registered against Non-applicant 1, amount of compensation claimed is highly exaggerated, the accident did not take place from the vehicle, there was no liability upon the owner and driver of the offending vehicle. Vehicle was insured with Non-applicant 3, the liability, if any, would be upon the Insurance company.

4. Appellant/ Non-applicant 3-Insurance Company submitted reply to the claim application denying the fact of accident from the vehicle. There was no valid and effective driving licence with Respondent 4/ Non-applicant 2. The vehicle was plied in breach of conditions of Insurance policy, there was no valid and effective driving licence, fitness and permit of the offending vehicle.

5. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties held that deceased Punit met with an accident coming into the contact of high voltage electricity line upon mounting over the tanker due to negligence on the part of Respondent 3/ Non-applicant 1 driver of the tanker and died. Learned Claims Tribunal has decided the issue of breach of conditions of insurance policy in negative and awarded total sum of Rs. 1,90,000/- as compensation.

6. Mr. Ratan Pusty, learned counsel for the appellant-Insurance Company in MAC No. 676/2014 submitted that the Claims Tribunal committed error in awarding the compensation and fastening the liability upon the Appellant-Insurance Company. Finding recorded by the Claims Tribunal is contrary to the pleadings and evidence available on record. Learned Claims Tribunal failed to consider that no premium was paid in respect of helper and only Rs. 50/- was paid to legal liability to driver but the Tribunal has

not considered the material and evidence placed by the appellant-Insurance Company. During the course of enquiry, deceased was below 15 years of age on the date of accident and therefore it cannot be believed that the deceased was engaged by the owner of the tanker as helper. Employment of children is prohibited and punishable under the Labour Law. He submits that there may be other possibility that the deceased might be traveling as gratuitous passenger on the vehicle. The claimants failed to prove the negligence on the part of Respondent 3/ Non-applicant 1 driver of the offending vehicle because the vehicle was not in a running position but was stationary. He submits that the impugned award is not sustainable and is liable to be set aside.

7. Per contra, Mr. Sachin Singh Rajput, learned counsel for the Respondent 3 and 4 submitted that the Claims Tribunal after appreciation of entire facts, material and evidence placed on record by the respective parties has rightly passed the impugned award which does not call for any interference. He submits that under the policy premium was charged for driver, conductor and cleaner which is evident from the copy of policy placed on record as Ext. NA1. Under Section 147 of the Motor Vehicles Act, the driver and cleaner are having a statutory coverage and for them a policy is not so required. He also points out that after completion of the merge enquiry, F.I.R. was registered in which it is specifically mentioned that deceased was engaged as helper on the tanker which was engaged for watering pitching work of bank of canal, during that process and work, Respondent 3/ non-applicant 1 driver, without noticing, parked the tanker under the high tension electricity line and instructed the deceased helper to mount on the tanker and check the water level. When following the instruction of Respondent 3/ Non-applicant 1, deceased Punit mounted on the tanker he came in contact with that high tension electricity line and suffered electric shock. He further submits that the claimants have very categorically pleaded in their application that the age of the deceased on

the date of accident was 16 years and, therefore, submission of the learned counsel for the Insurance Company that the deceased was below 15 years of age is not sustainable. There is no prohibition for employment of a person above 14 years of age and hence, engagement of the deceased is not barred under any law.

8. Mr. A.L. Singroul, learned counsel for the respondent-claimants while opposing the submission made by the learned counsel for the Insurance Company with regard to liability to satisfy the amount of award on account of non-payment of premium submits that the insurance policy very clearly mentions the premium charged was for driver, conductor and cleaner and once there is mentioning of cleaner in the policy/ premium amount, it means the premium was charged for the cleaner/helper as well. He submits that the Claims Tribunal has rightly held the negligence on the part of the driver of the tanker as he parked the vehicle under the high tension electricity line and asked the deceased who was working as cleaner/helper to check the water level. He submits that the amount of compensation awarded to the claimants was on much lower side, hence, the claimants have also filed a separate appeal bearing MAC No. 743/2014 for enhancement of the impugned award. He submits that the learned Claims Tribunal assessed the income of the deceased on lower side, not awarded any amount towards future prospects, ignoring the age of the deceased as 16 years on the date of accident. Application of multiplier of 12 to the erroneous in view of the law laid down by the Hon'ble Supreme Court in the case of ***Amrit Bhanu Shali and others v. National Insurance Company Limited and others*** reported in **(2012) 11 SCC 738** and awarded very meagre amount of compensation on other conventional heads.

9. Mr. Sachin Singh Rajput and Mr. Ratan Pusty, learned counsel for the respective respondents in MAC No. 743/2014 filed by the claimants submit that the Claims Tribunal looking to the age of the deceased has rightly

assessed the income of the deceased and passed just and proper award which does not call for any interference.

10. We have heard learned counsel for the respective parties and perused the record at length.

11. Sofar as, the submission made by the learned counsel for the Insurance Company that there was no negligence on the part of the driver of offending vehicle tanker. We have perused the record. In claim application, claimants have very categorically pleaded that the offending tanker was parked under the high tension electricity line and it was the driver of the tanker who instructed the deceased to mount the tanker and check the water level which was engaged in watering pitching of bank canal. The owner and driver of the tanker have not filed any reply to the claim application and denied the fact of the accident.

12. Insurance Company has examined one Surendra Kumar Agrawal as NAW-1 who was not an eye witness to prove the insurance policy. In absence of any plea controverting the pleadings made in the claim application will amount to admission of the pleadings made in the claim application. The claimants in support of their claim application have filed copy of the final report Ext. P-1 and F.I.R. as Ext. P-2. F.I.R. was registered after merg enquiry in which the Investigating Officer of police while recording the F.I.R. has mentioned that the deceased Punit who was working under Respondent 3/ Non-applicant 1 driver as helper. On instruction of driver, deceased Punit mounted over the tanker to check the water level. The tanker was parked by Respondent 3/ Non-applicant 1-driver of it under the high tension electricity line which itself is a negligent act on the part of Respondent 3/ Non-applicant 1. From the above facts and evidence available on record, the accident took place on account of negligence on the part of the Respondent 3/ Non-applicant 1 driver of the tanker.

13. The next ground raised by the learned counsel for the Insurance Company that as the vehicle was stationary, the accident could not be said to be an accident arising out of use of motor vehicle. We are not convinced with the said submission of the learned counsel. The words used under Section 165 of the Motor Vehicles Act “accident arising out of use of motor vehicle” has its wider meaning. The person while working on or under the motor vehicle and discharging his duties will come within the purview of use of motor vehicle.

14. In the case at hand, the motor vehicle tanker while on work of watering the pitching of road of bank of canal, the driver parked it under the high tension electricity line and instructed the deceased to check the water level in tanker who on the instructions of driver, mounted the tanker and accident took place. It is not the case where the tanker was parked idle but was in use, it was stopped for the purpose to check the water level. Hence, in our considered view, it will come within the purview of Section 165 of the Motor Vehicles Act. The Hon'ble Supreme Court has considered the expression “arising out of the use of motor vehicle” in the matter of ***Shivaji Dayanu Patil and another v. Smt. Vatschala Uttam More*** reported in **(1991) 3 SCC 530** and held thus:

> “30. We find no ground for interfering with these findings recorded by the High Court and we must proceed on the basis that the persons who sustained injuries as a result of the explosion and fire in the petrol tanker were not indulging in any unlawful activity which may have caused the said explosion and fire. The matter has, therefore, to be examined in the light of the meaning to be assigned to the words “arising out of” in the expression “accident arising out of the use of a motor vehicle” in Section 92-A.
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> 31. The words “arising out of” have been used in various statutes in different contexts and have been construed by courts widely as well as narrowly, keeping in view the context in which they have been used in a particular legislation.
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> 32. In *Heyman v. Darwins Ltd., [1942] A.C. 356* while construing the arbitration clause in a contract, Lord Porter expressed the view that as compared to the word "under", the expression "arising out of" has a

wider meaning. In Union of India v. E.B. Aaby's Rederi A/S, [1975] A.C. 797 Viscount Discount Dilhorne and Lord Salmon stated that they could not discover any difference between the expression "arising out of" and "arising under" and they equated "arising out of" in the arbitration clause in a Charter Party with "arising under".

33. In *Samick Lines Co. Ltd. v. Owners of the Antonis P. Lemos, [1985] 2 WLR 468* the House of Lords was considering the question whether a claim for damages based on negligence in tort could be regarded as a claim arising out of an agreement under section 20(2)(1)(h) of the Supreme Court Act, 1981 and fell within the Admiralty jurisdiction of the High Court. The words "any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship" in section 20(2)(i)(h) were held to be wide enough to cover claims, whether in contract or tort arising out of any agreement relating to the carriage of goods in a vessel and it was also held that for such an agreement to come within paragraph (h), it was not necessary that the claim in question be directly connected with some agreement of the kinds referred to in it. The words "arising out of were not construed to mean "arising under" as in *Union of India v. E.B. Aaby's A/S, 1975 AC 797* which decision was held inapplicable to the construction of Section 20(2)(1)(h) and it was observed by Lord Brandon:

> "With regard to the first point, I would readily accept that in certain contexts the expression "arising out of" may, on the ordinary and natural meaning of the words use, be the equivalent of the expression "arising under", and not that of the wider expression "connected with". In my view however; the' expression "arising out of' is, on the ordinary and natural meaning of the words used, capable, in other contexts; of being the equivalent of the Wider expression "connected with". Whether the expression "arising out of has the narrower or the wider meaning in any particular ease must depend on the context in which it is used".

Keeping in view the context in Which the expression was used in the statute it was construed to have the wider meaning viz. "connected With".

34. x x x x x x

35. In the same case, Windeyer, J. has observed as under: (CLR p.447)

> "The words 'injury caused by or arising out of the use of the vehicle' postulate a causal relationship between the use of the vehicle and the injury. `Caused by' connotes a `direct' or 'proximate' relationship of cause and effect. 'Arising out of' extends this to a result that is less immediate; but it still carries a sense of consequence."

15. In view of the aforementioned ruling of the Hon'ble Supreme Court, the submission made by the learned counsel for the appellant-Insurance Company that the accident was not a result of arising out of use of motor vehicle is not sustainable and it is hereby repelled. The other ground raised by the learned counsel for the appellant-Insurance Company that the deceased was below 15 years of age cannot be engaged as labourer. We have perused the pleadings made in the claim application wherein the claimants have mentioned the age of the deceased as 16 years. In affidavit filed under Order 18 Rule 4 of CPC as evidence, age of the deceased has been shown as 16 years. No specific question has been put with regard to age of the deceased. The age mentioned in the merg intimation to be 15 years is recorded only on the basis of the appearance of the injured or the deceased which cannot be said to be accurate age determined. When there is difference of age of only 01 year, the statement of parents can be taken to be the correct age for determining the age of the deceased Punit, hence, we are of the view that the age of the deceased as mentioned in the claim application and stated by the father of the deceased in his evidence can be taken as the correct age as 16 years. Prohibition of employment of children under the labour activity is provided under the Child Labour (Prohibition and Regulation Act, 1986) wherein a child has been defined under Section 2(ii) which reads as under.

> "2. **Definitions**.– In this Act, unless the context otherwise requires,–
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> x x x x x x x
>
> (ii) "child" means a person who has not completed his fourteenth year of age..."

16. In the case at hand, the deceased was stated to be 16 years of age and, therefore, there is no prohibition or legal restriction of his engagement as cleaner/ helper. This submission of the learned counsel for the Insurance Company is not sustainable and it is hereby repelled. The submission of

learned counsel for the appellant-Insurance Company that under the policy, risk of the cleaner is not covered, we have perused the copy of insurance policy placed on record as Ext. NA1 in which the premium of Rs. 50 was charged for paid driver, conductor, cleaner-IMT-40. Perusal of the schedule of premium itself shows that Rs. 50 was charged for driver, conductor and cleaner. It is not a case that under the policy only mentions of one employee i.e. Driver but here other than the driver, conductor and cleaner are also mentioned.

17. Section 147 of the Motor Vehicles Act envisaged the requirement of policy and limits of liability. Relevant portion of Section 147 of the said Act is extracted below.

> “**147. Requirement of policies and limits of liabilities.-** (1) In order to comply with the requirement of this Chapter, a policy of insurance must be a policy which-
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> x x x x x
>
> x x x x x
>
> Provided that a policy shall not be required-
>
> (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee-
>
> (a) engaged in driving the vehicle, or
>
> (b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or
>
> (c) if it is a goods carriage, being carried in the vehicle, or
>
> (ii) to cover any contractual liability.
>
> *Explanation.–* For the removal of doubts, it is herby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who

> is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

18. In view of the aforementioned facts available on record and considering the provisions of Section 147 of the Motor Vehicles Act, we are of the view that the risk of the deceased was covered under the policy Ext. NA1 issued by the appellant-Insurance Company. Under IMT-40 for the extra coverage premium of Rs. 25/- for conductor/ cleaner is provided. The premium charged of Rs.50/- is not only for driver but for both driver and cleaner, where the IMT mentions the fixed amount for extra coverage of the driver, cleaner and conductor. For the foregoing reasons, we do not find any tenable ground to allow the appeal of the appellant-Insurance Company and the same is hereby dismissed accordingly.

19. Sofar as, the appeal filed by the claimants for enhancement of the amount of compensation. Perusal of the record would show that the claimants have pleaded the income of the deceased on the date of accident as Rs. 125/- per day + Rs. 40/- daily allowance i.e. Rs. 165/- per day. The claimants have failed to produce any documentary evidence with regard to the income of the deceased. In absence of any clinching piece of evidence placed on record by the claimants, the Claims Tribunal assessed the income of the deceased as Rs. 2,500/- per month by taking 25 working days in a month. The income assessed by the Claims Tribunal on notional basis, looking to the date of accident, is on lower side. The income of a person on notional basis has to be considered taking into consideration the nature of engagement, wage rate, cost of living and also the date and year for which the income is to be assessed.

20. In the case at hand, the accident took place on 10-03-2011, deceased was working as helper. Taking into consideration the aforementioned facts and age of he deceased, we find it appropriate to assess the income of the

deceased as Rs. 3,000/- per month. Claims Tribunal has applied the multiplier of 12 by taking into consideration the age of the parents and not the age of the deceased. Application of multiplier has been considered by the Hon'ble Supreme Court in the case of **Amrit Bhanu Shali (supra)** and recently in the case of ***Sube Singh v. Shyam Singh*** reported in **(2018) 3 SCC 18**. The Supreme Court in the case of **Sube Singh (supra)** has held that for the purpose of calculating the amount of compensation, age of the deceased is required to be taken into consideration and not the age of the parents/ dependents of the deceased/ injured for applying the multiplier and held thus.

> "4. ...The legal position, however, is no more res integra. In *Munna Lal Jain, [(2015) 6 SCC 347]* decided by a three-Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependents. We may usefully refer to the exposition in paras 11 and 12 of the reported decision, which read thus: (*Munna Lal Jain case, SCC pp. 351-52)*
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> *"11.* The remaining question is only on multiplier. The High Court *(Munna Lal Jain v. Vipin Kumar Sharma, 2012 SCC OnLine Del 4540)* following *Santosh Devi,[Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421]* has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependents or that of the deceased, has been hanging fire for some time; but that has been given a quietus by another three-Judge Bench decision in *Reshma Kumari, [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65].* It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependents is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote: *(Reshma Kumari case, SCC p. 88, para 36)*
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> '*36.* In *Sarla Verma, (2009) 6 SCC 121*, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in *Sarla Verma case* that the claimants in case of death claim for the purposes of compensation must establish *(a)* age of the deceased (*b*) income of the deceased; and *(c)* the number of dependents. To arrive at the loss of dependency, the Tribunal must consider (*i)* additions/deductions to be made for arriving at the

> income; (*ii)* the deductions to be made towards the personal living expenses of the deceased; and (*iii)* the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in *Sarla Verma case.*'
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> 12. In *Sarla Verma case* at para 19 a two-Judge Bench dealt with this aspect in Step 2. To quote: (SCC p. 133)
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> *'19. … Step 2 (Ascertaining the multiplier)*
>
> Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.' ”

21. In view of the aforementioned law laid down by the Supreme Court, the appropriate multiplier to be applied, in the case at hand, is of 18 as held by the Supreme Court in the case of ***Sarla Verma & others v. Delhi Transport Corp. & Anr*** reported in **(2009) 6 SCC 121**. Learned Claims Tribunal has awarded Rs. 10,000/- on other conventional heads [Rs.5000 towards pain and suffering + Rs. 5000 towards future expenses] which is also on lower side in view of the law laid down by the Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680**, and ***Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others*** reported in **(2018) 18 SCC 130.** In view of the law laid down by the Supreme Court in **Pranay Sethi (supra)**, there will be an addition of 40% of the established income of the deceased towards future prospects as the deceased was below 40 years of age and was not in permanent employment.

22. For the foregoing reasons, the amount of compensation to be awarded to the claimants requires re-computation which is as under.

23. The income of the deceased is taken as Rs. 3,000/- per month i.e. Rs.

36,000/- per annum. By adding 40% of the established income towards future prospects, the total income of the deceased will come to Rs. 50,400/- [Rs.36000+40% of Rs.36000]. Deceased was a bachelor, therefore there will be a deduction of ½ towards personal and living expenses which makes the yearly loss of dependency of the claimants as Rs. 25,200/-. Upon applying multiplier of 18 on the yearly loss of dependency, total loss of dependency will come to Rs. 4,53,600/- [Rs.25200x18]. Apart from the above, the claimants will be entitled for Rs. 40,000/- towards filial consortium, Rs. 15,000/- towards loss of estate, Rs. 15,000/- towards future expenses. Now the claimants will be entitled for total sum of **Rs. 5,23,600/-** instead of Rs. 1,90,000/- as awarded by the Claims Tribunal. The aforementioned amount of compensation will carry interest @ 6% from the date of filing of the claim application till its realization. Other conditions imposed by the learned Claims Tribunal will remain intact.

24. In the result, the appeal filed by the Insurance Company i.e. MAC No. 676/2014 is dismissed and MAC No. 743/2014 filed by the claimants is allowed in part and the impugned award is hereby modified to the extent as indicated herein above.

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

Pawan