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HIGH COURT OF CHHATTISGARH BILASPUR
M. A. (C) No. 228 of 2014

(Arising out of order dated 31.07.2013 passed in Motor Accident Claim Case No.38 of 2007 by the Additional Motor Accident Claims Tribunal, Kunkuri District Jashpur, Chhattisgarh)

1. Smt. Savita Das W/o Late Bhagwan Das Vayshnav aged 42 Years.
2. Prakash Kumar Das S/o Late Bhagwan Das Vayshnav aged about 23 years.
3. Prasann Kumar Das (Dead).
   through his legal heirs,
   A. Smt. Pratiksha Das W/o Late Prasann Kumar Das, aged about years.
   B. Minor Ku. Deep Sikha D/o Late Prasann Kumar Das, aged about years, through her Natural Guardian mother Smt. Pratigya Das.
   All are R/o. Village- Tapkara, Tahsil - Kunkuri, District- Jashpur (C.G.) Civil & Revenue District – Jashpur, (C.G.)

---- Appellants

Versus

1. Sardar Indrajeet Singh S/o Sardar Jogendra Singh aged 42 years, Occupation – Business, R/o - Kalimati Road, H.No. 126, Sakchi Jamsedpur, District - Jamsedpur (J.H.)
2. Sardar Vichettar Singh S/o Sardar Parkat Singh aged about 30 years, Occupation - Driver, R/o - Gurudwara Road, Kalimati, Sakchi Jamsedpur, District - Jamsedpur (J.H.)
3. United Insurance Company Ltd. Local Branch Office, Raigarh, District - Raigarh (C.G.)
   (Insurer of the Trailer)
4. Oriental Insurance Company Ltd. Local Branch Office, Raigarh (C.G.)
   (Insurer of the Motorcycle)
5. Rambhajan Das S/o Late Rammilan Das, aged about 72 years R/o - Village- Tapkara, Tahsil - Kunkuri, District - Jashpur (C.G.)

MAC No. 923 of 2013

(Arising out of order dated 31.07.2013 passed in Motor Accident Claim Case No.38 of 2007 by the Additional Motor Accident Claims Tribunal, Kunkuri District Jashpur, Chhattisgarh)

United India Insurance Company Limited Branch Office Raigarh, Through Its Divisional Manager, Divisional - Office, Guru Kripa Towers, Vyapar Vihar Road, Bilaspur, Distt.- Bilaspur (C.G.)

----Appellant

Versus

1. Smt Savita das Wd/o - Late Bhagwandas Vaishnav aged-42 years.
2. Prakash Kumar das S/o - Late Bhagwandas Vaishnav aged -23 years
3. Legal heir of Prasann Kumar Das (Dead)
   (A). Smt. Pratigya Das Wd/O - Prasann Kumar Das
   (B) Deep Shikha D/O - Late Prasann Kumar Das minor, Through mother Smt. Pratigya Das. (Respondent No. 3A)
   All are R/O- Vill. - Tapkara, Tah. -Kunkuri, Distt.- Jashpur (C.G.)
4. Sardar Indrajeet Singh S/o Sardar Jogender Singh aged- 42 years, Occupation – Business, R/O Kalimati Road, House No. 126, Sakchi Jamshedpur, Distt.- Jamshedpur, (Jharkhand).
5. Sardar Vichettar Singh S/o Sardar Pargat Singh aged-30 years, Occupation - Driver, R/O- Gurudwara Road, Kalimati, Sakchi Jamsedpur, Distt. -Jamsedpur (Jharkhand).
6. Oriental Insurance Company Limited, Branch Office, Raigarh, Distt. -Raigargh, (C.G.) (Insurer of Motor Cycle).
7. Shri Rambhajan Das S/o Late Ram milan Das aged-72 years R/O Vill. & P.O.- Tapkaram Tah.-Kunkuri, Distt. -Jashpur (C.G.)
   Note- Smt. Rambha Devi W/O-Shri Rambhajan Das aged-68 years R/O- Vill. & P.O- Tapkara, Tah.-Kunkuri, Distt.-Jashpur (C.G.) (abated due to death) (legal heir/representative of deceased Smt. Rambha Devi Shri Rambhajan Das- Respondent No. 7 is already on the record**)**

-----Respondents

MAC No.228 of 2014

For Appellants/Claimants	: Shri A.K. Prasad, Advocate
For Respondents No.1, 2, 5	: None
For Respondent No.3	: Shri Dashrath Gupta, Advocate
For Respondent No.4	: Shri R.N. Pusty, Advocate

MAC No.923 of 2013

For Appellant	: Shri Dashrath Gupta, Advocate
For Respondents 1 to 3	: Shri A.K. Prasad, Advocate
For Respondents No.4, 5, 7	: None
For Respondent No.6	: Shri 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, Judge

23.06.2020

1. As both the appeals are arising out of same award dated 31.07.2013 passed by the Additional Motor Accident Claims Tribunal, Kunkuri District Jashpur, Chhattisgarh (in short 'Claims Tribunal') in Motor Accident Claim Case No. 38/2007, they are being disposed of by this common judgment. MAC No. 228 of 2014 is filed by claimants seeking enhancement of the award on the grounds mentioned therein whereas MAC No.923 of 2013 is filed by Insurance Company/non-applicant No.3 challenging the liability fastened upon it for satisfying the amount of compensation awarded by learned Claims Tribunal.

2. Facts of the case in nutshell, are that, Prasannadas went to the Office of District Education Officer, Jashpur for the purpose of depositing examination fee along with his father Bhagwandas on Motorcycle bearing No.CG/14/ZC/0223 (hereinafter referred to as the 'Motorcycle'). While returning from Jashpur, Motorcycle was being driven by Bhagwandas and Prasannadas was riding as pillion. When they reached near village Chiraidand, at about 7.30 PM, one Trailer bearing registration No.HR-38/7912 (hereinafter referred to as 'offending Trailer') dashed the Motorcycle from its back side. In the aforementioned accident, Prasannadas fell down from the Motorcycle, the Motorcycle entangled with the chain attached with offending Trailer and Bhagwandas came under the wheels of offending Trailer. Bhagwandas succumbed to the injuries suffered by him on the spot. Accident was reported to concerned Police Station, based upon which, offence under Section 304A of IPC was registered against non-applicant No.2, driver of offending Trailer.

3. Claimants who are widow and two sons including Prasannadas have filed claim application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before the Claims Tribunal at Jashpur seeking compensation of RS.35,95,850/- mentioning therein that on the date of accident, deceased Bhagwandas was working as Headmaster at Middle School Tapkara and earning Rs.11,338/- per month.

4. Non-applicants No.3/Insurance Company of offending Trailer submitted reply to claim application and denied entire claim of the claimants. It was pleaded that no documents with regard to income through salary and agricultural income is placed on record, owner of the offending Trailer had not intimated the accident to the Insurance Company. There was contributory negligence on the part of deceased and further that the claimants have filed one more claim application arising out of same accident before the 3rd Motor Accident Claims Tribunal (Fast Track Court), Shahdol, Madhya Pradesh, but how that matter/claim case was closed has not been specifically mentioned/pleaded. The deceased himself has violated the provisions of M.V. Act, the policy filed by the claimants before the learned Claims Tribunal is forged and fabricated. Offending Trailer was not insured with respondent No.4/Insurance Company, the copy of insurance policy was sent for its verification to the Insurance Office, Jamshedpur, where insurance policy has been found to be fake and prayed for dismissal of claim against it.

5. Non-applicant No.4/Insurance Company of the Motorcycle also submitted separate reply and denied entire claim. It was pleaded that deceased himself was owner of the Motorcycle and cannot be treated as third party and in case of accident, the liability will be upon the owner, driver and insurer of the offending Trailer. It was further pleaded that the accident took place on account of negligence of deceased Bhagwandas himself as he was overtaking the offending Trailer, the deceased violated the provisions of M.V. Act as he was not wearing helmet. It was further pleaded that on 29.06.2005, legal representatives of deceased have been given compensation of Rs.1,00,000/-.

6. Non-applicant No.5 did not appear before learned Claims Tribunal and was proceeded *ex parte*.

7. Non-applicant No.6 in the claim application/Respondent No.7 in MAC No.923 of 2013 has been shown to be dead.

8. Learned Claims Tribunal on appreciation of pleadings, evidence and material placed on record by the respective parties, held that death is a result of accident due to rash and negligent driving of offending Trailer by non-applicant No.2 and dashing the Motorcycle bearing No.CG-14/ZC/0223 driven by deceased Bhagwandas. Negligence on the part of Bhagwandas was not found to be proved, contributory negligence also not found to be proved. The insurance policy of the offending Trailer has not been found to be fake and awarded a total sum of Rs.10,36,658/- as compensation.

9. Shri A.K. Prasad, learned counsel for the appellants/claimants in MAC No.228 of 2014 and respondents No.1 to 3 in MAC No.923 of 2013 submits that learned Claims Tribunal erred in awarding very meager amount of compensation. The deduction towards personal and living expenses has been erroneously made as 1/3rd instead of 1/4th. No amount towards future prospects is awarded. It is further argued that the amount of compensation on the other conventional heads awarded by learned Claims Tribunal is on the lower side, which is to be enhanced suitably.

10. Shri Dashrath Gupta, learned counsel for the appellant/Insurance Company in MAC No.923 of 2013 and respondent No.3 in MAC No.228 of 2014 submits that the finding recorded by learned Claims Tribunal that insurance policy is not fake is not correct. He submits that Insurance Company has challenged the said finding recorded by learned Claims Tribunal in MAC No.923 of 2013. Shri

Gupta further contended that Insurance Company is not liable to pay any amount of compensation on account of insurance policy placed on record claiming it to be insurance policy of the offending Trailer, on its verification from the office at Jamshedpur, was found to be fake. The documents i.e. affidavit (Ex.D/7) and certified copy of premium register (Ex.D/8) was for a period from 25.01.2004 to 30.01.2004 was produced, but in it, the details of the truck has not been shown to have issued the policy. It was also argued that learned Claims Tribunal ought to have exonerated the appellant/respondent No.3 in the facts and circumstances of the case. It is contended that the award of penal/default interest is not permissible under the M.V. Act and except award of penal interest compensation on other heads are just and proper.

11. Shri R.N. Pusty, learned counsel for respondent No.4 in MAC No.228 of 2014 and respondent No.6 in MAC No.923 of 2013 supports the award passed by learned Claims Tribunal. He submits that contributory negligence has not been found to be proved by learned Claims Tribunal, and further that the amount of compensation awarded to the claimants is just and proper.

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

13. Looking to the grounds raised by learned counsel for respondent No.3 in MAC No.228 of 2014 and appellant in MAC No.923 of 2013, we are dealing with the appeal filed by the Insurance

Company of offending Trailer first. The appellant/Insurance Company has raised two grounds in its appeal. Firstly, the insurance policy is fake and not issued from its office and further the award of penal interest to be erroneous.

14. To appreciate the grounds raised and submissions made by the learned counsel for the appellant/Insurance Company in MAC No.923 of 2013, we have perused the copy of insurance policy, which was filed along with the claim application and bearing seal affixed by the Clerk of the Court.

15. The insurance policy bears the Policy No.873215 and Certificate No.12278. The period for which the policy was issued is mentioned as 28.01.2004 to 27.01.2005. The appellant/Insurance Company has filed the premium receipt register (Ex.D/8), which is for the period from 25.01.2004 to 30.01.2004 and further the copies of insurance policy issued by the Office of Micro Branch Office, Amar Bhawan, Adityapur, Kandra Road, Adityapur, Jamshedpur. The documents/polices which have been filed in support of the submission of the appellant before the learned Claims Tribunal and marked as Ex.D/9 to Ex.D/19, are of the Two-Wheelers showing covering of risk of those vehicles from 27.01.2004, 28.01.2004 29.01.2004 and 30.01.2004 for the period of one year. The Insurance Company has examined one S.D. Ekka (NAW-3(1), Assistant Manager, United India Insurance Company, Raigarh, who in paragraph-3 of his evidence admitted that the policy of offending Trailer was not issued from Raigarh Branch and the Policy No.873215 is issued from United India Insurance Company, Branch Adityapur, Jamshedpur and he has not looked into the papers relating to the policy in the Branch Office, Adityapur, Jamshedpur. He also admitted that Ex.P/20, which is a letter issued to the Advocate is from the Divisional Office, Korba and the Branch at Adityapur, Jamshedpur do not come within the jurisdiction of Divisional Office, Korba. He also admitted that he is unable to tell as to in whose name, Policy No.873215 was issued and he cannot state that the aforementioned Policy No.873215 is issued in the name of Indrajeet Singh. He admitted that the affidavit (Ex.D/7) was not prepared in front of him and the affidavit is of one Kishore Kumar Sinha, but he was not produced as witness in this case. He also admitted that he has not produced the original policy issuing register. The affidavit (Ex.D/7), which is a notarized affidavit placed on record of one Kishore Kumar Sinha showing him as Branch Incharge of Micro Branch Office, Amar Bhawan, Adityapur, Kandra Road, Adityapur, Jamshedpur, but he did not appear before the learned Claims Tribunal to prove the contents of the affidavit.

16. Perusal of claim application would show that the claimants have arrayed the appellant/Insurance Company showing address to be Local Branch Office, Raigarh. The claimants have filed copy of insurance policy along with their claim application, in which, the details and address of the Insurance Company who issued the policy for the offending Trailer is mentioned, then why not, the Insurance Company has been arrayed as party by giving the correct address of Office/Branch Office of the appellant/Insurance Company, who has issued the alleged policy and shown in the photocopy of the insurance policy. Though, in the pleadings in paragraph-16 of the claim application, it is mentioned the address of the United India Insurance Company Limited, Anand Bhawan, Post Adityapur, District Jamshedpur, Jharkhand, but the same has not been arrayed as party non-applicants in claim application.

17. The M.V. Act is a beneficial piece of legislation. Under Section 168 of the M.V. Act, the Claims Tribunal holds the enquiry and Chhattisgarh Motor Vehicles Rules, 1994 (hereinafter referred to as 'Rules of 1994') cast duty upon the Claims Tribunal for obtaining of information and documents necessary for awarding compensation. Under Section 169 of the M.V. Act, the Claims Tribunals shall have same powers of the Civil Courts compelling attendance of witness, discovery and production of documents and material objects.

18. In view of pleadings of the appellant/Insurance Company/non-applicant No.3 as also the evidence of S.D. Ekka (NAW-3(1) examined on behalf of the Insurance Company, it reveals that the Claims Tribunal has not conducted proper enquiry in terms of Sections 168 and 169 of the M.V. Act read with Rule 226 of the

Rules of 1994. The learned Claims Tribunal looking to the contents of the claim application as well as the details mentioned in the photocopy of the insurance policy showing the address of United India Insurance Company Limited, was under obligation to direct the claimants to make the United India Insurance Company Limited party by giving its correct address mentioned in policy and not only by its local office where claim is filed, more so, when in paragraph-16 of the claim application, correct address and details have been mentioned showing it to be insurer of the offending Trailer. Had the claimants have impleaded the United India Insurance Company Limited showing its address of Jamshedpur, then the adverse inference could have been drawn against the United India Insurance Company Limited having its branch at United India Insurance Company Limited, Anand Bhawan, Post Adityapur, District Jamshedpur, Jharkhand for not producing the entire record in their defence and examining the witness before Claims Tribunal.

19. So far as the appeal (MAC No.228 of 2014) filed by the claimants for enhancement of award on the ground of deduction and multiplier wrongly, non-awarding of future prospects and awarding compensation on other conventional heads on lower side is concerned, these issues have been considered and decided by Hon'ble Supreme Court in the matters of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[1], **National**

1 **(2009) 6 SCC 121**

Insurance Company Limited v. Pranay Sethi and others[2] and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others**[3] and the claimants can raise all these issues before the Claims Tribunal and the Claims Tribunal will be obliged to consider the law laid down by Hon'ble Supreme Court in aforementioned cases and to award just compensation.

20. In the result, the appeal (MAC No.923 of 2013) is allowed. Impugned award is set aside and the matter is remanded back to the Claims Tribunal with a direction to decide the case afresh in accordance with law, after affording adequate opportunity of hearing to the parties. The parties will be at liberty to amend cause title to adduce additional evidence, if any, in support of their respective cases. Since the accident is of the year 2004, we direct the Additional Motor Accident Claims Tribunal, Kunkuri District Jashpur, Chhattisgarh to decide the Motor Accident Claim Case No.38 of 2007 as expeditiously as possible, preferably within four months from the date of receipt of certified copy of this judgment. Consequently, the appeal (MAC No.228 of 2014) stands disposed off with the liberty as aforementioned.

21. Original record of Motor Accident Claim Case No.38 of 2007 be sent back forthwith along with copy of this judgment.

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

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh

2 **AIR 2017 SC 5157**
3 **(2018) 18 SCC 130**