AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 878 of 2013

(Arising out of order dated 15.03.2013 passed in Claim Case No.65 of 2012 by the 2nd Additional Motor Accident Claims Tribunal, Raipur, C.G.)

1. Smt. Satrupi, Wd/o Bakarlal Kosale, aged about 30 years,
2. Ku. Hemin, daughter of Bankarlal Kosale, aged about 16 years,
3. Vijay Kumar, son of Bankarlal Kosale, aged about 14 years,
4. Ku. Hemlata, daughter of Bankarlal Kosale, aged about 12 years,
5. Hemlal, son of Bankarlal Kosale, aged about 10 years,
6. Smt. Bhuri Bai, Wd/o Bisrami, aged about 66 years,

Appellant No.2, 3, 4, 5 are Minor hence impleaded through their natural guardian i.e. appellant no.1 Smt. Satrupi, Wd/o Bankarlal Kosale aged about 30 years

All resident of Village Chakway, P.S. Simga, Raipur, District Raipur, Chhattisgarh

---- Appellants

Versus

1. Paras Satnami, Son of Chintaram Satnami, Resident of Rawanbhatha P.S. Khamtarai, Tahsil and District Raipur, Chhattisgarh
2. M/s Amit Minerals Through Incharge Officer/Competent Officer, M/s Minerals, Rathor Chowk Ramsagarpara, Raipur, Tahsil and District Raipur, Chhattisgarh
3. Ifkyo-Tokiyo General Insurance Company Limited, Through Branch Officer, The Ifkyo-Tokiyo General Insurance Company Limited, 3rd Floor, 345-347 Lalganga Shopping Mall, G.E. Road, Raipur, District Raipur, Chhattisgarh

---- Respondents

For Appellants	:	Shri Amiyakant Tiwari, Advocate
For Respondents No.1 and 2	:	None
For Respondent No.3	:	Shri P.R. Patankar, 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
11.06.2020

1. Challenge in this appeal is to the impugned award dated 15.03.2013 passed by the 2nd Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.65 of 2012, whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.3,96,000/- as compensation, fastening liability for satisfying the compensation amount upon respondents No.1 and 2.

2. Brief facts for disposal of this appeal, are that, on 13.10.2011 at about 6.00 PM, a Truck bearing registration No.CG-04/J/1233 (hereinafter referred to as 'offending Truck') driven by respondent No.1 met with an accident with a Tractor bearing registration No.CG-04/DM/9357 and Trolley bearing registration No.CG-04/DM/9358. In the aforementioned accident, Bankarlal Kosale who was travelling on Tractor along with others died. The accident was reported to concerned Police Station, based on which, crime was registered against respondent No.1 for the offence punishable under Sections 279, 337, 338 and 304A of the Indian Penal Code.

3. Claimants who are widow, four children and mother of deceased Bankarlal Kosale filed an application under Section 166 of the Motor

Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') claiming compensation of Rs.8,76,000/- mentioning therein that they were dependent upon the income of the deceased and after his death, they have suffered loss of dependency.

4. Respondent No.1 did not choose to appear before the learned Claims Tribunal and was proceeded *ex parte*.

5. Respondent No.2 submitted reply to the claim application and pleaded that claim application is not maintainable on account of non-joinder of necessary party i.e. driver, owner and Insurance Company of the Tractor Trolley involved in the accident, Tractor and Trolley was driven in violation of conditions of insurance policy as on the date of accident, driver of the Tractor and Trolley was not possessing valid and effective driving license. It was further pleaded that on the date of accident, the offending Truck was insured with respondent No.3/Insurance Company and respondent No.1/non-applicant No.1 was possessing valid and effective driving license to drive the offending Truck, hence, the liability, if any, to pay the amount of compensation would be on the Insurance Company.

6. Respondent No.3/Insurance Company also submitted separate reply to the claim application and pleaded that the deceased was not doing any work and thereby not having any source of income. It was further pleaded that compensation claimed is highly exaggerated. It was also pleaded that there was contributory negligence and the liability

should be fastened equally between the two vehicles, there was no valid and effective driving license with respondent No.1, there was no valid fitness and permit of the offending Truck on the date of accident and thereby there was breach of conditions of insurance policy.

7. The learned Claims Tribunal on appreciation of pleadings and evidence held that Bankarlal Kosale died on account of motor accident between Truck bearing registration No.CG-04/J/1233 and Tractor bearing registration No.CG-04/DM/9357 and Trolley bearing registration No.CG-04/DM/9358, there was breach of conditions of insurance policy as on the date of accident, respondent No.1 was not possessing valid and effective driving license and awarded a total sum of Rs.3,96,000/- as compensation. Liability to satisfy the award was fastened upon Respondents No.1 and 2 (owner and driver).

8. Shri Amiyakant Tiwari, learned counsel for the appellants submits that exoneration of Insurance Company from its liability is illegal and erroneous as breach of conditions of insurance policy has not been proved. The driver was having valid license and it got renewed within time. In alternate, it is contended that even if there is breach of conditions of insurance policy, then also, the Claims Tribunal ought to have directed the Insurance Company to satisfy the award granting right of recovery. He further submits that the award passed by learned Claims Tribunal is on the lower side. It is submitted that no amount has been awarded towards future prospects, the deduction and multiplier applied is erroneous and meager amount has been

awarded towards other conventional heads, which is required to be enhanced suitably. Lastly, he submits that if it is found that there is breach of conditions of insurance policy, then the direction to Insurance Company of pay and recover be issued.

9. Per contra, Shri P.R. Patankar, learned counsel for respondent No.3/Insurance Company submits that the award passed by the learned Claims Tribunal is just and proper, the finding recorded by learned Claims Tribunal with regard to issue No.3 that there is breach of conditions of insurance policy is based on evidence. It is further contended that on the date of accident, in fact, the driver of offending Truck was not possessing valid and effective driving license as its validity period expired much before the date of accident i.e. 20.06.2010, whereas the accident took place on 13.10.2011, driving license was renewed only on 03.11.2011 for a period of three years upto 02.11.2014. It is contended that the award passed is just and proper and needs no interference. As the Claims Tribunal recorded a finding of breach of policy conditions, no liability can be fastened upon the Insurance Company.

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

11. So far as the submission of learned counsel for the appellants that the learned Claims Tribunal erred in holding that there was violation of conditions of insurance policy on the ground that driving license

was not renewed within time is concerned, the learned Claims Tribunal has clearly recorded in paragraph-13 after considering the statement of Rajesh Bhargava (NAW-2), Clerk of Regional Transport Office, Raipur that the license was not renewed from 20.06.2010 to 02.11.2011, the license expired about more than 3½ months from the date of accident and even after date of the accident, no application for renewal was made till 02.11.2011.

12. Section 15 of M.V. Act prescribes for 'Renewal of driving licences', relevant portion of which is reproduced herein below:-

> "**15. Renewal of driving licences.** —(1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry:
>
> Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:
>
> Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8, and the provisions of sub-section (4) of section 8 shall, so

> far as may be, apply in relation to every such case as they apply in relation to a learner's licence."

13. The proviso appended to sub-section (1) of Section 15 of M.V. Act very specifically prescribes that if application for renewal of a licence is made after lapse of period of thirty days from its expiry, then the driving licence shall be renewed with effect from the date of its renewal only, meaning thereby that the application for renewal of license is being made more than thirty days after expiry of validity period of license, then its renewal will not from the last date of validity period, but the date of its renewal only.

14. In the instant case, Rajesh Bhargava (NAW-2), Clerk of Regional Transport Office, Raipur has specifically stated in his evidence that license of respondent No.1 was not renewed from 20.06.2010 to 02.11.2011 and the said license was renewed only from 03.11.2011 to 02.11.2014. From the evidence of Rajesh Bhargava (NAW-2), it is apparent that from 20.06.2010 to 02.11.2011, there was no driving license.

15. The issue of renewal of license has been considered by Hon'ble Supreme Court in the matter of **Ram Babu Tiwrai v. United India Insurance Company Limited and Others**[1], in which, Hon'ble Supreme Court held as under:-

> "18. It is beyond any doubt or dispute that only in the event an application for renewal of licence is

1 **2008 AIR SCW 6512**

filed within a period 30 days from the date of expiry thereof, the same would be renewed automatically which means that even if an accident had taken place within the aforementioned period, the driver may be held to be possessing a valid licence. The proviso appended to sub-section (1) of Section 15, however, clearly states that the driving licence shall be renewed with effect from the date of its renewal in the event the application for renewal of a licence is made more than 30 days after the date of its expiry. It is, therefore, evident that as, on renewal of the licence on such terms, the driver of the vehicle cannot be said to be holding a valid licence, the insurer would not be liable to indemnify the insured.

The second proviso appended to sub-section (4) of Section 15 is of no assistance to the appellant. It merely enables the licensing authority to take a further test of competent driving and passing thereof to its satisfaction within the meaning of Sub-section (3) of Section 9. It does not say that the renewal would be automatic. It is, therefore, a case where a breech of the contract of insurance is established. This aspect of the matter has been considered by this Court in National Insurance Co. Ltd. v. Kusum Rai & Ors. [(2006) 4 SCC 250] holding :

> "11. It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of

> the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence."

It was furthermore held :

> "14. This Court in National Insurance Co. Ltd. v. Swaran Singh and Others [(2004) 3 SCC 29] clearly laid down that the liability of the Insurance Company vis-a-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle."

It was opined :

> "16. In a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not."

19. The principle laid down in Kusum Rai (supra) has been reiterated in Ishwar Chandra & Ors. v.

Oriental Insurance Co. Ltd. & Ors. [(2007) 10 SCC 650], referring to sub-section (1) of Section 15 of the Act, this Court stated the law, thus :

> “9. From a bare perusal of the said provision, it would appear that the licence is renewed in terms of the said Act and the rules framed thereunder. The proviso appended to Section 15 (1) of the Act in no uncertain terms states that whereas the original licence granted despite expiry remains valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal. The accident took place on 28-4-1995. As on the said date, the renewal application had not been filed, the driver did not have a valid licence on the date when the vehicle met with the accident.”

16. In view of aforementioned specific provisions of M.V. Act and authoritative pronouncement of Hon'ble Supreme Court as well as the facts and circumstances of the case at hand where the license of respondent No.1 was not renewed from 20.06.2010 to 02.11.2011 and the accident took place on 13.10.2011, we do not find any error in the finding recorded by learned Claims Tribunal that on the date of accident, respondent No.1 was not possessing valid and effective driving license leading to breach of conditions of insurance policy and exonerating the Insurance Company from its liability.

17. So far as the argument of learned counsel for the appellants that the learned Claims Tribunal erred in awarding the amount of compensation on lower side is concerned, perusal of the record would show that the claimants in their claim application have pleaded that the deceased was aged about 34 years and able-bodied person was working as Mason and thereby earing Rs.6,000/- per month. In support of their pleading with regard to the income of the deceased, the claimants have not produced any documentary evidence, but have examined appellant No.1-Smt. Satrupi Kosale as AW-1 and Bhagwati Prasad as AW-2, whose occupation is shown to be loader (Hamali). There is no admissible piece of evidence placed on record before the learned Claims Tribunal to prove the income of the deceased. In such circumstances, when the claimants have failed to prove the income of the deceased, then the income of such person is to be assessed on notional basis considering the nature of employment of deceased, price index and wage structure prevailing in the State. The pleadings and evidence made on the part of the claimants that the deceased was working as Mason has not been controverted and being so, nature of work in which the deceased was engaged comes within the purview of 'skilled labour'. Looking to the date of accident i.e. 13.10.2011 and considering that the deceased was a skilled labour, we deem it fit and proper to hold the income of deceased as Rs.4,500/- per month.

18. The learned Claims Tribunal has deducted 1/3rd amount towards personal and living expenses ignoring that there were six dependents of the deceased. The deduction towards personal and living expenses has been considered by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[2], in which, the Hon'ble Supreme Court has held that where the number of dependents are 4 to 6, then the deduction towards personal and living expenses will be 1/4th.

19. In view of the authoritative pronouncement by Hon'ble Apex Court, the deduction made by the learned Claims Tribunal as 1/3rd is set aside and we hold that there will be a deduction of 1/4th towards personal and living expenses.

20. The learned Claims Tribunal has not awarded any compensation towards future prospects. The award of compensation on the head of future prospects has been considered and decided by Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Pranay Sethi**[3] and held that the person who is not in permanent employment or on fixed salary, there will be an addition of 40% of the established income where the age of the deceased/employee is less than 40 years.

21. In the case at hand, the age of the deceased has been taken by learned Claims Tribunal on the basis of postmortem report (Ex.P/5)

2 **(2009) 6 SCC 121**
3 **(2017) 16 SCC 680**

as 36 years, therefore, there will be addition of 40% of the established income towards future prospects for assessing the total monthly/yearly income of the deceased.

22. The learned Claims Tribunal has awarded only Rs.12,000/- towards other conventional heads, which in the opinion of this Court, is on the lower side in view of the pronouncement of Hon'ble Supreme Court on the issue.

23. For the aforementioned reasons, the impugned award passed by learned Claims Tribunal requires reconsideration and recalculation, which is in the following terms :

The income of the deceased as assessed at Rs.4,500/- per month i.e. Rs.54,000/- per annum. On the date of accident, deceased Bankarlal Kosale was aged about 36 years, therefore, there will be addition of 40% of established income for assessing the total income of deceased in view of the law laid down by Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra). By adding 40% towards future prospects i.e. Rs.21,600/- (54,000 x 40%), the annual income comes to Rs.75,600/- (54,000 + 21,600). After deducting 1/4th towards his personal and living expenses i.e. Rs.18,900/- (75,600 / 4) in view of the law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.)** (supra), yearly dependency of the claimants' comes to Rs.56,700/-. At the time of accident, the age of the deceased has been taken by learned Claims Tribunal as 36 years, therefore, multiplier of 15 would be applicable in the present case. After applying the multiplier of 15, the total loss of dependency comes to Rs.8,50,500/- (56,700 x 15).

24. Apart from above loss of dependency, the claimants will be further entitled for a sum of Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate, Rs.40,000/- towards parental consortium (payable to children because of the death of parents), Rs.40,000/- towards spousal consortium (payable to the spouse because of the death of the partner) and Rs.40,000/- towards filial consortium (payable to the parents because of the death of children) in view of law laid down by Hon'ble Supreme Court in the matter of **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others**[4]. Though the death was instantaneous, we award a further sum of Rs.10,000/- towards pain and suffering.

25. On the basis of above recalculation, now the claimants will be entitled for a total compensation of Rs.10,10,500/- (8,50,500 + 15,000 + 15,000 + 40,000 + 40,000 + 40,000 + 10,000) instead of Rs.3,96,000/- as awarded by the learned Claims Tribunal.

26. So far as the submission made by learned counsel for the appellants that the direction be issued to respondent No.3/Insurance company to pay and recover appears to be just and proper. The breach of conditions of insurance policy is with respect to non-renewal of license in time. The doctrine of pay and recover has been considered

4 **(2018) 18 SCC 130**

by the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Challa Bharathamma and others**[5], in which, the Supreme Court held thus :

> "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 concerned Executing Court 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. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct

5 **(2004) 8 SCC 517**

> realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

27. Further the Hon'ble Supreme Court in the matter of **Shamanna and another v. Divisional Manager, Oriental Insurance Company Limited and others[6],** held thus :

> "13. Since the reference to the larger Bench in *National Insurance Co. Ltd. v. Parvathneni, (2009) 8 SCC 785* has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in *National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297* followed in *Laxmi Narain Dhut v. National Insurance Co. Ltd. (2007) 3 SCC 700,* and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in Swaran Singh, (supra) and Laxmi Narain Dhut, (supra) cases. While so, in our view, the High Court ought not to have interfered with the award passed by the

6 **(2018) 9 SCC 650**

> Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment Shamanna (supra) of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored. ”

28. Recently, the Hon'ble Supreme Court in the matter of **Parminder Singh v. New India Assurance Company Limited and others[7],** further issued a direction to pay and recover in a case of no valid and effective driving license considering the pronouncement of **Shamanna** (supra).

29. Considering the ratio laid down in above decisions of the Hon'ble Supreme Court as also considering the beneficial object of M.V. Act and the fact that the deceased was a third party, this Court is of the view that it will be in larger interest of justice to direct the insurer to first pay the amount of compensation to claimants and then to recover it from the driver and owner of the offending vehicle in accordance with law.

30. For the foregoing reasons, appeal is allowed in part and impugned award passed by learned Claims Tribunal is modified accordingly. Appellants are entitled for total compensation of Rs.10,10,500/- instead of Rs.3,96,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per

7 **(2019) 7 SCC 217**

annum from the date of filing of claim application till its realization. The other condition imposed by learned Claims Tribunal including award of Advocate's fee shall remain intact.

31. We direct Respondent No.3/Insurance Company to deposit the entire amount of compensation before the Claims Tribunal first and thereafter recover the amount of compensation so deposited by it from respondent No. 2 owner of the offending Truck. For recovery of the amount so deposited by it, respondent No.3 is not required to file separate case/suit but can recover the same by filing an application of execution in the very same proceedings.

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

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh