AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 471 of 2013

{Arising out of order dated 28.02.2013 passed by learned 3rd Additional Motor Accident Claims Tribunal, Raipur in Claim Case No. 238 of 2011}

1. Smt. Bhuwaneshwari Bai, Wd/o Late Om Prakash Sahu, aged about 26 years.

2. Heman Lal, S/o Late Om Prakash Sahu, aged about 6 months.

3. Bhagwat, S/o Late Baisakhu Sahu, aged about 51 years.

4. Sukham, W/o Bhagwat Sahu, aged about 50 years.

Appellant No. 2 is minor hence impleaded through his natural guardian mother Appellant No. 1 Smt. Bhuwaneshwari Sahu.

All R/o Subhash Nagar, Telibandha, P.S. Telibandha, Raipur, District Raipur (C.G.)

---- Appellants

Versus

1. Vikram Jems, S/o Vinod Jems, R/o Satmanipara, Telibandha, Raipur, District Raipur (C.G.)

2. Vinod Kumar Jems, S/o Larence Jems, R/o Satmanipara, Telibandha, P.S. Telibandha, Raipur, District Raipur (C.G.)

3. Royal Sundaram Allience Insurance Co. Ltd. Through In-Charge Officer, Royal Sundaram Allience Insurance Co.Ltd. Devendra Nagar Road, P.S. Devendra Nagar, Raipur, Tah. & District Raipur (C.G.)

---- Respondents

For Appellants : Shri Amiyakant Tiwari, Advocate.
For Respondent No. 3 : Shri Anupam Dubey, Advocate.

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

Per P. R. Ramachandra Menon, Chief Justice

22.05.2020

1. Appeal is mainly for enhancement of the quantum of compensation. Claimants are the Appellants. On 21.06.2010, when the deceased by name Omprakash Sahu was travelling as a passenger in 'Auto Rickshaw' bearing No. C.G. 04 T 6827 (which is insured by the 3rd Respondent/Insurance Company), because on the rash and negligent driving on the part of the driver of the Auto Rickshaw, it dashed against the rear side of a stationary Truck, causing fatal injuries to the passenger, leading to his death. This led to the claim petition filed by the widow, minor son and the parents seeking compensation.

2. The Insurance Company contested the claim mainly on the ground that the driver was not having valid driving licence authorizing to drive a 'transport vehicle' at the relevant time. They also examined a witness from the Motor Vehicles Department. The Tribunal repelled the said contention and after the total compensation payable as Rs. 4,57,000/-, it was directed to be satisfied by the other Respondents, exonerating the Insurance Company from the liability because of the breach of conditions in the policy. This is put to challenge by the claimants, besides seeking for enhancement of the compensation and to fix the liability upon the Insurance Company.

3. Heard Shri Amiyakant Tiwari, the learned counsel appearing for the Appellants and Shri Anupam Dubey, the learned counsel appearing for the 3rd Respondent.

4. The first question is whether the Tribunal was justified in exonerating the Insurance Company for the alleged breach of condition in the policy, insofar as the 'Auto Rickshaw' was being driven without authorization in the licence. The issue with regard to the authorization to drive a transport vehicle, in the case of a person holding a licence to drive a 'Light Motor Vehicle', can no longer be *res integra*. It was the subject matter of reference before the Apex Court in ***Mukund Dewangan vs Oriental Insurance Company Limited*** reported in **(2017) 14 SCC 663** (a case originated from this Court). The main question referred was "*Whether a driver who is having a licence to drive Light Motor Vehicle and is driving transport vehicle of that class is required additionally to obtain an endorsement to drive a transport vehicle*" ? It has been held w.r.t the relevant provisions of the Motor Vehicle Act, 1988, that it is always open to drive any 'Light Motor Vehicle' irrespective of character or use, without any separate/specific authorization, if the driver is having a 'Light Motor Vehicle' licence.

5. In the instant case, the vehicle involved is only an 'Auto Rickshaw' (which term is not separately defined either under the Motor Vehicle Act, 1988 or under the Central/State Rules). That apart, even if it is assumed that the person concerned was not having any valid driving licence to drive the vehicle, the settled law is that it cannot adversely affect the right of a 'third party' and in such cases, the right of the Insurance Company is only to 'pay and recover' the amount from the person/persons who have committed the breach of conditions in the policy. In the said circumstance, we hold that the Insurance Company is liable to satisfy the amount awarded by the Tribunal.

6. This Court is aware of the fact that the verdict passed by the Apex Court in ***Mukund Dewangan vs Oriental Insurance Company Limited*** reported in **(2017) 14 SCC 663** has been doubted and referred to Larger Bench for

re-consideration as per the decision in ***Bajaj Alliance (sic Allianz) General Insurance Company Limited vs Rambha Devi & Others*** reported in **(2019) 12 SCC 816**. The reference was mainly for the reason that some of the significant provisions in the Motor Vehicle Act, 1988 and the Central Motor Vehicles Rules 1989 **(Section 4(1) & 2; Section 7, Section 14 & proviso to Section 14(2)(a); Rule 5, Rule 31(2), (3), (4) etc were unfortunately not brought to the notice of the Court in *Mukund Dewangan (supra)*)**. However, the Apex Court, still applied the law in ***Mukund Dewangan (supra)*** in ***M.S. Bhati vs National Insurance Company Limited*** reported in **(2019) 12 SCC 248** which is virtually to the effect that the binding nature of the dictum in ***Mukund Dewangan (supra)*** continues, until the reference is answered by the Larger Bench, to the contrary.

7. Coming to the quantum of compensation, the learned counsel for the Appellants submits that the Tribunal has reckoned only Rs. 3,000/- as the notional monthly income, despite the fact that the deceased was a 'driver' by profession. The said version is sought to be rebutted by the learned counsel for the 3rd Respondent/Insurance Company, pointing out that the absolutely no material was produced and no evidence was adduced as to the alleged avocation of the deceased. No driving licence has been produced even before this Court as on date. In the said circumstance, the version of the learned counsel for the Appellants that the deceased was having a monthly income of Rs. 9,000/- as a 'driver' is not liable to be accepted. However, it has to be borne in mind that the accident was occurred in the year 2010. Considering the daily wage earned even by a manual labour as on that date, we find it appropriate to reckon Rs. 4,000/- as the monthly income of the deceased who was aged 33 years. Giving effect to the law declared by the Apex Court in ***Sarla Verma Vs. Delhi Transportation Corporation*** reported in **(2009) 6 SCC 121**, to the extent as affirmed by the Constitution Bench in ***National Insurance Company Limited***

vs Pranay Sethi & Others reported in **(2017) 16 SCC 680,** in the case of a person who is less than 40 years, though he is self employed without any fixed income, 40% enhancement is necessary towards 'future prospects'. As such, the monthly comes to Rs. 4,000 + 4,000 x 40/100 = Rs. 5,600/-. The appropriate multiplier to be taken is '16'. Dependency compensation, after deducting 1/3rd income towards personal expenses, it comes to Rs. 5,600 x 12 x 2/3 x 16 = Rs. 7,16,800/-. After giving credit to the sum of Rs. 4,57,000/- awarded by the Tribunal, the balance payable is **Rs. 2,59,800/-**.

8. By virtue of the law declared by the Apex Court (Constitution Bench) cited above, the claimants are entitled to get amounts under the conventional heads such as 'loss of estate', 'funeral expenses' and also towards 'loss of consortium', to the extent as provided therein. In the instant case, the Tribunal has awarded only Rs. 5,000/- towards the funeral expenses; Rs. 5,000/- towards loss of estate and Rs. 15,000/- towards loss of consortium. As per the law declared by the Supreme Court (mentioned above), it should be Rs. 15,000/- towards funeral expenses, Rs. 15,000/- towards loss of estate and Rs. 40,000/- towards loss of consortium. In the said circumstance, the claimants are entitled to get a further sum of **Rs. 10,000/-** towards funeral expenses, **Rs. 10,000/-** towards loss of estate and **Rs. 25,000/-** towards loss of consortium.

9. It is also relevant to note that, relying on the law declared in ***Pranay Sethi's (supra)*** case, the concept of 'consortium' has been further explained by the Apex Court in ***Magma General Insurance Company Limited vs Nanu Ram Alias Chuhru Ram & Others*** reported in **(2018) 18 SCC 130**. It can be of three types; **Parental consortium** (payable to children because of the death of parents); **Spousal consortium** (payable to the spouse because of the death of the partner) and **Filial consortium** (payable to the parents because of the death of children). Since the Tribunal has awarded only a consortium of Rs.

15,000/-, it has to be enhanced to be Rs. 40,000/- to satisfy the requirement of the 'Spousal consortium' in respect of 1st Appellant (widow); thus resulting in a balance of **Rs. 25,000/-**. We are also of the view that the 2nd Appellant child is entitled to get 'Parental consortium' and as such, a sum of **Rs. 40,000/-** is awarded under this head. Similarly, towards Filial consortium, the parents (Appellants 3rd and 4th) are entitled to get sum of **Rs. 40,000/-**. Thus, the total balance compensation payable comes to **Rs. 4,09,800/- (Four lakhs nine thousand and eight hundred)**.

10. Incidentally, it is to be noted that the Tribunal has reckoned Rs. 36,000/- as the annual income of the deceased and after deducting 1/3rd towards the personal expenses, the multiplicand has been fixed as '**Rs. 27,000/-**'. Adopting a multiplier of 16, a sum of Rs. 4,57,000/- has awarded towards the loss of the dependency as calculated in the paragraph 17 of the Award. Obviously, there appears a mistake in the calculation, as, on deducting 1/3rd from Rs. 36,000/-, it should be **Rs. 24,000/-**, instead of Rs. 27,000/- reckoned by the Tribunal. However, this does not have much relevance, as the correct calculation has been given by us in the 'paragraph No. 7'.

11. The balance compensation awarded as above shall be paid with interest @ 7% per annum from the date of the accident, till the date of deposit. Since the policy is admitted, we direct the 3rd Respondent/Insurance Company to remit the said amount with interest as aforesaid, as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment. The appeal stands allowed to the said extent.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Brijmohan