NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1213 of 2018

1. Smt. Yogita Sahu W/o Late Bhagbali Sahu Aged About 38 Years R/o Village - Mauharkhar, Kota, Police Station Kota, District Bilaspur Chhattisgarh.
2. Laxminarayan Sahu S/o Late Bhagbali Sahu Aged About 18 Years R/o Village - Mauharkhar, Kota, Police Station Kota, District Bilaspur Chhattisgarh.

---- Appellants

Versus

1. Lakhan Singh Raj S/o Ramhau Ram Raj Aged About 50 Years Caste - Gond, R/o Near Jogipur School, Police Station - Kota , Tahsil - Kota, District Bilaspur Chhattisgarh.
2. Ranjeet Singh Raj S/o Lakhan Singh Raj Aged About 23 Years Caste - Gond, R/o Near Jogipur School, Police Station - Kota Tahsil Kota District Bilaspur Chhattisgarh.
3. I C I C I Lombard General Insurance Co. Ltd., Through Branch Manger, Commercial Building , Devendra Nagar Road, Branch Raipur Tahsil And District Raipur Chhattisgarh.
4. Ku. Kiran Sahu D/o Late Bhagbali Sahu Aged About 20 Years R/o Village - Mauharkhar Kota Police Station Kota, District Bilaspur Chhattisgarh. **---- Respondents**

For Appellants	:-Shri Goutam Khetrapal, Advocate.
For Respondents No. 1 and 2	:-Shri Malay Shrivastava , Advocate appears along with Ms. Neha Shrivastava,Advocate.
For Respondent No.3	:-Shri Amrito Das, Advocate appears along with T. Abraham, Advocate.
For Respondent No. 4.	:-Shri A.L. Singroul, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal
Order On Board

18/02/2020

1. This Miscellaneous Appeal has been preferred by the Claimants 1 and 3 under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act of 1988') questioning the legality and propriety of the award dated 16.05.2018 passed by the 5th Additional Motor Accident Claims Tribunal, Bilaspur, District Bilaspur (for short 'the Claims Tribunal') in Motor Accident Claim Case No. 515/2015 by which, the

Claims Tribunal, while allowing the claim in part, has awarded a total amount of compensation to the tune of Rs.22,22,534/- (Rupees Twenty Two Lakhs Twenty Two Thousand Five Hundred and Thirty Four Only) with 6% interest per annum from the date of filing of the claim petition till its realisation while exonerating the Insurance Company from its liability. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated, the facts of the case are that on 12.03.2015, deceased-Bhaagbali Sahu was returning to his village 'Kota' by his motor cycle bearing its Registration No. CG 10 EN-5469 and as soon as he reached near the village Bhainsajhar, he was hit vehemently from its opposite side by the offending vehicle, the another motor cycle bearing Registration No. CG 10 NC-6733, which was owned by Non-Applicant No. 2/Ranjeet Singh and was insured with Non-Applicant No. 3/I.C.I.C.I. Lombard General Insurance Company Limited. At the relevant time, the vehicle in question was being driven rashly and negligently by its driver, namely, Lakhan Singh Raj, as a result of which, deceased (Bhagbali Sahu) injured badly and expired during the course of his treatment into the Hospital.

3. On account of the aforesaid accident, a claim petition enumerated under Section 166 of the Act of 1988 has been made by his widow and minors claiming total amount of compensation to the tune of Rs.36,48,984/- (Rupees Thirty Six Lakhs Fourty Eight Thousand Nine Hundred and Eighty Four only) under various heads by submitting *inter-alia* that the deceased was a Government Employee and was working as a Forest Guard in Rajgamarg Forest Division at Korba and used to

earn Rs.16,069/- per month.

4. The aforesaid claim has been contested by Non-Applicants No. 1 and 2, by saying that the alleged accident has not occurred with the alleged offending vehicle and submit further that in case of any liability being fastened, the same could be indemnified by the I.C.I.C.I. Lombard General Insurance Company Limited, as it was insured with the said company. Non-Applicant No. 3/Insurance Company has contested the claim mainly on the ground that the driver of the alleged offending vehicle was not holding an effective and valid driving licence and therefore, it was being used in violation of the Insurance Policy, therefore, no liability could be fastened upon it.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 12.03.2015 due to rash and negligent driving of the driver of the offending vehicle resulting into the sad demise of Bhagbali Sahu. It held further that the driver of the alleged offending vehicle was not holding any kind of licence and considering further the monthly income of the deceased as Rs.16,069/-, as claimed, awarded total amount of compensation as mentioned hereinabove, while exonerating the Insurance Company from its liability.

6. Being aggrieved, claimants 1 and 3 have preferred this appeal. Shri Goutam Khetrapal, learned counsel appearing for the Appellants submits that the Tribunal has committed an illegality in holding that the driver of the offending vehicle was not holding the effective and valid driving licence to drive the same. It is contended further that since the vehicle in question was admittedly insured with the said insurance

company, therefore, while exonerating the insurance company, the Tribunal ought to have applied the principles of pay and recover. It is contended further that the Tribunal while awarding the amount of compensation ought to have awarded proper amount of compensation towards the conventional heads instead of Rs. 50,000/- only. Having failed to do so, the Tribunal has erred in awarding a meagre amount of compensation payable to the claimants. In support, he placed his reliance upon the decision rendered in the matter of **National Insurance Company Limited vs. Pranay Sethi and others** and **National Insurance Co. Ltd. vs. Swaran Singh and others** reported respectively in **(2017) 16 SCC 680** and **(2004) 3 SCC 279**.

7. On the other hand, learned counsel for the Respondents has supported the award impugned.

8. From perusal of the record, it appears that the driver of the offending vehicle was not possessing any kind of driving license and therefore, while filing the charge sheet against him in connection with Crime No. 71/2015 an offence under Section 3/181 of the Act of 1988 has also been registered as the driving licence of him was not seized from him. That apart, driver and owner have not entered into the witness box in order to establish the fact that the driver was holding valid and effective driving licence at the time of occurrence of the alleged accident. The Tribunal has, therefore, not committed any illegality in exonerating the Insurance Company from its liability on finding that the alleged offending vehicle was being used in violation of the policy. The finding so recorded in this regard by the Tribunal based upon due and proper appreciation of the evidence deserves to be and is hereby affirmed.

9. As far as the amount of compensation as assessed by the Claims Tribunal is concerned, it appears that only a sum of Rs.50,000/- has been awarded towards conventional heads. However, the Claimants would be entitled to a sum of Rs.70,000/- in this regard in the light of the principles laid down in the matter of **National Insurance Company Limited vs. Pranay Sethi and others** (supra) instead of Rs.50,000/-, as under:-

	Mode of Compensation	**Amount Rs.**
1.	Loss of consortium to wife	40,000/-
2.	Funeral expenses	15,000/-
3.	Loss of estate	15,000/-
	Total	Rs. 70,000/-

12. The claimants would, thus, be entitled to a total sum of Rs. 22,42,534/- (Rs.21,72,534+Rs.70,000/-) instead of Rs.22,22,534/-, with 6% interest per annum as awarded by the Claims Tribunal from the date of filing of the claim petition till its realisation. Since the vehicle in question was insured with Non-Applicant No. 3/I.C.I.C.I. Lombard General Insurance Company Limited, therefore, by applying the principles laid down in the matter of **National Insurance Co. Ltd. vs. Swaran Singh and other** (supra), It would be just and proper to direct the said Insurance Company to first pay the aforesaid amount of compensation, i.e., Rs. 22,42,534/- with 6% interest per annum from the date of filing of the claim petition till its realisation to the claimants, with a direction to recover the same from the driver and owner of the vehicle in question in Execution Proceedings arising in this very case.

13. The appeal is, accordingly, allowed in part with the aforesaid observations.

Rest of the observations as made by the Claims Tribunal shall remain intact. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE

Vivek