NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 880 of 2013

- The Oriental Insurance Co.Ltd. Thru- Its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur, Revenue & Civil Distt. Bilaspur C.G. PIN 495001

---- Appellant

Versus

1. Jeerjodhan S/o Late Antu Korva Aged About 33 Years Occupation agriculturist and labourer R/o Village Nawadihkhurd, P.S. And Tah. Balrampur, Revenue Distt. Balrampur-Ramanujganj, Civil Distt. Surguja C.G.
2. Rajendra Singh S/o Ghurwa Singh Aged About 41 Years Occupation Vehicle Driver, R/o Basantpur, P.S. Bagbahara, Revenue & Civil Distt. Jashpur C.G.
3. Upendra Singh S/o Late Devendra Singh Aged About 40 Years, Bus owner (Badan Bus) R/o Kodatarai, Raigarh, P.S. And Tah. Raigarh, Civil & Revenue Distt. Raigarh C.G.

---- Respondents

M.A.(C) No. 175 of 2014

- Jirjodhan S/o Late Antu Korwa Aged About 32 Years Occupation Agriculturist/Labourer R/o Nawadih Khurd, P.S. And Tah. Balrampur, Distt. Balrampur-Ramanujganj C.G. **---- Appellant**

Versus

1. Rajendra Singh S/o Ghuruwa Singh Aged About 40 Years, occupation Driver R/o Basantpur, P.S. Bagbahar, Distt. Jashpur C.G.
2. Upendra Singh S/o Late Devendra Singh R/o Kodatarai, Raigarh, P.O. And P.S. Raigarh, Tah. And Distt. Raigarh C.G.
3. Oriental Insu.Co.Ltd. Thru- Its Branch Manager, Branch Office- Manendragarh Road, Near Ambedkar Chowk, Ambikapur, Distt. Surguja C.G. **---- Respondents**

In MAC/880/2013

For Appellant:	Shri R. N. Pusty, Advocate
For Respondents No. 1 & 2:	None, though served.
For Respondent No.3:	Shri Amit Sharma, Advocate.

In MAC/175/2014

For Appellant:	Shri V. K. Pandey, Advocate along with Ms. K. Radhika, Advocate
For Respondents No. 1 & 2:	None, though served.
For Respondent No.3:	Shri R. N. Pusty, Advocate.

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J
Award/Order On Board

04.02.2020

1. Both these appeals, preferred under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act, 1988'), arise out of the common award passed on 29.06.2013 by the Additional Motor Accident Claims Tribunal (hereinafter referred to as 'the Claims Tribunal') Ramanujganj, District Balrampur Ramanujganj (C.G.) in Claim Case No.58/2012, they are being disposed of by this common order. The parties to these appeals shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 28.08.2009, at about 4:00 p.m., deceased Antu Korwa was returning to his village Daldhoba by the offending vehicle “Bus” bearing its registration No. C.G.-13-A-9801, which was owned by Non-applicant No.2-Upendra Singh and was insured with Non-applicant No.3- The Oriental Insurance Company Limited. At the relevant time, it was being driven rashly and negligently by its driver Rajendra Singh, as a result of which, he lost his control and the alleged vehicle turned turtle and owing to which, the deceased sustained serious injuries and was admitted into the hospital, where he expired during the course of his treatment on 29.08.2009.

3. Based upon the aforesaid accident, a claim enumerated under Section 166 of the Act, 1988 has been made by the deceased's son Jirjodhan claiming total amount of compensation to the tune of Rs.10,59,000/- under various heads by alleging *inter alia* that his father, a 48 year old, was an agriculturist and used to earn Rs.4,500/- per month.

4. The aforesaid claim has been contested by Non-applicants No.1 & 2, the driver and the owner of the vehicle in question by saying that the deceased was not travelling in the alleged vehicle and pleaded further that the driver of the offending vehicle was holding the valid and effective driving licence and since the vehicle in question was insured with the Appellant/Insurance Company, therefore, in case of any liability being fastened, the same could be indemnified by the said Company. While Non-applicant No.3, the insurer of the alleged offending vehicle, contested the claim by submitting *inter alia* that the driver of the alleged offending vehicle was not holding the valid and effective driving licence to drive the alleged transport vehicle, which was being used even without any permit and fitness certificate, therefore, no liability could be fastened upon the insurance company.

5. After considering the evidence led by the parties, the Claims Tribunal by its award impugned, arrived at a conclusion that the alleged accident occurred on 28.08.2009 at about 4:00 p.m. due to rash and negligent driving by the driver of the offending vehicle "Bus" resulting into the sad demise of said Antu Korwa, a 55-60 years old, agriculturist. It held further that at the relevant point of time, the vehicle in question was being driven without any permit. It, however, held further that since the insurer has failed to produce the insurance policy, therefore, it cannot be held that which of the terms and conditions stipulated therein have been violated by the insured. As a consequence and by assessing the monthly income of the deceased to the tune of Rs.3,000/- and by applying the multiplier of 9 awarded total amount of compensation to the tune of Rs.1,72,000/- with 9% interest per annum from the date of the award till its realization while

fastening the liability upon the Insurance Company.

6. Being aggrieved, these appeals have been preferred by the insurer as well as by the Claimant. Shri R. N. Pusty, learned counsel for the Appellant in MAC/880/2013 submits that the award under appeal as passed by the learned Claims Tribunal while fastening the liability upon the Insurance Company even upon holding that the vehicle in question was being used without any permit, is apparently contrary to law. While drawing attention to the provision prescribed under Section 66 of the Act, 1988, it is contended that the owner of the alleged transport vehicle was not entitled to permit the use of the alleged vehicle in any public place in absence of the valid permit. However, without considering this material fact, the Tribunal has erred in fastening the liability upon the Insurance Company. In support, he placed his reliance upon the decision rendered in the matter of ***Amrit Paul Singh and Another*** vs. ***Tata AIG General Insurance Company Limited and others*** reported in **(2018) 7 SCC 558**.

7. Shri V. K. Pandey, learned counsel appearing for the Claimant/Appellant in MAC/175/2014 submits that just and proper compensation payable to the Claimant has not been awarded as neither the monthly income of the deceased has been assessed properly nor proper multiplier has been applied. He submits further that while awarding the amount of compensation, the Tribunal ought to have considered the future prospects of the income of the deceased. Having failed so, the Tribunal has committed an illegality in awarding the meagre amount of compensation. In support, he placed his reliance upon the decision rendered in the matter of ***National Insurance Co. Ltd.*** vs. ***Pranay Sethi*** reported in **2017 (16) SCC 680**.

8. Shri Amit Sharma, learned counsel appearing for Non-applicant No.2, the owner of the vehicle in question has supported the award impugned.

9. I have heard learned Counsel for the parties and perused the entire record carefully.

10. In MAC/880/2013, preferred by the Appellant/Insurance Company, it has been contended by Shri Pusty that the vehicle in question was a transport vehicle, therefore, it cannot be used without valid permit as per the provision prescribed under Section 66 of the Act, 1988. From perusal of the record, it appears that it was used without any valid permit as evidenced by a temporary permit, marked as Ex.D.2, which was issued by the concerned R.T.O. on 28.08.2009 as a bare perusal of it would reveal the fact that it has come into force from 7:00 p.m., whereas, the alleged accident occurred prior to that, i.e. at 4:00 p.m on 28.08.2009. The Tribunal has, therefore, rightly arrived at a conclusion that the vehicle in question was being used without any permit at that particular point of time. However, despite holding as such, the Tribunal has certainly committed an illegality in fastening the liability upon the Insurance Company on finding that the policy has not been placed on record by the insurer, whereas it was an admitted fact that the vehicle in question was insured with the Appellant/Insurance Company. While fastening the liability upon the Insurance Company, the Tribunal has completely overlooked the mandatory provision as prescribed in Section 66 of the Act, 1988, which reads as under:-

> **66. Necessity for permits.—** (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or

> goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:
>
> xxxx xxxx xxxx xxxx xxxx

11. A bare perusal of the aforesaid provision, it appears that no owner of a motor vehicle is entitled to use or permit the use of his vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used. Here in the case in hand, as found hereinabove, although the temporary permit (Ex.D.2) was issued on 28.08.2009, but it has come into force with effect from 7:00 p.m., i.e., after the occurrence of the alleged accident which took place at 4:00 p.m. on the said day. It is, thus, evident that at the relevant point of time the vehicle in question was being used without any valid permit in violation of the said statutory provision prescribed under sub-section (1) of Section 66 of the Act, 1988. The said observation of mine is fortified by the principles laid down by the Supreme Court in the matter of ***Amrit Paul Singh and Another*** vs. ***Tata AIG General Insurance Company Limited and others*** (supra), where, it has been observed at paragraph 24 as under:-

> "**24.** …............Use of a vehicle in a public place without a permit is a fundamental statutory infraction......."

12. The Claims Tribunal has, therefore, committed an illegality in fastening the liability upon the Insurance Company. The finding so recorded is, therefore, liable to be and is hereby set aside and the

Appellant/Insurance Company is accordingly entitled to be and is hereby exonerated from its liability.

13. As far as the appeal (MAC/175/2014) preferred by the Claimant is concerned, it appears that the amount of compensation, as awarded by the Claims Tribunal without applying the proper multiplier and even without considering the future prospects of the income of the deceased appears to be on lower side and, therefore, deserves to be modified and/or enhanced.

14. From perusal of the record, it appears that the deceased was an agriculturist and was 50 years old, as evidenced from the application (Ex.P.3), applied for postmortem report. Considering the wages prevailing under the Minimum Wages Act in the year 2009, the Tribunal has rightly assessed the monthly income of the deceased at Rs.3,000/-. It, however, appears that while determining the income of the deceased, future prospects of his income to the extent of 10% of his monthly income should have been taken into consideration in order to provide just and proper compensation payable to the Claimant in the light of the decision rendered in the matter of ***National Insurance Co. Ltd.*** vs. ***Pranay Sethi*** (supra). Since the deceased was found to be 50 years old at the time of the accident, the proper multiplier applicable would be 13, instead of 9, as applied by the Tribunal.

15. Considering the monthly income of the deceased as such, yearly Rs.36,000/- and, that by adding 10% of it, i.e., Rs.3,600/- towards future prospects of his income, annual dependency would be worked out as Rs.39,600/- (Rs.36,000/- + Rs.3,600/-). Since the Applicant alone was dependent upon his deceased father, therefore, while deducting half of it, i.e., Rs.19,800/- and that by applying the multiplier of 13, the total

dependency would thus arrive at Rs.2,57,400/-. In addition to this, the Claimant is entitled to a sum of Rs.70,000/- towards conventional heads as under :-

Mode of compensation	**Amount Rs.**
(i) Loss of love and affection to Claimant/son of the deceased	- 40,000/-
(ii) Funeral expenses	- 15,000/-
(iii) Loss of estate	- 15,000/-
Total	**- Rs.70,000/-** ===============

16. The claimant would, thus, be entitled to a total sum of Rs.3,27,400/-, instead of Rs.1,72,000/- as assessed by the Claims Tribunal, with 9% interest per annum as awarded by the Tribunal. Since the vehicle in question was admittedly insured by the Non-applicant No.3/The Oriental Insurance Company Ltd., therefore, by applying the principles laid down in the matter of ***National Insurance Co. Ltd.*** vs. ***Swaran Singh and Others*** reported in **(2004) 3 SCC 297**, it would be just and proper to issue a direction to the said Company to first pay the awarded sum to the Claimant and then to recover the paid awarded sum from the owner (Upendra Singh) and driver (Rejendra Singh) of the offending vehicle in execution proceedings arising in this very case.

17. Consequently, MAC/880/2013 preferred by the Appellant/Insurance Company is allowed, while MAC/175/2014 preferred by the Claimant is allowed in part to the extent indicated hereinabove with the aforesaid direction. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE

Nikita