AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1289 of 2014

1. Adesh Kumar S/o Lakhan Lal Yadav, Aged About 37 Years, R/o: village - Godela, P.S - Arjunda, Distt. Balod C.G. **(Driver).**
2. Rohit Kumar Sahu S/o Bhujan Lal Sahu, Aged About 50 Years, R/o. village- Sakara, P.S. Somani, Distt. Rajnandgaon C.G. **(Owner).**

---- Appellants/Non-applicants No.1 & 2.

Versus

1. Smt. Satarupa Bai Yadav Wd/o Late Parmanand Yadav, A/o 20 Years.
2. Ku. Lekha D/o Late Parmanand Yadav, Age- 03 Months, Minor, Through her natural guardian, Mother Smt. Satarupa Bai, (respondent No.1).
3. Samay Lal S/o Sukhuram Yadav, Aged About 45 Years.
4. Smt. Dhela Bai W/o Samay Lal Yadav, Aged About 42 Years.
   All are R/o. Village -Bargahi, P.S. Ghumka, Tah & Distt. Rajnandgaon C.G. **----Applicants/Claimants.**
5. Manager Shriram General Insurance Company, E-8, Industrial Area, Sitapura, Jaipur (Rajasthan), C/o. Branch Manager, Shriram General Insurance Company, Kikabhai Complex, G.E. Road, Rajnandgaon C.G.

–--Respondent/Non-applicant No.3.

MAC No. 1117 of 2015

1. Smt. Satarupa Bai Yadav W/o Late Parmanand Yadav, Aged About 20 Years.
2. Ku. Lekha D/o Late Parmanand Yadav, Age- 03 Months, Minor, Through her legal guardian, Mother Smt. Satarupa Bai.
3. Samay Lal S/o Sukhuram Yadav, Aged About 45 Years.
4. Smt. Dhela Bai W/o Samay Lal Yadav, Aged About 42 Years.
   All are R/o. village -Bargahi, P.S. Ghumka, Distt (Revenue & Civil), Rajnandgaon C.G. **----Appellants/Claimants**

Versus

1. Adesh Kumar S/o Lakhan Lal Yadav, Aged About 37 Years, R/o: village - Godela, P.S - Arjunda, Distt. Balod C.G. **(Driver).**
2. Rohit Kumar Sahu S/o Bhujan Lal Sahu, Aged About 50 Years, R/o village -Sakara, P.S. Somani, Tah & Distt. Rajnandgaon C.G. **(Owner).**
3. Shriram General Insurance Company, E-8, Industrial Area, Sitapura, Jaipur (Rajasthan), Presently office at Throu Branch Manager, Shriram

General Insurance Co. Kikabhai Complex, G.E. Road, Rajnandgaon, Chhattisgarh (Insurer). **---Respondent.**

MAC No.1289 of 2014

For Appellants	:	None.
For Respondent No.1 & 4	:	Shri Yogesh Pandey, Advocate.
For Respondent No.5.	:	Shri S. S. Rajput, Advocate.

MAC No.117 of 2015

For Appellants	:	Shri Yogesh Pandey, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Shri S.S. Rajput, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J
Order on Board

Per Parth Prateem Sahu, J
19/11/2020

1. As above two appeals arise out of same accident, they are being disposed off by this common order.

2. Challenge in above two appeals is to the award dated 29/08/2014 passed by learned 2nd Additional Motor Accident Claims Tribunal, Rajnandgaon, (CG) (for short, 'the Tribunal') in Claim Case No.153/2012, whereby the Tribunal allowed claim application in part, awarded total compensation of Rs.4,72,000/- in a death case along with interest @ 6% p.a. While exonerating the Insurance Company, fastened liability to satisfy the amount of compensation upon non-applicant Nos.1 & 2, jointly and severally.

3. MAC No.1289 of 2014 is filed by appellants -driver and owner of offending vehicle challenging the liability fastened upon them; exoneration of non-applicant No.3/Insurance Company & also quantum of compensation awarded to applicants/claimants by the Tribunal vide award dated 29.08.2014 on the grounds mentioned therein. Whereas, MAC No.1117 of 2015 is filed by appellants/claimants seeking enhancement of amount of compensation on the grounds mentioned therein.

4. Facts relevant for disposal of these appeals are that on 09.06.2012, Parmanand Yadav was returning to his home on bicycle after completion of his work as 'labourer'. When he reached near Pars Board Barghari Marg, one Truck (Tipper) bearing registration No.CG04/ZC/6562, (for short, 'offending vehicle'), coming from opposite direction, driven by non-applicant No.1 rashly and negligently, dashed the bicycle of Parmanand Yadav and caused accident. In the aforesaid accident, Parmanand Yadav suffered grievous injuries, he was taken to Government Hospital, Rajnandgaon, looking to his serious condition, he was referred to Hospital at Raipur for better treatment, where he remained admitted from 09.06.2012 to 16.06.2012. During the course of treatment he died on 16.06.2012. Accident was reported to Police Station -Somni based upon which crime was registered against non-applicant No.1.

5. Claimants, who are widow, child and parents of deceased, filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.15,30,000/- on the ground that on the date of accident, deceased was working as 'labourer' in stone mines and earing Rs.5,000/- per month.

6. Non-applicant No.1 & 2, driver & owner of offending vehicle, submitted reply to application and denied the pleadings made therein. They have pleaded that on the date of accident, non-applicant No.1 was possessed with valid and effective driving license. Deceased dashed from rear side of offending vehicle and amount of compensation claimed is highly exaggerated. Offending vehicle was insured with non-applicant No.3/Insurance Company and as such liability to pay the amount of compensation would be of Insurance Company.

7. Non-applicant No.3/Insurance Company submitted its reply to application, while denying the pleadings made therein, pleaded that amount of compensation is highly exaggerated, there was breach of policy condition as on

the date of accident, non-applicant No.1 was neither having valid and effective driving license nor valid permit or fitness certificate.

8. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that non-applicant No.1 due to his rash and negligent driving of offending vehicle dashed the bicycle of Parmanand Yadav and caused accident, resultantly Parmanand Yadav died. Breach of policy condition was found to be proved and awarded Rs.4,72,000/- as compensation.

9. In **MAC No.1289 of 2014,** appellants have challenged the impugned award on the ground that no eye-witness was examined to prove that accident took place from offending vehicle, hence, finding recorded by the Tribunal with regard to involvement of offending vehicle is liable to be set aside. Deceased met with accident on account of his own negligence, on the date of accident, there was valid permit with offending vehicle issued by the R.T.O, Raipur. Insurance Company cannot avoid its liability where issuance of Insurance Policy is not in dispute for the period in which accident took-place and deceased being a third party.

10. Shri Yogesh Pandey, learned counsel for the appellants in **MAC No.1117 of 2015** and respondent Nos.1 to 4 in MAC No.1289 of 2014, submits that the Tribunal after considering the evidence and materials placed on record by the respective parties has rightly arrived at a finding that Parmanand Yadav died in accident occurred due to rash and negligent driving of offending vehicle by non-applicant No.1. He further submits that the Tribunal erred in assessing monthly income of deceased as Rs.3,000/- per month only, overlooking the nature of occupation as pleaded and stated by the claimants in evidence. Tribunal also erred in not awarding any amount towards future prospects and very meager amount is awarded on other conventional heads.

11. Shri S.S. Rajput, learned counsel for the Insurance Company in both appeals, submits that the Tribunal after considering documents available on record and oral evidence of respective parties, has arrived at a correct finding that there was breach of condition of Insurance Policy as on the date of accident, there was no valid permit and fitness certificate with offending vehicle. As per finding recorded by the Tribunal in Para No.9, driver and owner of offending vehicle have not placed on record any documents in respect of valid permit and fitness certificate of offending vehicle. He further submits appeal filed by claimants is barred by 253 days, for which, Driver, Owner or Insurance Company may not be made to suffer, interest on the amount of compensation.

12. We have heard learned counsel for the parties and also perused the record.

13. So far as the grounds raised by appellants/driver and owner of offending vehicle in MAC No.1289/2014 are concerned. Non-applicant No.1 to 4/claimants in support of their claim has placed on record, Final Report (Ex.P-1), FIR (Ex.P-2), Crime Details (Ex.P3), Post-Mortem report (Ex.P-4), Naksha Panchayat (Ex.P-5) and Property Seizure Memo (Ex. P- 8 & 9). Perusal of Seizure Memo shows that during investigation, Police has seized copies of registration certificate, Insurance Policy, driving license & offending vehicle, but not seized copy of permit & fitness certificate. Owner of offending vehicle was examined as Witness No.1 of NA-2 and he has stated in his evidence that he has brought copies of registration, Insurance Policy, permit & Driving License. In his cross-examination, he stated that on the date of accident, there was no valid fitness certificate of offending vehicle and for that reason, the Police has not seized the same.

14. So far as submission made by learned counsel for the Insurance Company with regard to valid permit of offending vehicle is concerned, perusal

of evidence of owner of offending vehicle, where he stated that he has filed copy of permit, but that was not marked as exhibit at the time of recording of his evidence. Appellants alongwith memo of appeal has filed copy of permit of Truck (Tipper) bearing registration No.CG04/ZC/6562 ie offending vehicle issued from R.T.O, Raipur, having its validity from 04.10.2007 to 03.10.2012 as Annexure –A/4. Learned counsel for the Insurance Company neither controverted the said document nor said that it is forged or fabricated document.

15. In view of evidence of owner of offending vehicle, copy of permit of offending vehicle and further considering that no such pleading or submission on the part of Insurance Company is made, submission made by learned counsel for Insurance Company that there was no permit is not convincing to this Court.

16. That apart, when there is specific averment on the part of owner of offending vehicle that on the date of accident, offending vehicle was not having valid fitness certificate, the question arise for consideration of this Court is whether only on the ground of absence of fitness certificate Insurance Company can be absolved from its liability.

17. Requirement of certificate of fitness is envisaged under Section 56 of the Act of 1988. Section 56 (1) is reproduced below for ready reference :-

> “Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in sub-section

> (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder:
>
> Provided that where the prescribed authority or the "authorized testing station" refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal."

18. Perusal of above provision would show that unless and until there is valid certificate of fitness, transport vehicle shall not be deemed to be validly registered. Requirement of certificate of fitness is mandatory and fundamental for its registration. Section 39 of the Act of 1988 envisages for registration of vehicle, which reads as under :-

> "39. **Necessity for registration.** —No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner :
>
> Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

19. It prescribes that no person shall drive any motor vehicle in public or other places unless vehicle is registered. Conjoint reading of provisions of Section 39 and 56 of the Act of 1988 makes it clear that if the transport vehicle is plied

on public road or any place without certificate of fitness will be in breach of policy condition and such breach will be a fundamental breach.

20. This issue has been considered by the five judges Bench of Kerala High Court in case of **Pareed Pillai vs. Oriental Insurance Company Co. Ltd** reported in **AIR 2019 Kerala 9** and held thus :-

> “17. The stipulations under the above provisions clearly substantiate the importance and necessity to have a valid Fitness Certificate to the transport vehicle at all times. The above prescription converges on the point that Certificate of Registration, existence of valid Permit and availability of Fitness Certificate, all throughout, are closely interlinked in the case of a transport vehicle and one requirement cannot be segregated from the other. The transport vehicle should be completely fit and road worthy, to be plied on the road, which otherwise may cause threat to the lives and limbs of passengers and the general public, apart from damage to property. Only if the transport vehicle is having valid Fitness Certificate, would the necessary Permit be issued in terms of Section 66 of the Act and by virtue of the mandate under Section 56 of the Act, no transport vehicle without Fitness Certificate will be deemed as a validly registered vehicle for the purpose of Section 39 of the Act, which stipulates that nobody shall drive or cause the motor vehicle to be driven without valid registration in public place or such other place, as the case may be. These requirements are quite 'fundamental' in nature; unlike a case where a transport vehicle carrying more passengers than the permitted capacity or a goods carriage carrying excess quantity of goods than the permitted extent or a case where a transport vehicle was plying through a deviated route than the one shown in the route permit which instances could rather be branded as 'technical violations'. In other words, when a transport vehicle is not having a Fitness Certificate, it will be deemed as having no Certificate of Registration and when

> such vehicle is not having Permit or Fitness Certificate, nobody can drive such vehicle and no owner can permit the use of any such vehicle compromising with the lives, limbs, properties of the passengers/general public. Obviously, since the safety of passengers and general public was of serious concern and consideration for the law makers, appropriate and adequate measures were taken by incorporating relevant provisions in the Statute, also pointing out the circumstances which would constitute offence; providing adequate penalty. This being the position, such lapse, if any, can only be regarded as a fundamental breach and not a technical breach and any interpretation to the contrary, will only negate the intention of the law makers."

21. In view of very specific aforementioned provisions of the Act of 1988 and the ruling of Kerala High Court authored by one of us Hon'ble Justice P.R. Ramachandra Menon, we hold that, absence of fitness certificate for the offending vehicle is fundamental breach of policy condition.

22. Another ground raised by learned counsel for the appellants is with regard to false implication of offending vehicle in question. Perusal of FIR (Ex.P-2) would show that FIR was lodged on 12.06.2012 whereas accident took place on 03.06.2012. Cause of delay has been mentioned in FIR, that injured was taken to hospital and after returning from hospital, FIR was lodged. In FIR, number of Truck (Tipper) is specifically mentioned as 'CG04/ZC/6562.' After completion of investigation, final report has been prepared and submitted before the concerned Judicial Magistrate against driver of offending vehicle. The proceeding of registration of criminal case and submission of final report is not challenged by appellants, hence, submission of learned counsel for the appellants that offending vehicle was falsely implicated in accident is not sustainable and is repelled.

23. So far as appeal filed by appellants/claimants for enhancement of amount of compensation is concerned. Claimants have very specially pleaded in their pleadings that on the date of accident, deceased was aged about 22 years and working as 'labourer' in stones mines thereby earing Rs.5,000/- per month, but they failed to produce any admissible piece of evidence in this regard. In absence thereof, the Tribunal has assessed income of deceased as Rs.3,000/- per month. No doubt in absence of any admissible and clinching piece of evidence brought on record by claimants to prove income of deceased, income is to be assessed on notional basis. At the same time it is to be kept in mind the date of accident, nature of occupation, wage structure, price index and cost of living. The accident is of 09.06.2012, on the said date income of manual labourer would be much more than what is assessed by the Tribunal, hence, in the aforementioned facts of the case, we find it appropriate to assess the income of deceased as Rs. 4,000/- per month.

24. Issue with regard to award of future prospects has been considered by the Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**[1] and held that in case the deceased, victim of motor accident, was not in permanent employment and below the age of 40 years, an addition of 40% of established income of deceased towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads thus :-

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

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[1] (2017) 16 SCC 680

25. In case at hand, the Tribunal based on the post - mortem report has assessed age of deceased as 30 years, he was not in permanent employment on the date of accident. Therefore, this Court is of the considered opinion that claimants are entitled for an addition of 40% of established income of deceased towards future prospects.

26. The Tribunal has awarded only Rs.6,000/- under other conventional heads, which in the opinion of this Court is on lower side and the same is required to be enhanced in view of the decision of Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhuru Ram**[2].

27. For the foregoing reasons, we propose to recompute the amount of compensation awarded by the Tribunal.

28. Income of deceased is taken as Rs.4,000/- per month and accordingly yearly income comes to Rs.48,000/- (12 X 4000). By adding 40% of income towards future prospects, total annual income of deceased comes to Rs.67,200/- (Rs.48,000 + 40% of Rs.48,000). One of the claimants is brother of deceased aged about 45 years, he cannot be accepted to be dependent. After deducting 1/3rd towards personal and living expenses, total loss of annual dependency comes to Rs.44,800/- (Rs.67,200 – 1/3 of Rs.67,200). Tribunal assessed age of deceased as 30 years, therefore, multiplier applicable would be '17'. By applying multiplier of 17, total loss of annual dependency income comes to Rs.7,61,600/- (44800 X 17). Apart from this, claimants are entitled for a sum of Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of parental consortium, Rs.40,000/- towards filial consortium, Rs.15000/- towards funeral expenses, Rs.15,000/- towards loss of estate & Rs.58,000/- towards medical expenses as awarded by the Tribunal.

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[2] 2018 18 SCC 130

29. Now, claimants are entitled for a total compensation of **Rs.9,69,600/-** **(**7,61,600 + 40,000 + 40,000 + 40,000 + 15,000 + 15,000 + 58,000) instead of **Rs.4,72,000/-** as awarded by the Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of filing of application till its realization. Rest of the conditions of impugned award shall remain intact.

30. Claimants' appeal for enhancement of award is allowed. Insurance Company is exonerated from its liability on the ground that on the date of accident, there was no valid fitness certificate with offending vehicle. Deceased was a third party, hence, taking support of judgment passed by Hon'ble Supreme Court in case of **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others**[3] it is directed that Insurance Company shall first deposit the entire amount of compensation alongwith interest and thereafter, recover the same from owner and driver of offending vehicle ie (appellants in MAC No.1289/14) in accordance with law.

31. In result :

* **MAC No.1289 of 2014** filed by appellants/driver & owner of offending vehicle is dismissed.
* **MAC No.1117 of 2015** filed by claimants is allowed in part, impugned award is modified to extent as indicated above.

Sd/-	**Sd/-**
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

Jamal/-

[3] (2018) 7 SCC 558