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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 164 of 2015

1. Shanti Bai W/o Matukram Kushwaha Aged About 65 Years occupation agriculture R/o Village Kevra, P.S. And Tahsil Bhaiyathan, District Surguja Now Surajpur C.G.
2. Salita W/o Late Gopesh @ Gupesh Kumar Kushwaha Aged About 26 Years Occupation Housewife R/o Village Kevra, P.S. And Tahsil Bhaiyathan, District Surguja Now Surajpur C.G.
3. Vickey Kumar Kushwaha S/o Late Gopesh @ Gupesh Kumar Kushwaha Aged About 10 Years Occupation student Through natural guardian Mother Salita W/o Late Gopesh @ Gupesh Kumar Kushwaha,R/o Village Kevra, P.S. And Tahsil Bhaiyathan, District Surguja Now Surajpur C.G.
4. Shweta Kushwaha D/o Late Gopesh @ Gupesh Kumar Kushwaha Aged About 8 Years Through natural guardian Mother Salita W/o Late Gopesh @ Gupesh Kumar Kushwaha, R/o Village Kevra, P.S. And Tahsil Bhaiyathan, District Surguja Now Surajpur C.G.

---- Appellants

Versus

1. Anot Kumar Paikra S/o Bhojo Paikara Aged About 30 Years Occupation Driver R/o Village Sukhari, P.S. Chando, Police District Balrampur, District Surguja C.G. Now Balrampur , Chhattisgarh
2. Mahendra Pratap Singh S/o Bhagwai Sharan Singh Aged About 35 Years R/o Village Ganda, P.S. Pratappur, District Surguja Now Surajpur C.G.
3. The Oriental Insurance Company Ltd S/o Through The Branch Manager, The Oriental Insurance Company Ltd. Branch Office- Near Ambedkar Chowl, Manendragarh, Ambikapur, District Surguja C.G.

---- Respondents

For Appellants: Shri Atanu Ghosh, Advocate.
For Respondent No.3: Shri N. K. Malaviya, Advocate.

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J

Award On Board

12.02.2020

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act, 1988') questioning the legality and validity of the award dated

07.01.2015 passed by the Motor Accident Claims Tribunal (hereinafter referred to as 'the Claims Tribunal') Surajpur, District Surajpur (C.G.) in Motor Accident Claim Case No.23/2009, by which, the learned Claims Tribunal, while allowing the claim in part, has exonerated 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 05.02.2009, deceased Gopesh @ Gupuesh Kumar Kushwaha was returning to his village Kewra by motorcycle of his friend, namely, Vindesh Kushwaha while sitting as a pillion rider and at the relevant time, the said vehicle was dashed vehemently by the offending vehicle “Mini Bus” bearing its registration No. C.G.-15-A-5614, which was owned by Non-applicant No.2-Mahendra Pratap Singh and was insured with Non-applicant No.3- The Oriental Insurance Company Limited. At the relevant time, the vehicle in question was being driven rashly and negligently by its driver, namely, Anot Kumar Paikra, Non-applicant No.1, owing to which, the alleged accident occurred and deceased Gopesh @ Gupuesh Kumar Kushwaha expired during the course of his treatment.

3. On account of the aforesaid accident, the Claimants, being legal representatives of the deceased, instituted a claim under Section 166 of the Act, 1988 claiming total amount of compensation to the tune of Rs.15,00,000/- by submitting *inter alia* that the deceased was a Munshi and was also raising vegetables in the field and used to earn Rs.12,500/- per month and thus the said amount has been claimed under various heads.

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 since the driver of the motorcycle, namely, Vindesh Kushwaha was himself responsible for the alleged accident, therefore, the claim is liable to be rejected. While Non-applicant No.3-Insurance Company contested the claim mainly on the ground that the vehicle in question was being used by the driver of the said vehicle without holding any valid and effective driving licence and was being used without any permit and fitness certificate, therefore, no liability could be fastened upon it.

5. After considering the evidence led by the parties, it has been held by the Tribunal that the alleged accident occurred on 05.02.2009 due to rash and negligent driving by the driver of the offending vehicle “Mini Bus” resulting into the sad demise of said Gopesh @ Gupuesh Kumar Kushwaha. It held further that the vehicle in question was being used without any fitness certificate in violation of the insurance policy and that by assessing the monthly income of the deceased to the tune of Rs.3,000/-, awarded a total amount of compensation to the tune of Rs.4,84,000/- with 8% interest per annum from the date of filing of the claim petition till its realization while exonerating the Insurance Company from its liability.

6. Being aggrieved, the Claimants have preferred this appeal. Shri Atanu Ghosh, learned counsel appearing for the Appellants submits that while passing the award impugned, the Tribunal has committed an illegality in awarding the meagre amount of compensation as the future prospects of the income of the deceased has not been taken into consideration. He submits further that although the vehicle in question was found to be used without any fitness certificate but that alone would not be sufficient to

exonerate the Insurance Company from its liability. In any case, the Tribunal ought to have applied the principles of pay and recover while passing the award under appeal. In support, he placed his reliance upon the principles laid down in the matter of ***National Insurance Co. Ltd.*** vs. ***Pranay Sethi*** and ***National Insurance Co. Ltd.*** v. ***Swaran Singh and others*** reported respectively in **2017 (16) SCC 680** and **(2004) 3 SCC 297.**

7. Shri N. K. Malaviya, learned counsel appearing for Respondent No.3, while inviting attention to the seizure memo (Ex.A.8), submits that the fitness certificate of the alleged offending vehicle was valid only from 08.08.2006 upto 07.08.2008, therefore, it was not in existence at the time of the accident, which occurred on 05.02.2009. The Tribunal has, therefore, rightly exonerated the Insurance Company from its liability. In support, he placed his reliance upon the decision rendered in the matter of ***Pareed Pillai*** vs. ***Oriental Insurance Co. Ltd., Ernakulam*** reported in **AIR 2019 KERALA 9 FULL BENCH.**

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

9. From perusal of the record, it appears that the alleged offending vehicle was being driven with a valid permit by its driver, who was holding the valid and effective driving licence. However, from a bare perusal of the seizure memo (Ex.A.8), it is evident that the fitness certificate of the alleged transport vehicle was valid only with effect from 08.08.2006 upto 07.08.2008, whereas the alleged accident occurred much after the said period, i.e., 05.02.2009. It is, thus, evident that the vehicle in question was being used without any fitness certificate at the relevant time. It is, however, contended by Shri Ghosh that it cannot be a ground for the

exoneration of the Insurance Company. The said contention of Shri Ghosh cannot be held to be sustainable in view of the principles laid down in the matter of ***Pareed Pillai*** vs. ***Oriental Insurance Co. Ltd., Ernakulam*** (supra), wherein, under the similar circumstances, it has been observed at paragraphs 13, 15, 16 & 17 as under:

> "**13.** Fitness of the vehicle to be plied on the road as a 'transport vehicle' is very important, especially in relation to the lives and limbs of the persons travelling in the vehicle, the pedestrians, other vehicles and properties of persons who are also using the road. It is with this intent, that a specific provision has been incorporated under the Statute as Section 84, prescribing the general conditions attached to all permits. Clause (a) of Section 84 reads as follows :
>
> 84. General conditions attaching to all permits-
>
> The following shall be conditions of every permit-
>
> (a) that the vehicle to which the permit relates carries valid certificate of fitness issued under section 56 and is at all times so maintained as to comply with the requirements of this Act and the rules made thereunder;
>
> xxxx xxxx xxxx xxxx xxxx xxxx
>
> **15.** As mentioned above, fitness of a vehicle, to be used as a transport vehicle, is of paramount importance. The necessity to have 'Fitness Certificate' is prescribed under Section 56 of the Act. Sub-section (1) of Section 56 clearly stipulates that, a transport vehicle [subject to the provisions of Section 59 (power to fix the age limit of motor vehicle) and Section 60 (registration of the vehicles belonging to the Central Government)] shall not be deemed to be validly registered for the purpose of Section 39, unless it carries a 'Certificate of Fitness' as prescribed. By virtue of Section 84 (a), as mentioned already, it is a mandatory requirement of every Permit, that the vehicle to which the Permit relates, shall carry valid 'Certificate of Fitness' issued under Section 56 at all time, absence of which will automatically lead to a situation that the vehicle will not be deemed as having a Permit [if it is not having a 'Fitness Certificate' on a given date]......

16. Importance of the fitness/road worthiness of a vehicle, right from the time of registration of the vehicle, is further discernible from Rule 47 of the Central Motor Vehicles Rules 1989 [referred to as Central Rules]. The said Rule deals with application for registration of motor vehicles, which, among other things, stipulates that it shall be accompanied by various documents. Under sub-rule (1) (g), it is mandatory to produce road worthiness certificate in Form 22 from the manufacturers [Form 22A from the body builders]. On completing the formalities/procedures, 'Certificate of Registration' is to be issued in terms of Rule 48 of the Central Rules in Form 23/23A, as the case may be. The said Rule contains a proviso, insisting that, when Certificate of Registration pertains to a transport vehicle, it shall be handed over to the registered owner only after recording the Certificate of Fitness in Form 38. Validity of the Certificate of Fitness is only to the extent as envisaged under Rule 62 of the Central Rules, which mandates, as per the proviso, that the renewal of a Fitness Certificate shall be made only after the Inspecting Officer or authorised Testing Station as referred to in sub-section (1) of Section 56 of the Act has carried out the test specified in the table given therein.

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."

10. Applying the aforesaid principles to the case in hand, the Tribunal has not committed an illegality in exonerating the Insurance Company from its liability on account of the use of the alleged transport vehicle without a fitness certificate. The contention of Shri Ghosh in this aspect is accordingly rejected.

11. In so far as the second contention of Shri Ghosh that the amount of compensation, as assessed by the Claims Tribunal, without considering the future prospects of the income of the deceased and without providing proper amount of compensation towards conventional heads, appears to be acceptable. It is evident from the perusal of the record that neither the future prospects of the income of the deceased were taken into consideration nor proper amount of compensation towards conventional heads has been awarded by the Tribunal. Thus, in view of the principles laid down in the matter of ***National Insurance Co. Ltd.*** vs. ***Pranay Sethi*** (supra), the future prospects of the income of the deceased to the extent of

40% of it, is to be added, as the deceased was found to be 30 years old at the time of the accident, in order to provide just and proper compensation payable to the Claimants.

12. Considering the aforesaid facts and circumstances of the case and in view of the principles laid down herein above, I deem it proper to assess the monthly income of the deceased at Rs.3,000/-, yearly Rs.36,000/- as held by the Tribunal, and that by adding 40% of it, i.e., Rs.14,400/- towards future prospects of the income of the deceased, it would then be worked out at Rs.50,400/- (Rs.36,000/- + Rs.14,400/-). Since the number of family members dependent upon the deceased was 4, the proper deduction would be one-fourth, i.e., Rs.12,600/- towards his personal and living expenses and, thus, the total yearly dependency would be worked out at Rs.37,800/- (Rs.50,400/- – Rs.12,600/-). As observed herein above, the age of the deceased was found to be 30 at the time of the accident, the proper multiplier applicable would be 17, as applied by the Tribunal as well. Therefore, by applying the multiplier of 17, the total dependency would be worked out at Rs.6,42,600/- (Rs.37,800/- x 17). In addition to this, the Claimants would be entitled to a sum of Rs.1,70,000/- towards conventional heads as under:-

Mode of compensation	**Amount Rs.**
(i) Loss of consortium to wife	- 40,000/-
(ii) Loss of love and affection to two children at Rs.50,000/- each	- 1,00,000/-
(iii) Funeral expenses	- 15,000/-
(iv) Loss of estate	- 15,000/-
Total	**- Rs.1,70,000/-** ==============

13. The Claimants would, thus, be entitled to a total amount of compensation to the tune of Rs.8,12,600/-, instead of Rs.4,84,000/-, as awarded by the Tribunal and the same shall carry interest at the rate of 8% per annum from the date of filling of the claim petition till its realization. Since the vehicle in question was admittedly insured with Non-applicant No.3-The Oriental Insurance Company Limited, therefore, in view of the principles laid down in the matter of ***National Insurance Co. Ltd.*** v. ***Swaran Singh and others*** (supra) and ***Manager, National Insurance Company Limited*** v. ***Saju P. Paul and another*** reported in **(2013) 2 SCC 41**, it would be just and proper to apply the principles of pay and recover while directing Non-applicant No.3- The Oriental Insurance Company Limited to first pay the aforesaid amount of compensation, i.e., Rs.8,12,600/- with 8% interest per annum from the date of filing of the claim petition till its realization to the Claimants/Appellants and, then to recover the same from the driver and owner of the vehicle in question.

14. The appeal is, accordingly, allowed in part to the extent indicated herein above with the aforesaid observations and rest of the observations made by the Claims Tribunal shall remain intact. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE

Nikita