NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.202 of 2015

1. Jugabai Verma, widow of Gend Singh Verma, aged about 58 years, Occupation Housewife.
2. Omprakash Verma, S/o Gend Singh Verma, aged about 42 years.
3. Onkar Verma, S/o Gend Singh Verma, aged about 39 yrs.
4. Takeshwar Verma S/o Gend Singh Verma, aged about 36 years.
5. Shivnarayan Verma, S/o Gend Singh Verma, aged about 43 years.

   Appellant No.1 to 5 are resident of Village Dunda, Tahsil, Police Station & District-Bemetara (CG)
6. Smt. Ashwani, wife of Dinesh Kumar Verma, aged about 44 years, R/o Village Chourenga, Police Station Simga, District: Balodabazar-Bhathapara (CG)

---- Appellants

Versus

1. Ramesh Kumar Yadav, S/o R.C. Yadav, aged about 34 years R/o Village Radhika Nagar, Supela, Bhilai, District Durg (CG)
2. United India Insurance Company Limited, Tara Complex, Power House, G.E. Road, Bhilai 490011 (CG)

---- Respondents

For Appellants	:	Mr. Kamaljeet Singh, Advocate on behalf of Miss Sharmila Singhai, Advocate
For Respondent No.2	:	Mr. H.B. Agrawal, Sr. Advocate with Mr. Amit Tirkey, Advocate

SB:Hon'ble Shri Justice Parth Prateem Sahu

Order On Board

29/10/2020

1. Claimants/appellants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by the learned Additional Motor Accident Claims Tribunal, Bemetara

(for short 'the Claims Tribunal') in Claim Case No.107/2013 thereby allowing claim application in part and awarding Rs.2,06,068/- as compensation in a death case.

2. Facts relevant for disposal of this appeal, in brief, are that on 3.3.2013 at about 6.30 a.m. Gend Singh Verma was returning his house on foot from his Kothaar situated at village Dunda. On the way, on Durg-Bemetara main road, one Tata Indica, driven by non-applicant No.1 rashly and negligently, knocked down Gend Singh Verma. In the aforementioned accident, Gend Ram Verma suffered grievous injuries on various parts of his body. He was taken to the Primary Health Centre, Bemetara from where he was referred to better hospital at Raipur. Gend Singh Verma was taken to Narayana Hospital, Raipur where during the course of treatment he died on 5.3.2013. Accident was reported to the Police Station Bemetara based upon which crime bearing No.100/13 under Sections 279, 337, 304A of IPC and Section 39/192 of the Act of 1988 was registered against non-applicant No.1-driver.

3. Claimants/appellants, who are legal heirs of deceased, filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.50,00,000/- pleading therein that on the date of accident, Gend Singh Verma was holding 15 acre of agriculture land and earning Rs.10 lakhs p.a. from it.

4. Non-applicant No.1 did not appear before the Claims Tribunal and he was proceeded ex-parte.

5. Non-applicant No.2-insurance company of offending vehicle,

submitted reply to claim application and denied the pleadings made therein. It was pleaded that there was no registration of offending vehicle. Registration of vehicle under the Act of 1988 is mandatory. Amount of compensation claimed is highly exaggerated. Insurance company is not liable to pay the amount of compensation.

6. The Claims Tribunal on appreciation of pleadings and evidence placed on record held that Gend Singh Verma died on account of injuries suffered by him in an accident caused by offending vehicle on account of rash and negligent driving by its driver, there was breach of condition of insurance policy and awarded Rs.2,06,068/- as compensation.

7. Mr. Kamaljeet Singh, learned counsel for appellants submits that the Claims Tribunal erred in fixing income of deceased as Rs.3,000/- per month, overlooking the date of accident and income of deceased from the agriculture land owned and recorded in his name, which is evident from revenue documents brought on record as Ex.P-20. He further submits that the entire medical bills with regard to treatment of deceased have not been awarded by the Claims Tribunal. It is further argued that the Claims Tribunal erred in awarding meagre amount of compensation on other conventional heads in the facts and circumstances of case where claimants are widow and children of deceased. He further contended that the Claims Tribunal if arrived at a conclusion that there is breach of policy conditions because of non-registration of

offending vehicle only and issuance of insurance policy is proved, then a direction to pay & recover ought to have been issued by the Claims Tribunal.

8. Per contra, Mr. Agrawal, learned Senior Counsel representing respondent Insurance Company submits that non-applicant No.1 did not appear before the Claims Tribunal and placed on record copy of registration certificate of offending vehicle. Insurance policy placed on record as Ex.D-1, which was valid for the period from 15.10.2012 to 14.10.2013, was issued for new vehicle based on engine number, chasis number, which clearly mentions that at the time of issuance of insurance policy, the vehicle was not registered but it is a new vehicle. It is further contended that the Claims Tribunal taking note of law laid down by Hon'ble Supreme Court in the case of **Narinder Singh vs. National Insurance Company Ltd.** reported in **(2014) 9 SCC 324** has rightly held that there was breach of policy condition on account of non-registration of offending vehicle and exonerated the insurance company which does not call for any interference. He submits that quantum of award is just and proper which does not call for any interference.

9. I have heard learned counsel for the parties and perused the records.

10. In claim application the claimants/appellants have pleaded that deceased was earning Rs.10 Lakhs from 15 acre of agriculture land in his possession and in support thereof they

have placed on record copy of relevant revenue document i.e. kishtbandi khatoni & P-1 wherein decesaed Gend Singh Verma son of Mahasingh Verma has been shown to be owner of 6.85 acre of land. The Claims Tribunal has assessed income of the deceased for the purpose of calculating amount of compensation as Rs.3,000/- per month without assigning any reason. It is not in dispute that even after death of owner of agriculture land/property, the land will remain with appellants, who are legal heirs of deceased, from which they can earn income. Only loss which they have suffered is of supervision or nature of work which the deceased was doing in his agriculture lands. The work which deceased was doing during his lifetime for the purpose of earning income from agriculture fields can be managed by engaging some other person in his place and for which the claimants are required to pay wages. The wages for supervising and working in the field is to be fixed on notional basis considering the date of accident, price index, wage structure and cost of living.

11. The issue with regard to loss of dependency upon death of a person having agriculture income has been considered by Hon'ble Supreme Court in case of **State of Haryana vs. Jasbir Kaur & ors** reported in **(2003) 7 SCC 484** and held thus;-

> "8.It is clear on a bare reading of the Tribunal's decision as affirmed by the High Court that no material was placed before the former to prove as to what was the income. As rightly contended by learned counsel for the appellants, there was not even any material adduced to show type of

> land which the deceased possessed. The matter can be approached from a different angle. The land possessed by the deceased still remains with the claimants as his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source......"

12. In case of **National Insurance Company Ltd. Vs. Yogesh Dani** reported in **(2012) 3 SCC 613**, aforesaid issue has again been considered by Hon'ble Supreme Court and it was observed as under:-

> "12.In Jasbir Kaur case (supra), the claim was based on an assertion that the deceased was an agriculturist earning an amount of Rs.10,000/- per month by cultivating his land. Dealing with the question, this Court held:
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> > "8. ....The land possessed by the deceased still remains with the claimants as his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered."
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> 13. Coming to the case on hand, the claim is based on the assertion that the deceased owned agricultural land apart from the above mentioned three mini-buses. The High Court rejected the claim insofar as it is based on the income from the land, on the ground that the income would still continue to accrue to the benefit of the family. Unfortunately, the High Court failed to see that the same logic would be applicable even to the income from the above mentioned three buses. The asset (three mini-buses) would still continue with the family and fetch income. The only difference, perhaps, would be that during his life time the deceased was managing the buses, but now, the claimants may have to engage some competent person to manage the asset, which, in turn, would require some payment to be made to such a manager. To the extent of such payment, there would be a depletion in the net income accruing to the claimants out of the asset....."

13. In view of aforementioned law laid down by Hon'ble Supreme Court, looking to the status and age of deceased having ownership of land as per Ex.P-20, I find it appropriate to assess income of deceased as Rs.4,500/- per month in place of Rs.3,000/- p.m. as assessed by the Claims Tribunal.

14. The Claims Tribunal has deducted half towards personal and living expenses of deceased taking into consideration that widow is only dependent of the deceased and others being major children of deceased, cannot be treated as dependent on deceased. This finding of the Claims Tribunal is erroneous in view of decision of Hon'ble Supreme Court in case of **Sarla Verma vs. Delhi Transport Corporation** reported in **(2009) 6 SCC 121** wherein Hon'ble Supreme Court while considering the issue of standard deduction towards personal & living expenses of deceased has held that the deduction towards personal and living expenses of the deceased should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six. Where the deceased was a bachelor and the claimants are parents, deduction should be one-half (50%). In case at hand, the deceased was married and aged about 64 years, as held by the Claims Tribunal. The claim application has been filed by widow and major children of deceased. Since all the sons of deceased were major on the date of accident, they cannot be

treated as dependent on the deceased. Only widow of deceased can be legally considered to be dependant of deceased. Hence, the deduction for personal and living expenses of deceased will be one-third towards and not one-half, as was done by the Claims Tribunal.

15. Perusal of impugned award reveals that the Claims Tribunal considering the deceased to be of 64 years of age has applied multiplier of ‘7’, which in the opinion of this Court, is in consonance with decision of Hon'ble Supreme Court in the matter of Sarla Verma's case (supra) and does not call for any interference.

16. However, the amount awarded under other conventional heads by the Claims Tribunal i.e. Rs.10,000/- towards loss of consortium, Rs.10,000/- towards funeral and Rs.25,000/- towards loss of love and affection, is contrary to decision of Hon’ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130** and requires reconsideration.

17. Learned counsel for claimants/appellants could not able to point out as to which of the medical bills on record has not been considered by the Claims Tribunal. Hence, I affirm the award of Rs.1,05,068/- towards medical expenses.

18. For the foregoing reasons, I propose to recompute the amount of compensation payable to claimant/appellants to award just

compensation.

19. Income of deceased is taken as Rs.4,500/- per month and Rs.54,000/- per annum, as held above. Out of this amount, one-third is to be deducted towards personal & living expenses of the deceased and after deducting one-third, annual loss of dependency would come to Rs.36,000/- (54000-18000). By applying multiplier of 7, as applied by the Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.2,52,000/- (36000x 7). Besides this, appellant No.1, widow of deceased, is entitled for a sum of Rs.40,000/- towards spousal consortium and appellants No2 to 5 are entitled for Rs.40,000/- towards parental consortium, as held by Hon'ble Supreme Court in the matters of **Pranay Sethi (supra)** and **Magma General Insurance Company Limited's (supra)**. In addition to aforesaid amount, appellants are also entitled to get a sum of Rs.15,000/- for funeral expenses; Rs.15,000/- for loss of estate. Appellants are also entitled for Rs.1,05,068/- awarded by the Claims Tribunal towards medical expenses. Thus, claimants/ appellants are entitled for a total sum of Rs.4,67,068/- (252000+40000+40000+15000+15000+105068), instead of Rs.2,06,068/- as awarded by the Claims Tribunal. This amount of compensation shall carry simple interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimant/appellant as

compensation shall be adjusted from the total amount of compensation as calculated above.

20. Coming to the next submission made by learned counsel for appellant that the Claims Tribunal erred in not issuing 'pay & recover' direction even when the policy placed on record is not in disputed and risk of deceased was also covered under the policy.

21. Copy of policy is placed on record as Ex.D-1, which is not in dispute. The Claims Tribunal exonerated insurance company on account of breach of condition of insurance policy i.e. for want of registration of the offending vehicle with the Transport Department.

22. Hon'ble Supreme Court has considered the breach of policy condition on account of not having valid registration of vehicle in case of Narinder Singh (supra) and held thus:-

> "11. A bare perusal of Section 39 shows that no person shall drive the motor vehicle in any public place without any valid registration granted by the registering authority in accordance with the provisions of the Act. However, according to Section 43, the owner of the vehicle may apply to the registering authority for temporary registration and a temporary registration mark. If such temporary registration is granted by the authority, the same shall be valid only for a period not exceeding one month. The proviso to Section 43 clarified that the period of one month may be extended for such a further period by the registering authority only in a case where a temporary registration is granted in respect of chassis to which body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or unforeseen circumstances beyond the control of the owner.
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> 12. Indisputably, a temporary registration was granted in respect of the vehicle in question,

> which had expired on 11.1.2006 and the alleged accident took place on 2.2.2006 when the vehicle was without any registration. Nothing has been brought on record by the appellant to show that before or after 11.1.2006, when the period of temporary registration expired, the appellant, owner of the vehicle either applied for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons. In our view, therefore, using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract.

23. Hon’ble Supreme Court in the aforementioned ruling has held that not having valid registration of a vehicle is fundamental breach of terms and conditions of policy contract. While considering the fundamental breach of insurance policy on account of not having valid and effective driving license with driver and not having valid permit of offending vehicle in cases of third party, the Hon'ble Supreme Court has held that in such cases to protect the rights of third party a direction be issued to insurance company to first pay the amount of compensation and then to recover the same.

24. Recently, in the matters of **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others** reported in **(2018) 7 SCC 558** and **Shamanna and another vs. Divisional Manager, Oriental Insurance Company Ltd.& anr** reported in **(2018) 9 SCC 650** Hon'ble Supreme Court while dealing with similar issue has held thus in Amrit Paul Singh's case (supra):-

> “We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that

> matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (supra) and Lakhmi Chand (supra) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and other cases pertaining to pay and recover principle."

25. Considering the ratio laid down by Hon'ble Supreme Court in above decisions as also considering beneficial object of the Act of 1988, I am of the considered view that it will be in larger interest of justice to direct respondent No.2-Insurer to first deposit the entire amount of compensation and then to recover it from insured i.e. owner of offending vehicle. It is ordered accordingly.

26. In the result, appeal of claimants/appellants is allowed in the aforesaid terms.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-