NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 1115 of 2015

Surendranath Shrivastava S/o Kailashnath Shrivastava, aged about 54 year, R/o Karramad, post Durgukondal Tahsil Durgukondal, District North Batar Kanker (C.G.)

---- Appellant

Versus

1. Naveen Kumar Jain, S/o Heerachand Jain, aged about 30 years, R/o Bhanupratappur, Tahsil Bhanupratappur, District Kanker (C.G.)
(Driver-cum-Owner of alleged vehicle bearing registration no. C.G.-19-T-0448),
2. Bajaj Allianz General Insurance Company Limited, Through Branch Office Shivmohan Bhawan, Vidhan Sabha, Road, Pandri, Tahsil and District Raipur (C.G.).
(Insurer of alleged vehicle bearing registration no. C.G.-19 T-0448)

---- Respondents

For Appellant	:	Shri Anil Gulati, Advocate
For Respondent No.1	:	Shri Praveen Kumar Dhurandhar, Advocate
For Respondent No.2	:	Shri Sachin Singh Rajput, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

02.11.2020

1. This is claimant's appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') seeking enhancement of compensation awarded by the Additional Motor Accident Claims Tribunal, Bhanupratappur, District North Bastar, Kanker, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.38 of 2013 on 15.05.2015 whereby learned Claims Tribunal allowed the

application filed under Section 163-A of M.V. Act in part and awarded Rs.2,84,000/- as compensation in a death case.

2. Facts of the case in nutshell, are that, on 08.03.2008, Smt. Sushila Shrivastava was travelling on a Jeep bearing No.CG-19/T/0448 (hereinafter referred to as 'offending vehicle') from Raipur to his house at village Karramad, when offending vehicle reached near village Balodgahan in between Dhamtari-Kanker road, it met with an accident with unknown Truck. Due to aforementioned accident, offending vehicle turned turtle and on account of which, driver of offending vehicle Kailash Jain, Smt. Sushila Shrivastava and Ramadhar died.

3. Appellant/claimant, who is husband of deceased Smt. Sushila Shrivastava filed an application under Section 163-A of the M.V. Act before the learned Claims Tribunal seeking compensation of Rs.6,00,000/- pleading therein that on the date of accident, deceased was able-bodied woman, aged about 49 years and earning Rs.100/- per day from the work of stitching and embroidery and claimant was dependant upon the income of deceased (his wife).

4. Non-applicant No.1/owner of offending vehicle resisted the claim pleading therein that driver of offending vehicle Kailash Jain took his vehicle for its repairing and while returning, he met with persons known to him, he permitted them to ride on

offending vehicle, but on the way, offending vehicle met with an accident with unknown Truck and turned turtle. In the said accident, there was no negligence on the part of driver of offending vehicle; there was valid and effective driving licence with deceased driver of offending vehicle and there was valid permit of offending vehicle on the date of accident.

5. Non-applicant No.2/Insurance Company resisted the claim pleading therein that accident was on account of dashing with unknown Truck, for which, driver, owner and insurer of Truck are responsible and Insurance Company is not having any liability to pay the amount of compensation; adding that, deceased will not be third party for offending vehicle.

6. Learned Claims Tribunal on appreciation of the pleadings, evidence and material placed on record by the respective parties held that deceased Smt. Sushila Shrivastava died on account of motor accidental injuries suffered by her due to accident of the Jeep with unknown Truck, Jeep was plied in breach of policy conditions and awarded Rs.2,84,000/- as compensation.

7. Shri Anil Gulati, learned counsel for the appellant/claimant submits that learned Claims Tribunal erred in awarding meager amount of compensation. He further submits that though the application is filed under Section 163-A of the M.V. Act and income pleaded as Rs.100/- only, but learned

Claims Tribunal ought to have taken into consideration the maximum income prescribed under Section 163-A of the M.V. Act i.e. Rs.40,000/- per annum in the facts of the case. It is contended that learned Claims Tribunal even if arrived at a finding that there was breach of policy conditions as on the date of accident, offending vehicle was not having valid permit to ply the vehicle within the territorial jurisdiction where it met with an accident, could have directed the Insurance Company to first pay the amount of compensation and thereafter to recover the same from non-applicant No.1/owner of the offending vehicle.

8. Per contra, Shri Praveen Kumar Dhurandhar, learned counsel for respondent No.1/owner of offending vehicle submits that learned Claims Tribunal erroneously exonerated the Insurance Company from its liability as it is not a case of no permit, but it is a case breach of conditions of permit. It is contended that learned Claims Tribunal erred in awarding higher amount of compensation towards other conventional heads. Amount of compensation on other conventional heads is to be awarded in accordance with 2nd Schedule formulated under Section 163-A of the M.V. Act, but learned Claims Tribunal erred in awarding Rs.10,000/- towards loss of consortium, Rs.5,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. He further argued that he has filed cross-objection challenging the

impugned award whereby liability to satisfy the amount of compensation has been fastened upon him and further challenging the quantum of amount of compensation to be on higher side. It is lastly contended that cross-objection has already been admitted vide order dated 07.12.2015.

9. Shri Sachin Singh Rajput, learned counsel for respondent No.2/Insurance Company submits that learned Claims Tribunal has rightly arrived at a finding that there was breach of policy conditions. He further submits that permit of offending vehicle is for plying the vehicle within Kanker district as held by learned Claims Tribunal in paragraph-11 of the impugned award, there was no permit for plying the vehicle out of Kanker district and place of accident is coming within the territorial jurisdiction of Durg district, as such, offending vehicle was being plied out of territory of Kanker district without any permit. He places his reliance on the verdict rendered by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Challa Bharathamma and others**[1] and **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others**[2] in support of his contention.

10. I have heard learned counsel for the respective parties and perused the record carefully.

---

1 **(2004) 8 SCC 517**
2 **(2018) 7 SCC 558**

11. Before dealing with the arguments advanced by respective parties, it will be relevant to mention that owner of offending vehicle has challenged the award dated 22.06.2013 passed by learned Additional Motor Accident Claims Tribunal, Bhanupratappur, District North Bastar Kanker, Chhattisgarh in Claim Case No.42 of 2008 in MAC No.26 of 2014 (arising out of same accident) challenging the liability fastened upon him, which came up for hearing before Division Bench of this Court, in which, I (Parth Prateem Sahu) being one of the member, taking into considering the rulings of Hon'ble Supreme Court in case of **Challa Bharatamma** (supra) and **Amrit Paul Singh** (supra), dismissed the appeal vide order dated 21.08.2020.

12. Now, in the light of above faith of appeal filed by owner of offending vehicle, the only question arises for consideration before this Court is with regard to quantum of impugned award. Not only the application filed by the appellant/claimant under Section 163-A of the M.V. Act where the amount of compensation is to be calculated on structural formula as mentioned in 2nd Schedule of M.V. Act, but appellant/claimant himself has pleaded the income of deceased as Rs.100/- per day. In view of aforementioned facts where the appellant/claimant himself pleaded the income of deceased as Rs.100/- per day and learned Claims Tribunal has calculated the amount of compensation treating

the income as Rs.3,000/- per month, the submission made by learned counsel for the appellant/claimant that income can be enhanced to Rs.40,000/- per annum is not sustainable and it is hereby repelled.

13. So far as the submission made by learned counsel for respondent No.1/owner of offending vehicle that amount of compensation awarded to the appellant/claimant is on higher side is concerned, perusal of impugned award would show that learned Claims Tribunal upon assessing the income of deceased as Rs.3,000/- per month and Rs.36,000/- per annum, deducted 1/3rd towards personal and living expenses and applying the multiplier of 11, calculated the amount of compensation towards loss of dependency. The application of deduction of 1/3rd and multiplier of 11 is as per 2nd Schedule of M.V. Act, which does not call for any interference.

14. So far as the award of amount of Rs.10,000/- towards loss of consortium and Rs.5,000/- each towards loss of estate and funeral expenses is definitely on the higher side then what is provided under 2nd Schedule. If application is made under Section 163-A of the M.V. Act for grant of compensation then the amount of compensation is to be calculated strictly as per the formula provided under 2nd Schedule. In Clause-III of 2nd Schedule, award of compensation on other damages has

been specifically mentioned as (i) funeral expenses – Rs.2,000/-, (ii) loss of consortium – Rs.5,000/- and (iii) loss of estate – Rs.2,500/-.

15. For the aforementioned reasons and discussions, the amount of compensation for which the appellant/claimant is entitled for requires re-consideration and re-computation, which is as under :

The award of amount of compensation on the head of loss of dependency awarded by learned Claims Tribunal is Rs.2,64,000/- (3,000 x 12 x 2/3 x 11) is a correct calculation. Apart from aforementioned amount of Rs.2,64,000/- towards loss of dependency, appellant/ claimant is further entitled for Rs.2,000/- towards funeral expenses, Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate.

16. Now, the appellant/claimant is entitled for total compensation of Rs.2,73,500/- (2,64,000 + 2,000 + 5,000 + 2,500) instead of Rs.2,84,000/- as awarded by learned Claims Tribunal. This aforesaid amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization.

17. Now, I will consider the prayer made by learned counsel for the appellant/claimant for issuance of direction with regard to pay and recover. The Hon'ble Supreme Court in case of

Challa Bharatamma (supra) and **Amrit Paul Singh** (supra) while considering the breach of policy conditions on account of not having the valid permit and further considering the prayer for pay and recover has issued a direction of pay and recover in case of **Amrit Paul Singh** (supra) and held thus :

> “24..........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 *National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 and Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100* 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."

18. Taking support of aforementioned law laid down by Hon'ble Supreme Court and considering the facts and circumstances of the case, I find it appropriate to direct respondent No.2/Insurance Company to first deposit the entire amount of compensation and thereafter to recover the same from respondent No.1/owner of offending vehicle in accordance with law. If respondent No.1/owner has not deposited the entire amount of compensation till date, then respondent No.2/Insurance Company shall deposit the amount of compensation before the Claims Tribunal and thereafter to recover the same from respondent No.1/owner of the offending vehicle in accordance with law.

19. In the result, appeal filed by appellant/claimant is allowed in part and cross-objection filed by respondent No.1/owner of offending vehicle is allowed in part. Impugned award stands modified to the extent indicated herein-above.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh