

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 355 of 2015****Reserved on 14.06.2021****Pronounced on 24.06.2021**

- Goverdhan Singh S/o Late Hirasai Aged About 55 Years R/o Village Sunderpur, Post-Sirsi, Odgi Road, Bhaiyathan, Tah. Bhaiyathan, Distt. Surajpur Chhattisgarh. (Owner) **---- Appellant**

Versus

1. Brijlal S/o Ramadhin Aged About 30 Years Caste Panika Occupation agriculturist R/o Village Jhanshi, Post-Basdai, Thana And Tah. Surajpur, Distt. - Surajpur Chhattisgarh. (Applicant/claimant)
2. Branch Manager- Bajaj Alianz General Insurance Co. Ltd. G.E. Plaza, Airport Road, Yarwada, Pune India 411006 Police Servicing Office Shiv Mohan Bhawan, Vidhan Sabha Marg, Pandri Raipur Chhattisgarh.(Non-applicant No.1)
3. Parmeshwar Singh alias Kunder S/o Shivdhari Singh Aged About 24 Years, occupation Driver R/o Village Jhanshi, Post-Basdai, Thana And Tah.- Surajpur, Distt.-Surajpur Chhattisgarh. (Non-applicant No.2) **---- Respondents**

For Appellant:	Shri Sanjay Agrawal, Advocate appears along with Shri Mohit Kumar, Advocate.
For Respondent No. 1:	Smt. Meena Shastri, Advocate.
For Respondent No. 2:	Shri Ghanshyam Patel, Advocate.
For Respondent No.3:	None, though served.

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

1. This appeal has been preferred by the owner under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act, 1988') questioning the legality and propriety of the award dated 31.10.2014 passed by Second Additional Motor Accident Claims Tribunal, Surajpur, District Surajpur (C.G.) (hereinafter referred to as 'the Tribunal') in Claim Case No. 21/2012, whereby, the Tribunal, while exonerating the insurance company from its liability, has awarded a total amount of compensation to

the tune of Rs.2,31,000/- with 9% interest per annum from the date of filing of the claim petition till the date of actual payment. While, the Claimant has filed the cross-appeal seeking the enhancement of amount of compensation. The parties to this appeal shall be referred hereinafter as per their description before the Tribunal.

2. Briefly stated the facts of the case are that on 28.08.2011, at about 5-6 p.m., deceased Prahlad was travelling along with others on a Tractor attached with its Trolley bearing Registration No.C.G.-15/AE/0625 and C.G.-15/AE/0622 respectively for the purposes of performing the procession ceremony of Lord Krishna. At the relevant time, it was being driven in a rash and negligent manner by its driver Parmeshwar Singh @ Kunder, owing to which, it turned turtle and said Prahlad got injured badly and succumbed to the injuries during his treatment, while one of his friends also died, giving rise to the institution of the claim petition by his father under Section 166 of the Act, 1988. According to him, the deceased was a student and was engaged in selling newspapers and used to earn Rs.2,000/- per month and claimed compensation of Rs.15,30,000/- under various heads.

3. While denying the claim, it was pleaded by Non-applicants No. 2 & 3, i.e., driver and owner of the vehicle in question that since it was being used by its driver, who was holding the valid and effective driving license, therefore, in case of any liability being fastened, the same could be indemnified by Non-applicant No.1 Bajaj Allianz General Insurance Co. Ltd. While, the insurer of it took a defence that the vehicle in question, which was insured for the agricultural purposes was, however, being used other than its purposes as a commercial vehicle by carrying passengers on hire.

As such, no liability could be fastened upon it.

4. The Tribunal, after considering the evidence led by the parties, arrived at a conclusion that the alleged accident occurred due to rash and negligent driving by the driver of the alleged offending vehicle resulting into the sad demise of the claimant's son Prahlad, who was 11 years old at the relevant point of time. It held further that the vehicle in question, i.e., tractor attached with its trolley, which was insured for agricultural purposes, was being used for carrying children for the purposes of performing procession ceremony of Lord Krishna in violation of the insurance policy. In consequence, while exonerating the insurance company from its liability and that by considering the notional income of the deceased to the tune of Rs.36,000/- per annum, awarded total amount of compensation along with its interest as mentioned herein above.

5. According to Shri Sanjay Agrawal, learned counsel appearing for the Appellant/owner, the finding of the Tribunal holding that the vehicle in question, insured for agricultural purposes, was being used in violation of the policy and thereby exonerating the insurance company from its liability, is apparently contrary to law. While referring to the provision prescribed under sub-rule (7) of Rule 97 of Chhattisgarh Motor Vehicles Rules, 1994 (hereinafter referred to as 'Rules, 1994'), it is contended that since the alleged offending vehicle was being used at that particular time for the religious purpose, therefore, it cannot be held to be used in violation of the policy and, has placed his reliance upon the decisions rendered in the matters of ***National Insurance Co. Ltd. vs. Sarvanlal and others*** and ***Bisun Singh and Ors. vs. Ratni Devi and Ors.*** reported in **2004 (4) M.P.H.T. 404** and **2019 (2) CGLJ 45**, respectively. It is contended further

that the amount of compensation as determined by the Tribunal is on higher side and deserves to be set aside and/or modified.

6. On the other hand, Shri Ghanshyam Patel, learned counsel appearing for Non-applicant No.1 has supported the award impugned as passed by the Tribunal and contended further while placing his reliance upon the decisions rendered in the matters of ***Bhav Singh vs. Savirani and Ors.*** and “***Karam Chand and another vs. Budhani Bai and others*** reported in (2008) 1 MPJR 11 and (2011) 4 MPJR 14 respectively that the case law, as relied upon by the learned counsel for the Appellant was however held to be not a good law, therefore, it would not be of any use in the matter.

7. Smt. Meena Shastri, Learned counsel appearing for the Claimant, while placing her reliance upon the decisions rendered by the Supreme Court in the matters of ***National Insurance Company Limited vs. Pranay Sethi and others*** and ***Magma General Insurance Company Limited vs. Nanu Ram ALIAS CHUHRU RAM and Others*** reported in (2017) 16 SCC 680 and (2018) 18 SCC 130 respectively, submits that the amount of compensation as determined by the Tribunal without considering the future prospects of the income of the deceased and that by applying incorrect multiplier of 10 is apparently contrary to law and deserves to be enhanced accordingly.

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

9. Admittedly, the vehicle in question, i.e., tractor attached with its trolley, was insured as a “Farmers Package Policy” as evidenced by its policy (Ex.N.A.1-5) and deceased Prahlad and others were travelling on it.

According to the statement of Brijlal (AW1), his son on that fateful day was going along with others for performing the procession ceremony of Lord Krishna's immersion. It is stated further by him that as many as six to seven children were travelling on it. The version of him was corroborated by Purushottam (AW2), who was not only accompanied with the deceased but was also engaged in performing the said procession ceremony. It appears further from the statement of Parmeshwar (NAW1), the driver of the alleged offending vehicle, that the deceased and as many as ten to fifteen children were travelling on the vehicle for performing the procession ceremony of Lord Krishna's immersion.

10. According to Rishav Pandey (NAW2), the Law Officer of the insurance company, the vehicle in question was engaged other than the agricultural purposes as it was being used by carrying children for the performance of the procession ceremony of Lord Krishna's immersion.

11. In view of the aforesaid evidence led by the parties, it appears that the vehicle in question was being used at the relevant time for the purposes of performing the procession ceremony of Lord Krishna's immersion. It is now to be noted at this juncture, the principles laid down by the Supreme Court in the matter of ***State of Mysore vs. Syed Ibrahim*** reported in **(1967) 2 SCR 673**, wherein it was held that the use of the vehicle at a particular time would be decisive in order to arrive at a conclusion that it was being used in violation of the policy or not. In the said matter, the owner of the car, though registered as a motor car, not meant to be used as a transport vehicle, was, however, used by carrying passengers for hire. In that factual scenario, it was observed that the motor vehicle on that particular occasion must be said to have been used as a

transport vehicle and, if so used without a permit, then there would be an infringement of the provision prescribed under Section 42(1) of the Motor Vehicles Act, 1939 (now Section 66 of the Act of 1988). Paragraphs 5, 7 & 8 of the said judgment are relevant for the purpose, which read as under:-

5.It is the use of the motor vehicle for carrying passengers for hire or reward which determines the category of the motor vehicle whether it is adapted for that purpose or not. It must follow that even if a motor vehicle is occasionally used for carrying passengers for hire or reward it must be regarded when so used as a public service vehicle and therefore a transport vehicle and if it is so used without the necessary permit such use would be in breach of Section 42(1) and the owner who uses it or permits it to be so used would be liable to be punished under section 42(1) read with Section 123.

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7. Similarly in *Public Prosecutor v. Captain R. Rajagopalan* (AIR 1933 Mad 233) the High Court of Madras held that though Rule 30(a) of the Madras Motor Vehicles Rules was intended to apply to motor vehicles used for the express purpose of letting for hire, if a motor vehicle was used even once for such a purpose, then, on that one occasion it was nonetheless let for hire. Hence if a person undertakes to convey goods for reward in his private vehicle on one occasion without the necessary licence he would be regarded as having let his vehicle for hire and would commit an offence under that Rule. It was contended in that case that the legislature did not intend to compel an owner of a private vehicle, who ordinarily uses his vehicle for his own purposes to take out a licence merely because on one occasion he conveyed goods for hire in his private lorry. That contention was negatived on the ground that a motor vehicle even if used once for conveying goods for reward would nonetheless be regarded on that occasion as one let out for hire. In *Re. Manager, Indian Express* (AIR 1945 Mad 440) a motor car owned by the petitioner was twice used for taking bundles of newspapers from the office of the Indian Express to the railway station. It was held

that when the car was used for taking the said bundles, it came within the definition of a "goods vehicle" as defined by [Section 2\(8\)](#) and, therefore, permit under [Section 42\(1\)](#) was necessary and as the owner had no permit thereunder, he was guilty of an offence punishable under [Section 123](#).

8. The combined effect of [Section 42\(1\)](#) and the definitions of a "motor vehicle", a "public service vehicle" and a "transport vehicle" is that if a motor vehicle is used as a transport vehicle, the owner who so uses it or permits it to be so used is required to obtain the necessary permit. It is the use of the motor vehicle for carrying passengers for hire or reward which determines the application of [Section 42\(1\)](#). Therefore, whenever it is so used without the permit, there is an infringement of the sub-section.

12. While keeping the aforesaid principles in mind, it is necessary to examine the use of the vehicle in question at the relevant point of time and from a bare perusal of the pleadings of the parties, vis-a-vis, the evidence led by them, as observed herein above, it is evident that the vehicle in question was neither used for agricultural purposes nor was it being used as a commercial vehicle on hire. It was, however, admittedly found to be used for performing the procession ceremony of Lord Krishna's immersion and was, thus, used for a religious function and ten to fifteen children were travelling for the said purpose on it and, the unladen weight of it, i.e., tractor-trolley combination, as reflected from its Registration Certificates (Ex.N.A.-1C and Ex.N.A.2C), is 2790 kg.

13. According to learned counsel for the Appellant that since the vehicle in question was being used as such for religious purpose, therefore, in view of the Rule 97 of Rules, 1994, it cannot be said that it was being used in violation of the policy, as held by the Tribunal.

14. In order to consider the aforesaid contention, it is necessary to

examine the said Rule of Rules, 1994, which reads as under:-

97. Carriage of person in Goods Carriage. -- (1)

No person shall be carried in a goods carriage other than a *bonafide* employee or the owner or the hirer and except in accordance with this rule.

(2) No person shall be carried in the cabin of goods carriage beyond the number for which there is seating accommodation at the rate of thirty-eight centimetres measured along with the seat for each person excluding the space reserved for the driver, and not more than-

(i) six persons in addition to the driver in any goods carriage other than light transport vehicle;

(ii) three persons in addition to the driver in any light goods carriage;

(iii) one person in addition to the driver in the light goods carriage having gross vehicle weight less than one thousand kilograms.

(3) Notwithstanding anything contained in sub-rule (1) but subject to provisions of sub-rules (5) and (6) a Regional Transport Authority may by an order in writing permit that a large number of persons may be carried in the vehicle on the condition that no goods at all are carried in addition to such persons and such persons are carried free of charge in connection with the work for which the vehicle is used, and that such other conditions as may be mentioned by the Regional Transport Authority are observed and where the vehicle is required to be covered by a permit, the conditions of permission aforesaid are also made conditions of the permit.

(4) Notwithstanding anything contained in sub-rules (1) and (2), but subject to the provisions of sub-rules (4) and (5)-

(i) for purpose of celebrations in connection with the Republic day or Independence day, the Regional Transport Officer, and

(ii) where it considers expedient in public interest in respect of vehicles owned or hired by it and in respect of other vehicles on such grounds of urgent nature to be specified in the order, the State Government may, by general or special order, permit goods carriage to be used for the carriage of persons for the purpose aforesaid and subject to the conditions as be specified in the order.

(5) No person shall be carried in any goods carriage-

(i) unless an area of not less than 3600 square centimetres of the floor of the vehicle is kept open for each person,

(ii) in such manner--

(a) that such person when carried on goods or otherwise is in danger of falling from the vehicle;

(b) that any part of his body, if he was in a sitting position, is not a height exceeding three metres from the surface upon which the vehicle rests.

(6) The provisions of this rule shall not apply to motor vehicles registered under Section 60 of the Act.

(7) Notwithstanding anything contained in sub-rules (1) and (2) but subject to the provisions of sub-rule (5) such tractor-trailer other than those registered in the name of Industrial organisation, Municipal Institutions, water supply institution and non-agricultural cooperative societies, and the unladen weight of which does not exceed 7300 Kgs. may be used for the following purposes-

(i) for carrying labourers and the member of the family of agriculturist for the purpose of agriculture or any purpose connected with agriculture including sale and purchase of articles or agriculture.

(ii) for carrying persons at the time of Mela, Markets, Religious Functions, Marriages and at other ceremonial occasions provided that the number of persons so carried shall not exceed 20 at a time.

15. It is true, by virtue of sub-rule 7(ii) of the aforesaid provision that if the unladen weight of the tractor-trolley combination (Goods carriage vehicle) does not exceed 7300 kgs, then notwithstanding anything contained in sub-rules (1) and (2), but subject to the provisions of sub-rule(5), such a tractor-trolley other than those registered in the name of Industrial organisation, Municipal Institutions, Water Supply Institution and Non-agricultural Cooperative Societies may be used for the purpose of

carrying persons at the time of Mela, Markets, Religious Functions, Marriages and at other ceremonial occasions if the number of persons so carried are not exceeded 20 at a time. It is, therefore, contended by learned counsel for the Appellant-owner while placing his reliance upon the decisions rendered in the matters of **National Insurance Co. Ltd. vs. Sarvanlal and others** (supra) and **Bisun Singh and Ors. vs. Ratni Devi and Ors.** (supra) that since the vehicle in question, although insured as a “Farmers Package Policy”, but was found to be used for the purpose of religious function, therefore, it cannot be said that it was being used at that particular time in violation of the policy so as to exonerate the insurance company from its liability, as held by the Tribunal. The said contention is, however, noted to be rejected as the interpretation of the aforesaid Rules has come up for consideration before the Full Bench of the M.P. High Court in the matter of **Bhav Singh vs. Savirani and Ors.** reported in **(2008) 1 MPJR 11** wherein it was held that Rule 97 is not to cover the risk under Section 147 of the Act, 1988 automatically and accordingly held as under:-

“Regarding the Division Bench judgment in Sarvanlal and Ors. (supra), we find that the Division Bench has relied on not only the judgment of the Full Bench in Jugal Kishore (supra) but also Clause (vii) of Rule 97 of the Motor Vehicles Rules, 1994 (for short 'the Rules of 1994') made by the State of M.P. So far as the judgment of the Full Bench in Jugal Kishore (supra) is concerned, we have already clarified the position of law. Regarding Clause (7) of Rule 97 of the Rules of 1994, we find that the Rules of 1994 have been made by the State of M.P. under Section 96 of the Act and in particular Sub-section (2)(xxxi) which provides that without prejudice to the generality of the foregoing power, rules under Section 96 may be made with respect to the carriage of persons other than the driver in goods carriages. Section 96 is placed in Chapter-V of the

Act which relates to 'Control of Transport Vehicles'. Sub-section (1) of Section 96 of the Act states that the State Government may make rules for the purpose of carrying into effect the provisions of Chapter-V. Hence, Rule 97 of the Rules of 1994 has been made by the State Government to give effect to the provisions of Chapter-V of the Act, which, as we have seen, relates to 'control of transport vehicles'. These rules obviously cannot have a bearing in interpreting the provisions of Chapter-XI of the Act including Sections 145 and 147 of the Act. As we have indicated above, the liability of the insurer to indemnify the insured in respect of death or bodily injury suffered by a passenger or an employee would be covered by the provisions of Section 147 of the Act or the terms and conditions of the insurance policy. Thus, the decision of the Division Bench in *Sarwan Lal* (supra) in so far as it relies on Rule 97 of the Rules of 1994 to hold the insurer liable for death or bodily injury suffered by the passenger does not lay down the correct law.”

16. From perusal of the aforesaid observation, it is thus evident that the decision of the Division Bench of the M.P. High Court rendered in the matter of ***National Insurance Co. Ltd. vs. Sarvanlal and others*** reported in **2004 (4) M.P.H.T. 404**, has been held to be not the correct law and, therefore, based upon which, the decision of the coordinate Bench of this Court in the matter of ***Bisun Singh and Ors. vs. Ratni Devi and Ors.*** reported in **2019 (2) CGLJ 45**, as relied upon herein by the learned counsel for the Appellant-owner, fastening the liability upon the insurance company in view of the said Rules, would not be of any use.

17. Be that as it may, the interpretation of the above mentioned Rules has also come up for consideration before the Division Bench of this Court in the matter “***Karam Chand and another vs. Budhani Bai and others*** reported in **(2011) 4 MPJR 14** wherein it has been held at para 13 which is relevant for the purpose, reads as under:-

13. True, the above rule permits carrying of persons in the trolley attached to tractor at the time of Mela, Markets, Religious Functions, Marriages etc. provided that the number of persons so carried shall not exceed 20 at a time. In the light of aforesaid rules, the appellants may not be liable for prosecution due to violation of various provisions of the Act and Rules framed thereunder prohibiting use of vehicle for carrying passengers but it does not mean that under this rule, the insurance company can also be held liable for such persons sitting in the tractor trolley under the statutory policy, because statutory policy does not provide for the liability of the insurer with respect to passengers, who were neither contemplated, at the time, the contract of insurance was entered into, nor any premium was paid to the extent of benefit of insurance to such category of people. Therefore, the point raised is also of no help to him.

18. It appears that the aforesaid Full Bench decision of the M.P. High Court overruling the said Division Bench decision of the said High Court as well as the principles laid down by this Court in the above mentioned decision has unfortunately not been brought to the knowledge of the coordinate Bench of this Court, therefore, the principles laid down in the said matter, i.e., ***Bisun Singh and Ors. vs. Ratni Devi and Ors.*** (supra) would not be of any use for the Appellant-owner.

19. That apart, from a bare perusal of the policy marked as Ex.N.A.1-5, it is evident that no premium was paid by the owner for covering the risk of passenger, so as to hold that based upon the terms and conditions stipulated therein, the insurance company can be held liable.

20. Consequently, I do not find any substance in the submission of the learned counsel for the Appellant-owner, so as to fasten the liability upon the insurance company. The appeal preferred by the Appellant-owner is accordingly dismissed.

21. Now, in so far as the cross-appeal preferred by the Claimant seeking enhancement of the amount of compensation is concerned, it appears that the Tribunal, while determining the amount of compensation, has failed to consider the future prospects of the income of the deceased in order to provide just and proper compensation payable to the Claimant. The award impugned determining the amount of compensation is, therefore, liable to be re-assessed in the light of the principles laid down by the Constitution Bench of the Supreme Court in the matter of ***National Insurance Company Limited vs. Pranay Sethi and others*** (supra) and also in the light of the principles laid down in the matter of ***Magma General Insurance Company Limited vs. Nanu Ram ALIAS CHUHRU RAM and Others*** (supra).

22. Considering the monthly income of the deceased to the tune of Rs.3000/-, yearly Rs.36,000/-, as held by the Tribunal, an addition of 40% of it, i.e., Rs.14,400/- towards future prospects of his annual income is to be made in the light of the principles laid down in the said matter of ***Pranay Sethi*** (supra). It would, thus, come to Rs.50,400/- (Rs.36,000/- + Rs.14,400/-). Since the deceased was unmarried, deduction of half of it, i.e., Rs.25,200/- towards his personal and living expenses would be appropriate. The annual dependency would thus come to Rs.25,200/- (Rs.50,400/- - Rs.25,200/-) and, that by applying the multiplier of 15, looking to the age of the deceased and by considering the guidelines as provided in second schedule framed under Section 163-A of the Act, 1988, the total dependency would come to Rs.3,78,000/- (Rs.25,200 x 15).

23. Besides, father-Claimant is entitled to be awarded loss of consortium under the head of parental consortium as held by the Supreme

Court in the matter of **Magma General Insurance Company Limited** vs. **Nanu Ram ALIAS CHUHRU RAM and Others** (supra) at the rate as held in the matter of **Pranay Sethi** (supra). Consequently, in addition, Claimant is entitled to following amounts towards conventional heads:-

Mode of compensation	Amount Rs.
(i) Loss of parental consortium	- 40,000/-
(ii) Funeral expenses	- 15,000/-
(iii) Loss of estate	- 15,000/-
Total	- Rs.70,000/- =====

24. Consequently, the Claimant would be entitled to a total amount of compensation to the tune of Rs.4,48,000/- (Rs.3,78,000/- + Rs.70,000/-) instead of Rs.2,31,000/-, as awarded by the Tribunal and, the enhanced amount of compensation, i.e., Rs.2,17,000/-(Rs.4,48,000/- - Rs.2,31,000/-) shall carry interest at the rate of 6% per annum from the date of admission of his cross-appeal, i.e., 27.01.2021 till the date of actual payment.

25. Although, as observed herein above that the Non-applicant No.1 -Bajaj Alianz General Insurance Company Limited has been exonerated from its liability but the policy was admittedly found to be in existence. Therefore, by applying the principles laid down in the matters of **National Insurance Co. Ltd.** vs. **Swaran Singh and Others** and **Manager, National Insurance Company Limited** vs. **Saju P. Paul and another** reported in (2004) 3 SCC 297 and (2013) 2 SCC 41, respectively, I accordingly issue a direction to the said company to first pay the awarded sum to the Claimant-father and then to recover the amount of compensation paid by it from the owner-Goverdhan Singh (Appellant

herein) and the driver, namely, Parmeshwar Singh (Non-applicant No.2) of the alleged offending vehicle in execution proceedings arising in this very case.

26. With the aforesaid observations, the appeal preferred by the owner is hereby dismissed, while the cross-appeal preferred by the Claimant is allowed in part to the extent indicated herein above. Rest of the observations as made by the Tribunal shall remain intact. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE