**NAFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

**MAC No. 99 of 2015**

1. Banti Yadav, Aged about 42 Years, s/o Bulthu Yadav, R/o Hora Transport Company, Fafadih, Thana Gunj, Raipur Distt. Raipur, Chhattisgarh (Driver)
2. Speed Cargo C/o Hora Transport Company, Fafadin, Thana Gunj, Raipur Distt. Raipur C.G. (Owner)

**---- Appellants**

**Versus**

1. Smt.Sambati Sahu, Wd/o Late Shiv Kumar Sahu Aged About 32 Years
2. Chudamani @ Maniram Sahu S/o Late Shiv Kumar Sahu Aged About 15 Years
3. Hemant Kumar Sahu S/o Late Shiv Kumar Sahu, Aged About 13 Years
4. Ku. Rupa Sahu D/o Late Shiv Kumar Sahu Aged About 13 Years
5. Smt. Puniya Bai Wd/o Late Tiharu Ram Aged About 60 Years

   Respondents 2 to 4 are minors represented Thru- Natural Guardian, Mother Smt. Sambati Sahu

   All are R/o Village Kodapar Thana Kurud, District : Dhamtari, Chhattisgarh (claimants)
6. ICICI Lombard General Insurance Company Limited, Thru- The Branch Manager, Near Railway Crossing, Devendra Nagar, District : Raipur, Chhattisgarh (Insurer)

**----Respondents**

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| For Appellants | : | Shri SS Rajput, Advocate |
| For Respondents- 1 to 5 | : | Shri AL Singroul, Advocate |
| For Respondent- 6 | : | Shri Shailesh Tiwari, Advocate |

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**Hon'ble Shri PR Ramachandra Menon, Chief Justice &**
**Hon'ble Shri Justice Parth Prateem Sahu**
**Order on Board**

**Per Parth Prateem Sahu, J.**
**13.01.2021**

1. Challenge in this appeal is to the award dated 25.09.2014 passed by the Chief Motor Accident Claims Tribunal, Raipur in Claim Case -120 of 2012, whereby learned Claims Tribunal allowed application under Section 163A of the Motor Vehicle Act and awarded Rs.9,34,000/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 22.04.2011 Shivkumar Sahu was riding his bicycle and going to Abhanpur from village Kodapar, while so at about 12 noon, when he reached near railway crossing of Abhanpur, one Truck bearing No.CG 04 J 4217 (hereafter referred to as 'offending vehicle') driven rashly and negligently by NA1, dashed bicycle of Shivkumar Sahu and caused accident. In the said accident Shivkumar Sahu suffered grievous injuries on his person and died on the spot.

3. Claimants, who are widow, children and widow mother of deceased filed an application under Section 163A of the Act of 1988 seeking compensation of Rs.24,50,000/- on different heads pleading therein that on the date of accident, deceased was aged about 35 years able bodied person, working as Mason and earning Rs.3,000/- per month. Claimants were dependent upon income of deceased.

4. NA1 and 2 driver and owner of offending vehicle submitted reply to the claim application, while denying the pleadings made therein, further pleaded that amount of compensation claimed is highly exaggerated. Offending vehicle was insured with NA3 Insurance Company and they were not having any liability to satisfy the amount of compensation.

5. NA3/Insurance Company submitted reply to claim application denying the facts pleaded therein. It was further pleaded that amount of compensation is highly exaggerated. Accident was a result of negligence of deceased himself. On the date of accident, NA1 was not possessed with valid and effective driving license. There was no valid permit and fitness certificate of offending vehicle.

6. Upon appreciation of pleadings and evidence brought on record by the respective parties, learned Claims Tribunal held that the deceased died on account of motor accidental injuries due to rash and negligent driving of offending vehicle by NA1. Contributory negligence and non-joinder of necessary parties were not found to be proved. Breach of policy conditions was found to be proved as on the date of accident NA1, driver of offending vehicle not possessed with valid and effective driving license, assessed income of deceased as Rs.3,000/- per month, awarded Rs.9,35,000/- as total compensation on different heads.

7. Shri SS Rajput, learned counsel for the appellants, driver and owner of offending vehicle submits that learned Claims Tribunal erred in arriving at a finding that on the date of accident offending vehicle was driven in breach of policy conditions. He submits that though on the date of accident, license of NA1 could not be renewed, NA1 was driving the class of offending vehicle since long under valid driving license. NA1 was not suffering with any dis-qualification to drive the class of vehicle which he was driving on the date of accident, hence, the finding recorded by learned Claims Tribunal that there was breach of policy conditions and also exoneration of Insurance Company is erroneous. He further contended that Tribunal erred in awarding excessive amount of compensation overlooking the fact that claim application was filed under Section 163A of the Act of 1988 hence, amount of compensation is to be calculated strictly in accordance with the calculation as mentioned in Second Schedule formulated under Section 163A of the Act 1988 considering the proved income. He submitted that learned Claims Tribunal erred in deducting ¼ towards personal and living expenses and awarding Rs.4,50,000/- to the claimants towards loss of consortium, loss of love and affection. He submits that the heads under which

compensation other than the loss of dependency to be awarded has been specifically mentioned in Second Schedule wherein not only the heads, but the amount to be awarded is also quantified which only comes to Rs.9,500./- in total. He further contended that learned Claims Tribunal erred in awarding penal interest of Rs.12% in the facts and circumstances of the case. There is no provision under the Act of 1988 to award any penal interest if the amount of compensation is not deposited by the parties as awarded by learned claims Tribunal.

8. In view of above, he submits that the impugned award may be modified accordingly.

9. Shri AL Singraul learned counsel for respondents 1-5/Claimants submits that the amount of compensation calculated by learned Claims Tribunal is just and proper in the facts and circumstances of the case. He submits that Tribunal has taken into consideration the ruling of Hon'ble Supreme Court for awarding amount of compensation on other conventional heads.

10. We have heard learned counsel for the respective parties and perused the record of claim case.

11. So far as the 1st ground raised by learned counsel for the appellant that Claims Tribunal erred in exonerating the Insurance Company from its liability on the ground of licence is concerned, we have perused copy of license placed on record as Ex.D2. Perusal of document D2 would show that license was originally issued on 24.01.1992. It also shows the period of driving license and also mentioned that driving license was not valid from 26.01.2011 to 26.06.2011.

During this period NA1, was not having any live or valid license with him. Date of accident as per pleading was on 22.04.2011 ie beyond the 30 days of expiry of license of NA1.

12. Renewal of license is envisaged under Section 15 of the Act of 1988. Proviso to Section 15 of Act of 1988 would show that validity of license continues after the date of its expiry, only up to 30 more days and if within the period of 30 days of expiry of driving license, application is not made before competent authority, license shall be renewed with effect from date of its renewal only. In the case at hand, undisputedly, license of NA1 expired on 26.01.2011 and renewed only on 27.06.2011. In between, accident took place on 22.04.2011.

13. Issue of renewal of license has been considered by Hon'ble Supreme Court in case of **Ram Babu Tiwari vs United India Insurance Company Limited and Others** reported in (2008) AIRSCW 6512 and held as under:-

> "18. It is beyond any doubt or dispute that only in the event an application for renewal of licence is filed within a period 30 days from the date of expiry thereof, the same would be renewed automatically which means that even if an accident had taken place within the aforementioned period, the driver may be held to be possessing a valid licence. The proviso appended to sub-section (1) of Section 15, however, clearly states that the driving licence shall be renewed with effect from the date of its renewal in the event the application for renewal of a licence is made more than 30 days after the date of its expiry. It is, therefore, evident that as, on renewal of the licence on such terms, the driver of the vehicle cannot be said to be holding a valid licence, the insurer would not be liable to indemnify the insured.
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> The second proviso appended to sub-section (4) of Section 15 is of no assistance to the appellant. It merely enables the licensing

authority to take a further test of competent driving and passing thereof to its satisfaction within the meaning of Sub-section (3) of Section 9. It does not say that the renewal would be automatic. It is, therefore, a case where a breech of the contract of insurance is established. This aspect of the matter has been considered by this Court in National Insurance Co. Ltd. v. Kusum Rai & Ors. [(2006) 4 SCC 250] holding :

> "11. It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The appellant, therefore, could raise the said defence."

It was furthermore held :

> "14. This Court in National Insurance Co. Ltd. v. Swaran Singh and Others [(2004) 3 SCC 29] clearly laid down that the liability of the Insurance Company vis-a-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle."

It was opined :

> "16. In a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not."

> 19. The principle laid down in Kusum Rai (supra) has been reiterated in Ishwar Chandra & Ors. v. Oriental Insurance Co. Ltd. & Ors. [(2007) 10 SCC 650], referring to sub-section (1) of Section 15 of the Act, this Court stated the law, thus :
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> > "9. From a bare perusal of the said provision, it would appear that the licence is renewed in terms of the said Act and the rules framed thereunder. The proviso appended to Section 15 (1) of the Act in no uncertain terms states that whereas the original licence granted despite expiry remains valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal. The accident took place on 28-4-1995. As on the said date, the renewal application had not been filed, the driver did not have a valid licence on the date when the vehicle met with the accident."

14. Though learned counsel for the appellant may be correct, that NA1 did not suffer any disqualification during that period, but the fact remains that NA1 did not renew his license for a period of about five months. Hence, in view of law laid down by Hon'ble supreme Court in case of **Rambabu** (supra) and further considering the facts of the case, and provision under Section 15 of Act of 1988, on the date of accident driver was not possessed with valid Driving License. In view of above, we do not find any force in the submission made by learned counsel for the appellant that Claims Tribunal erred in arriving at a finding that there was breach of policy conditions. The submission made by learned counsel for the appellant is not sustainable and it is hereby repelled.

15. So far as 2nd ground raised by learned counsel for the appellant with regard to quantum of compensation awarded by the Tribunal, admittedly, application is filed under Section 163A of the Act of 1988. Amount of

compensation is to be calculated on basis of parameters and factors as mentioned under Second Schedule formulated under Section 163A of the Act of 1988. In Second schedule, the heads for grant of compensation as general damages has been mentioned as funeral expenses, loss of consortium if beneficiary is the spouse, and loss of estate. Amount of compensation to be awarded is quantified as Rs.2,500/-, Rs.5,000/- and Rs.2,500/- respectively under the three heads. There is no scope for awarding compensation towards loss of love and affection under the Schedule, and standard deduction towards personal and living expenses of the deceased has been shown to be 1/3rd. There is no mention of deduction to be varied looking to the number of claimants/dependants of deceased. Learned Claims Tribunal overlooking the parameters and factors mentioned under Second schedule, has applied deduction of 1/4th towards personal and living expenses and awarded Rs.4,50,000/- towards other conventional heads, which is much on higher side than amount to be awarded to the claimants under the provision of 163A of the Act of 1988.

16. For the foregoing reasons, amount of compensation to be awarded to the claimants requires recalculation and re-computation which is as under:

a) Income of deceased as taken by the Claims Tribunal is Rs.3,000/- per month and Rs.36,000/- per annum;

b) After deducting 1/3rd towards personal and living expenses, loss of annual dependency comes to Rs.24,000/- {36000 – (36000 x 1/3)}.

c) Claimant was aged about 35 years on the date of accident, hence multiplier of 17 would be applicable as applied by the Tribunal. Upon multiplying yearly loss of dependency with 17, total loss of dependency comes to Rs.4,08,000/-.

d) Claimants will be further entitled for Rs.2,000/- for funeral expenses, Rs.5,000/- for loss of consortium to respondent-1 widow and Rs.2,500/- for loss of estate, which makes total amount of compensation as Rs.4,17,500/- (408000 + 2000 + 5000 + 2500)

17. Now claimants are entitled for **Rs.4,17,500/-** as total compensation instead of Rs.9,34,000/- as awarded by learned Claims Tribunal.

18. Aforementioned amount of compensation shall carry interest @ 9% from the date of filing of application till its realisation as awarded by the Tribunal.

19. So far as submission of learned counsel for the appellants regarding awarding penal interest under the Section 171 of the Act of 1988, it only provides for award of Simple Interest. The law makers have not made any law for awarding penal interest /conditional interest if amount of compensation awarded is not deposited within specific time period. In view of above, award of penal interest @ 12% by the Tribunal in para 41.2 is also hereby set aside.

20. Appeal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
**(PR Ramachandra Menon)**
**Chief Justice**

Sd/-
**(Parth Prateem Sahu)**
**Judge**

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