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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.549 of 2015

- Manager National Insurance Company Ltd., Branch Raipur Chhattisgarh, G.E. Road, Raipur, Foolchowk, District Raipur Chhattisgarh, Chhattisgarh.

---- Appellant (Insurer)

Versus

1. Mohammad Raffique Khan And Ors S/o Ajmer Khan Aged About 52 Years R/o Village Hardibhata, Tahsil P.S. Mainpur, District Gariyaband Chhattisgarh , Chhattisgarh
2. Smt. Kamroon Nisha W/o Rafique Khan Aged About 47 Years R/o Village Hardibhata, Tahsil P.S. Mainpur, District Gariyaband Chhattisgarh, District : Gariyabandh, Chhattisgarh
3. Mohammad Arif S/o Rafique Khan Aged About 26 Years R/o Village Hardibhata, Tahsil P.S. Mainpur, District Gariyaband Chhattisgarh , District : Gariyabandh, Chhattisgarh
4. Smt. Johara Bano W/o Ajmer Khan Aged About 70 Years R/o Village Hardibhata, Tahsil P.S. Mainpur, District Gariyaband Chhattisgarh , District : Gariyabandh, Chhattisgarh

(Respondents No.1 to 4-Claimants)

5. Ramgopal Vishwakarma S/o Punaram Vishwakarma Aged About 53 Years R/o Indra Market Ward No. 3, Gobra Nawapara, P.S. Gobra Nawapara, District Raipur Chhattisgarh , District : Raipur, Chhattisgarh

(Driver)

6. Dharamchand Sundrani S/o Late Aadhtmal Sundrani Aged About 50 Years R/o Ganjroad Nawapara Rajim, P.S. Gobra Nawapara, Tahsil Nawapara And District Raipur Chhattisgarh , District : Raipur, Chhattisgarh

(Owner)

---- Respondents

MAC No.878 of 2015

1. Moh. Rafiq Khan S/o Ajmer Khan Aged About 52 Years R/o Village Hardibhatha Tah. And Thana Mainpur Distt. Gariyabandh Chhattisgarh , Chhattisgarh
2. Smt. Kamrun Nisha W/o Rafiq Khan Aged About 47 Years R/o Village Hardibhatha Tah. And Thana Mainpur Distt. Gariyabandh Chhattisgarh, District : Gariyabandh, Chhattisgarh
3. Moh. Aarif S/o Rafiq Khan Aged About 26 Years R/o Village Hardibhatha Tah. And Thana Mainpur Distt. Gariyabandh Chhattisgarh , District : Gariyabandh, Chhattisgarh
4. Smt. Johara Bano W/o Ajmer Khan Aged About 70 Years R/o Village Hardibhatha Tah. And Thana Mainpur Distt. Gariyabandh Chhattisgarh, District : Gariyabandh, Chhattisgarh

---- Appellants-Claimants

Versus

1. Ram Gopal Vishwakarma S/o Punaram Vishwakarma Aged About 53 Years R/o Indra Market Ward No. 3 Gobra Nawapara, Thana Gobra Nawapara, District Raipur Chhattisgarh , Chhattisgarh **(Driver)**
2. Dharam Chand Sundrani S/o S/o Late Aadhatmal Sundrani Aged About 55 Years R/o Ganj Road Nawapara Rajim Thana Gobrra Nawapara, Tah. Nawapara And Distt. Raipur Chhattisgarh , District : Raipur, Chhattisgarh **(Owner)**
3. Manager, S/o National Insurance Company Limited, Branch Raipur Chhattisgarh G.E. Road Raipur Fool Chouk Distt. Raipur Chhattisgarh , District : Raipur, Chhattisgarh **(Insurer)**

---- Respondents

Present:-
For Appellant-Insurance Company: Shri Raj Awasthi Advocate.
For Respondents No. 1 to 4/Claimants: Shri A.L. Singraul, Advocate.

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

Order On Board

10.12.2021

1. Both these appeals arise out of common award passed on 23.02.2015 by the Second Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.44/2013 whereby, the learned Claims Tribunal while allowing the claim in part awarded total amount of compensation to the tune of Rs.2,59,000/- while exonerating the insurance company from its liability and that by applying the principles of pay and recover. Parties shall be referred as per their description before the court below.

2. Briefly stated the facts of the case are that on 10.01.2013, when Mohammad Arif Khan was going by driving a Maruti Van bearing Registration No.CG-04-HC-0662 from Manipur to Bhilai and as soon as he reached near the village Gatapar, Rajim Road, at that particular time, it was dashed by the offending vehicle “Truck” bearing its Registration No.CG-04-JA-5514, which was being driven rashly and negligently by its driver Ramgopal Vishwakarma resulting into the sad demise of

Mohammad Arif Khan, who was found to be 24 years old at the relevant time.

3. On account of the aforesaid accident, a claim enumerated under Section 166 of the Act, 1988 was made by the claimants, claiming total amount of compensation to the tune of Rs.35 lacs by submitting inter alia that the deceased was involved in transporting business and used to earn Rs.15,000/- per month and owing to untimely death of him, they suffered irreparable loss.

4. The aforesaid claim has been contested by Non-applicants No.1 & 2, by submitting inter alia that the driver of the alleged offending vehicle was holding an effective and valid driving licence, and therefore, in case of any liability being fastened, they would be entitled to be indemnified by the said Insurance Company. While the insurer of the alleged offending vehicle contested the claim mainly on the ground that the driver of it was not possessing the effective and valid driving licence and alleged vehicle was thus being used in violation of the insurance policy and, as such, no liability could be fastened upon it.

5. After considering the evidence led by the parties, the Claims Tribunal by its award impugned arrived at a conclusion that the alleged accident has occurred due to rashness and negligent driving by the driver of the alleged offending vehicle namely Ram Gopal Vishwakarma resulting the sad demise of Mohammad Arif Khan, who was 24 years old at the time of accident. It held further that in absence of any documentary evidence, it cannot be held to be his monthly income to the tune of Rs.15,000/- and that by considering his notional income at Rs.3,000/- per month and by applying the multiplier of 13 awarded total amount of compensation as mentioned hereinabove. It held further that the driver of the alleged offending vehicle was not holding the effective and valid driving licence, in

consequence, while exonerating the insurance company from its liability has applied the principle of pay and recover by directing the insurance company to first pay the awarded sum and then to recover it from the owner and driver of the alleged offending vehicle.

6. Being aggrieved, these appeals have been preferred by the insurer as well as by the claimants. Shri Raj Awasthi, learned counsel appearing for the appellant in MAC No.549/2015 submits that the award as passed by the learned claims tribunal while applying the principle of pay and recover is apparently contrary to law. According to him, once it was found that the vehicle in question was being used in violation of the insurance policy, no order as such ought to have been passed. While, Shri Singroul, learned counsel appearing for the claimants in MAC No.878/2015 submits that just and proper amount of compensation payable to the claimants has not been awarded as the monthly income of the deceased has wrongly been assessed only to the tune of Rs.3,000/- and erred further in applying the multiplier of 13. It is contended further by him that while determining the amount of compensation, the Claims Tribunal ought to have applied the multiplier of 18 as the deceased was found to be 24 years old and ought to have considered further the future prospective of the income of the deceased. Having failed to consider the same, the Claims Tribunal has committed an illegality in awarding the meager amount of compensation payable to the claimants. In support, he placed his reliance upon the decision rendered by the Supreme Court in the matter of ***National Insurance Company vs. Pranay Sethi and others*** and ***Sarla Verma (SMT) and others vs. Delhi Transport Corporation and another*** reported respectively in **(2017) 16 SCC 680** and **(2009) 6 SCC 121.**

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

8. In MAC No.878/2015 preferred by the claimants, it appears that the amount of compensation, as determined by the Claims Tribunal, while assessing the monthly income of the deceased only to the tune of Rs.3,000/- and that by applying the multiplier of 13 even upon holding the age of deceased at 24 years and, that too without considering the future prospects of his income is in lower side and therefore, deserves to be modified and/or enhanced.

9. It is true that the claimants have failed to establish the fact that the deceased was involved in transporting business and used to earn Rs.15,000/- per month, however, his monthly income should have been considered as per the notification issued under the provisions of Minimum Wages Act, 1948. As the alleged accident occurred on 10-01-2013, it would therefore, be appropriate to consider his monthly income to the tune of Rs.4,646/- rounded off to Rs.4,600/-, yearly Rs.55,200/-, prevailing at the relevant point of time, as per the notification issued by the prescribed authority under the Minimum Wages Act, 1948. Since the deceased was found to be 24 years old, therefore, by determining his actual income, an addition of 40% of it, i.e. Rs.22,080/- towards future prospects of his income is to be made in the light of the principles laid down by the Constitutional Bench of the Supreme Court in the matter of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra).*** It would thus come to Rs.77,280/- (Rs.55,200/-+Rs.22,080/-). As the deceased was found to be 24 years old, proper multiplier applicable would be 18, instead of 13, in view of the principles laid down in the matter of ***Sarla Verma(Smt) and others Vs. Delhi Transport Corporation and another***(supra). The total amount of compensation would thus come to Rs.13,91,040/-(Rs.77,280x18). Since the deceased was unmarried, therefore, half of it is required to be deducted, in view of the principles laid

down in the said matter of ***Sarla Verma*** (supra). The total dependency would, therefore, come to Rs.6,95,520/- (Rs.13,91,040 x ½).

10. Besides the mother and father of the deceased are entitled to be awarded towards loss of consortium under the heads of filial consortium as held by Supreme Court in the matter of ***Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram and Others*** reported in **(2018) 18 SCC 130** at the rate as held in the said matter of ***Pranay Sethi*** (supra)***.*** Consequently, in addition, the claimants are entitled to the following amounts towards conventional heads :-

Mode of Compensation		**Amount** (in Rs.)
(I) Loss of consortium to mother	-	Rs.40,000/-
(II) Loss of consortium to father	-	Rs.40,000/-
(III) For funeral expenses	-	Rs.15,000/-
(iv) For loss of estate	-	Rs.15,000/-
T O T A L	**-**	**Rs.1,10,000/-**

11. Accordingly, the claimants would be entitled to a total sum of Rs.8,05,520/-(Rs.6,95,520/-+Rs.1,10,000/-) and the enhanced amount of compensation i.e. Rs.5,46,520/- (Rs.8,05,520/-(-)Rs.2,59,000/-) shall carry interest at the rate of 6% per annum from the date of filing of the claim petition, i.e.22.02.2013, till the date of actual payment.

12. Insofar as the appeal, being MAC No.549/2015, preferred by the Insurance Company is concerned, the question as raised herein, however remains no more res integra, in view of the principles laid down by the Supreme Court in the matter of ***Manager, National Insurance Company Limited Vs. Saju P. Paul And another,*** reported in ***(2013) 2 SCC 41,*** wherein at paragraphs 20 and 26, it has been observed as under:-

> **20. "In this case, the High Court had proceeded on the basis that they were gratuitous passengers. The admitted plea of the respondents themselves was that the deceased had boarded the**

> **lorry and paid an amount of Rs.20 as transport charges. It has not been proved that the deceased was travelling in the lorry along with the driver or the cleaner as the owner of the goods. Travelling with the goods itself does not entitle anyone to protection under Section 147 of the Motor Vehicles Act."**
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> **26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in *Baljit Kaur, (2004) 2 SCC 1, and Challa Upendra Rao, (2004) 8 SCC 517 should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggled further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 01-08-2011, (National Insurance Company Ltd vs. Saju P. Paul, SLP(C)No.20127 of 2011, order dated 01-08-2011) and the said amount has been invested in a fixed deposit amount. Having regad to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent No.1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter, may recover the amount so paid from the owner (Respondent No.2 herein). The recovery of the amount by the Insurance Company from the Owner shall be made by following the procedure as laid down by this Court in Challa Upendra Rao, (2004) 8 SCC 517."***

13. By applying the aforesaid principles to the case in hand, it would be just and proper to issue a direction to the appellant/Insurance Company (National Insurance Company Limited) to first pay the awarded sum to the claimants and then to recover the paid awarded sum from the owner and driver of the alleged offending vehicle as ordered by the Claims Tribunal in its award under appeal.

14. Consequently, MAC No.549/2015 preferred by the appellant/ National Insurance Company Ltd is hereby dismissed, while MAC No.878/2015 preferred by the claimants is hereby allowed in part to the extent indicated herein above. No order as to costs.

SD/-
(Sanjay S. Agrawal)
JUDGE

Ruchi/Satish Tumane