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HIGH COURT OF CHHATTISGARH BILASPUR

MAC No. 226 of 2015

Divisional Manager, National Insurance Company Limited New Buss Terminal Building, Gandhi Road, Rourkela, District Sundergarh (Orissa)

Through Authorized Signatory National Insurance Company Limited Divisional Office Taha Complex Ring Road- 1 Priyadarshani Nagar, Bilaspur, Chhattisgarh.

---- Appellant

Versus

1. Bihanu Ram S/o Diba Ram, Aged About 53 Years
2. Smt. Sulochini W/o Late Kumbhkaran Ram, Aged About 34 Years
3. Minor Vinita Bai D/o Late Kumbhkaran Ram, Aged About 15 Years
4. Minor Savita Bai D/o Late Kumbhkaran Ram, Aged About 13 Years
5. Minor Durgawati D/o Late Kumbhkaran Ram, Aged About 10 Years
6. Minor Durwati Bai D/o Late Kumbhkaran Ram, Aged About 6 Years

   All respondent number 3 to 6 are minor through natural guardian mother respondent No.2 Sulochini

   All respondent number 1 to 6 caste Khadia, are resident of Village Ooper Kachhar P.O. Latbora, Tahsil Kunkuri District Jashpur, Chhattisgarh
7. Jiveshwar Singh S/o Raghunath Sing Rajput age 58 Years Caste Rajput resident of Village Dipatoli Jashpur Nagar, Chhattisgarh (**Dead and claim petition held abated against him**)
8. Anup Kumar Gupta S/o Suresh Chandra Gupta R/o Village Tapkara Tehsil Kumkuri District Jashpur Nagar (C.G.)

Presently residing at Near Water Tank Industrial State Rourkela District Sundergarh (Orissa) Pincode 769004.

---- Respondents

MAC No. 1442 of 2015

1. Bihanuram S/o Deeba Ram, Aged About 53 Years
2. Sulochni Wd/o Late Kumbhkaran Ram, Aged About 34 Years
3. Minor Hemanand Ram S/o Late Kumbhkaran Ram, Aged About 17 Years
4. Minor Vinita Bai D/o Late Kumbhkaran Ram, Aged About 15 Years
5. Minor Savita Bai D/o Late Kumbhkaran Ram, Aged About 13 Years
6. Minor Durgavati D/o Late Kumbhkaran Ram, Aged About 10 Years
7. Minor Duruvati Bai D/o Late Kumbhkaran Ram, Aged About 6 Years

   For appellant no.3 to 7 through their next friend mother Sulochni, appellant No.2

   All by Caste - Khadiya, R/o Upar Kachar, Post Office Lathbora, Tahsil Kunkuri, District Jashpur, Civil and Revenue District Jashpur Chhattisgarh**.**

---- Appellants

Versus

1. Anup Kumar Gupta S/o Suresh Chand Gupta, R/o Village Tapkara, Tahsil Kunkuri, District Jashpur Chhattisgarh At Present R/o Near Water Tank Industrial State, Rourkela, District Sundargarh Orissa 769004
2. Branch Manager, National Insurance Company Limited, New Bus Terminal Building, Gandhi Road, Rourkela, District Sundargarh (Orissa)

   Through Local Branch Office National Insurance Company

Limited Vyapar Vihar Road, Taha Complex, Priy Pradarshniya Nagar, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondents

For Claimants	: Shri Rishikant Mahobia, Advocate
For Owner	: None
For Insurance Company	: Shri B.N. Nande and Shri Priyanshu Gupta, Advocates

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

29.01.2021

1. As both the appeals are arising out of award dated 31.07.2014 passed by Additional Motor Accident Claims Tribunal, Kunkuri, District Jashpur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.65 of 2010 whereby learned Claims Tribunal awarded Rs.6,51,298/- as compensation in fatal accident case and fastened liability to satisfy the amount of compensation upon non-applicants No.2 and 3/owner and insurer of offending vehicle, they are being disposed of by this common judgment.

2. MAC No.226 of 2015 is filed by the Insurance Company challenging the liability fastened upon it to satisfy the amount of compensation on the ground of breach of policy conditions, whereas MAC No.1442 of 2015 is filed by the claimants seeking

enhancement of amount of compensation on different heads awarded by learned Claims Tribunal.

3. Facts relevant for disposal of these appeals, are that, on 22.07.2010, Kumbhkaran Ram was boarding Bus bearing No.OR-14/M/6012 (hereinafter referred to as 'offending vehicle') at Singibahar, while so, before he could board the offending vehicle, non-applicant No.1/driver of offending vehicle drove it rashly and negligently, due to which, Kumbhkaran Ram slipped and fell down. He came under the wheels of offending vehicle. In the aforementioned accident, Kumbhkaran Ram suffered grievous injuries over his legs and died during the course of treatment after eight days of accident.

4. Claimants who are father, widow and children of deceased filed an application under Sections 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before learned Claims Tribunal seeking compensation of Rs.25,60,000/- on different heads pleading therein that on the date of accident, deceased was working as Panchayat Karmi and earning Rs.6,000/- per month.

5. Non-applicant No.2 submitted reply to the claim application while denying the adverse pleadings made therein further pleaded that deceased was not travelling on offending vehicle, but he died on account of falling on road. On the date of accident, offending vehicle was insured with non-applicant

No.3, hence, liability, if any, to satisfy the amount of compensation would be upon non-applicant No.3.

6. Non-applicant No.3/Insurance Company submitted its separate reply, while denying the entire pleadings made therein, pleaded that driving licence of driver of offending vehicle is not readable. Insurance of offending vehicle was not in force, hence, Insurance Company be exonerated from the liability.

7. Upon appreciation of pleadings, evidence and material brought on record by respective parties, learned Claims Tribunal held that deceased Kumbhkaran Ram died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1; breach of policy conditions was not found to be proved and awarded Rs.6,51,298/- as total compensation on different heads.

8. Shri B.N. Nande, learned counsel for Insurance Company submits that learned Claims Tribunal erred in fastening the liability upon Insurance Company to satisfy the amount of compensation overlooking the fact that non-applicant No.1/driver of offending vehicle was not possessed with valid and effective driving licence. He was possessed with licence authorizing him to drive 'private service vehicle' whereas he was driving the vehicle of a class within 'passenger carrying commercial vehicle'. It is contended that learned Claims Tribunal further erred in not considering the permit placed on

record wherein no stoppage of a place where accident took place is mentioned in route permit. He submits that on aforementioned two grounds, there was breach of policy condition. Tribunal erred in overlooking both the facts.

9. Per contra, Shri Rishikant Mahobia, learned counsel for the claimants submits that submission made by learned counsel for the Insurance Company with regard to breach of policy conditions is not correct. He further submits that extract of driving licence is available on record as Ex.D/2 along with covering letter of Investigator of Insurance Company and as per extract of driving licence available on record, driver of offending vehicle was possessed with licence authorizing him to drive 'Light Motor Vehicle (Non-Transport), Transport/Medium/Heavy Motor Vehicle- Goods. Offending vehicle is registered as 'Private Service Vehicle-Bus'. It is pointed out that offending vehicle was running on the same route as mentioned in route permit (Ex.D/3). There was no breach of policy conditions. It is further contended that claimants have also preferred an appeal being MAC No.1442 of 2015 seeking enhancement of amount of compensation. Learned Claims Tribunal erred in assessing monthly income of deceased as Rs.2,700/- instead of Rs.6,000/- as pleaded in claim application. It is argued that Tribunal has not awarded any compensation towards future prospects and meagre sum of Rs.15,000/- has been awarded towards other conventional heads. Placing reliance on the

verdict of Hon'ble Supreme Court in **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121, National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130** submits that amount of compensation be suitably enhanced.

10. Opposing the submission made by learned counsel for the claimants seeking enhancement of amount of compensation, learned counsel for Insurance Company submits that amount of compensation calculated by learned Claims Tribunal is based on material and evidence available on record, which is just and proper and does not call for any interference.

11. We have heard learned counsel for the respective parties and perused the record carefully.

12. To appreciate the submission made by learned counsel for Insurance Company with regard to breach of policy conditions on the ground of licence, we have perused copy of extract of driving licence placed on record as Ex.D/2. Perusal of Ex.D/2 would show that driver of offending vehicle was possessed licence with endorsement as under :

> “LIGHT MOTOR VEHICLE NON TRANSPORT WEF 13/09/1964
>
> TRANSPORT VEHICLE M/HMV (REGID CHASSIS)-GOODS WEF 13/09/1978
>
> TRANSPORT VEHICLE REGID-M/HMV (REGID CHASSIS)-PRIVATE SERVICE

VEHICLE-BUS WEF 13/19/1978”

13. Perusal of aforementioned document (Ex.D/2) would show that driver of offending vehicle was having licence to drive 'Heavy Goods Vehicle and Private Service Vehicle-Bus'. Driver of offending vehicle was having licence authorizing him to drive same class of vehicle which he was driving i.e. Heavy Vehicle-Bus, hence, in view of ruling rendered by Hon'ble Supreme Court in **Mukund Dewangan v. Oriental Insurance Company Limited** reported in **(2017) 14 SCC 663**, submission made by learned counsel for Insurance Company that driver of offending vehicle was not possessed with valid and effective driving licence to drive offending vehicle is not sustainable and it is hereby repelled.

14. So far as the second submission made by learned counsel for Insurance Company with regard to permit, copy of permit is available on record as Ex.D/3 which is a permanent permit wherein timing of offending vehicle and its stoppage is mentioned. Perusal of pleadings and evidence brought on record by Insurance Company, it is not a case of Insurance Company that offending vehicle was travelling on the route which was not permitted in the permit (Ex.D/3), but it is a case that as per timing and stoppage given in Ex.D/3, no stoppage was given in Ex.D/3 of a place where accident occurred, hence, there is breach of policy condition. We find it difficult to accept the submission made by learned counsel for Insurance

Company that merely because accident took place at a place where there was no stoppage provided in permit, there will be breach of policy condition. From perusal of record and evidence, it is apparent that Insurance Company failed to prove that offending vehicle is running on the route other than the route permitted.

15. In view of aforementioned facts and evidence available on record, second submission made by learned counsel for Insurance Company that offending vehicle is being driven in breach of permit, hence, there was breach of policy condition is also not sustainable and it is hereby rejected.

16. One important thing which has been observed by learned Claims Tribunal in paragraph-13 of the award is that the Insurance Company has knowingly tried to hide the insurance policy issued by it for the period from 13.02.2010 to 12.02.2011.

17. For the foregoing reasons, we do not find any merit in the appeal (MAC No.226 of 2015) filed by Insurance Company, which is liable to be and is dismissed.

18. Now we will deal with MAC No.1442 of 2015 filed by claimants. The claimants have placed on record Ex.A/17 issued by Chief Executive Officer, Janpad Panchayat, Farsabahar to prove the income of deceased Kumbhkaran Ram wherein his income is mentioned as Rs.2,700/- per month. Learned Claims Tribunal

taking into consideration the documentary evidence placed on record by claimants themselves, accepted the same and assessed the income of deceased as Rs.2,700/- per month. Learned Claims Tribunal upon taking into consideration the income proved has calculated the amount of compensation without adding any amount towards future prospects.

19. The Hon'ble Supreme Court in case of **Pranay Sethi** (supra) considered the issue of award of future prospects and held thus:

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

20. In the case at hand, age of deceased is shown to be 32 years in postmortem report (Ex.A/15), as such, there shall be addition of 40% of established income towards future prospects. Number of dependents are seven, therefore, there will be deduction of $1/5^{th}$ towards personal and living expenses. Claims Tribunal correctly applied the multiplier of 16. Claims Tribunal awarded meagre sum of Rs.15,000/- only towards other conventional heads, which is to be enhanced as per ruling of Hon'ble Supreme Court in **Pranay Sethi** (supra) and **Nanu Ram alias**

Churhu Ram (supra).

21. For the aforementioned reasons and discussions, the amount of compensation awarded by learned Claims Tribunal requires re-consideration and re-computation, which is as under :

Income of the deceased is taken as Rs.2,700/- per month and Rs.32,400/- per annum as assessed by learned Claims Tribunal. By adding 40% of the income towards future prospects, the total annual income of deceased comes to Rs.45,360/- (32,400 x 40% = 12,960 and 32,400 + 12,960). After deducting 1/5th towards personal and living expenses, yearly loss of dependency of the claimants will come to Rs.36,288/- (45,360 / 5 = 9,072 and 45,360 – 9,072). By applying multiplier of 16 to yearly loss of dependency, amount of compensation towards loss of dependency will come to Rs.5,80,608/- (36,288 x 16). Apart from above, the claimants will be further entitled for a sum of Rs.40,000/- towards spousal consortium to the wife (payable to the spouse because of the death of partner), Rs.40,000/- towards parental consortium to the children (payable to children because of the death of father), Rs.40,000/- towards filial consortium to the father (payable to the parents because of the death of their children), Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. The claimants will be further entitled to Rs.10,000/- towards pain and suffering as deceased died after sometime from the date of accident during the course of treatment.

22. Now, the claimants are entitled for total compensation of Rs.7,40,608/- (5,80,608 + 40,000 + 40,000 + 40,000 + 15,000 + 15,000 + 10,000) instead of Rs.6,51,298/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

23. In the result :

(i) MAC No.226 of 2015 filed by Insurance Company is hereby dismissed.

(ii) MAC No.1442 of 2015 filed by the claimants is allowed in part and impugned award is modified to the extent as indicated herein-above.

Sd/-	Sd/-
(P. R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

Yogesh