NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 53 of 2014

1. Smt.Satyabhama Dave, W/o Late Vijay Kumar Dave, aged about 34 years.
2. Master Rahul Kumar Dave S/o Late Vijay Dave, aged about 9 years Minor through his natural guardian and mother Smt. Satyabhama Dave.
3. Master Aryan S/o Late Vijay Dave, aged about 4 years, Minor through his natural guardian and mother Smt. Satyabhama Dave
4. Smt. Savitri Devi, W/o Late Surendra Kumar Dave, aged about 61 years.

   All R/o Aghanpur, Tetarkhutipara, P.S. Jagdalpur & Tahsil Jagdalpur, Civil & Revenue District Bastar, District- Bastar (CG).

---- Appellants (Claimants)

Versus

1. Ratturam, S/o Shri Padmanath, aged about 30 years, R/o Sadakpara, Lamragura Chitrakot, P.S. Lauhandigura, Civil & Revenue Distt. Bastar, District- Bastar, C.G.
2. Sanpati Khambari S/o Ransingh, aged about 37 years, R/o Aghanpur, Jagdalpur, P.S. Jagdalpur, Civil & Revenue District Bastar, District Bastar (CG).
3. The Oriental Insurance Company Limited, Through Branch Manager, Near Hotel Lakshaman Avenue, Jagdalpur, District-Bastar, (C.G.)

---- Respondents

For Appellants	:	Mr. Manoj Paranjpe, Advocate
For Respondent No.1 & 2	:	None
For Respondent No.3	:	Mr. Pravin K Tulsiyan, Advocate

Hon'ble Shri PR Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

13/04/2021

1. Appellant-claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') feeling partially aggrieved by the award dated 5.10.2013

passed by the learned 1st Additional Motor Accident Claims Tribunal, Jagdalpur in Claim Case No.39/2013 thereby allowing application for grant of compensation in part and awarding Rs.15,30,464/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal, in brief, are that on 16.4.2009 when Vijay Kumar Dave was travelling on motorcycle bearing registration number CG17-K-4083, one truck bearing registration number CG17-H-0203 (for short 'the offending truck') dashed his motorcycle and thereafter the offending truck turned turtle. In the said accident, Vijay Kumar Dave suffered grievous injuries, he was taken to Maharani Hospital, Jagdalpur where he succumbed to injuries during the course of treatment.

3. Appellants-claimants filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.37,41,000/- pleading therein that on the date of accident, the deceased was 41 years of age, he was working as Patwari (government servant) and getting salary of Rs.12,900/- per month. Claimants were dependent on the income of the deceased.

4. Non-applicant No.1, driver offending truck, submitted his reply to claim application and denied the entire pleadings made therein. It was further pleaded that on the date of accident, non-applicant No.1-driver was possessed with valid & effective driving license and the offending truck was insured with non-

applicant No.3-Insurance Company.

5. Non-applicant No.2-owner of offending truck, submitted his reply to claim application, while denying the pleadings made in claim application it was pleaded that non-applicant No.1 was possessed with valid & effective driving license; the offending truck was insured with non-applicant No.3-Insurance Company and as such, liability if any for payment of amount of compensation would be upon non-applicant No.3.

6. Non-applicant No.3-Insurance Company also filed its reply to claim application denying the entire pleadings made therein. It was further pleaded that as there was head-on collusion between two vehicles, there was contributory negligence, therefore, the amount of compensation be calculated accordingly. Driver of both the vehicles involved in the accident were not having valid and effective driving license. Offending truck was not having valid fitness certificate, permit and registration; it was carrying passengers more than its seating capacity and it was plied in breach of policy conditions. Premium was paid for covering risk of driver, conductor and cleaner only. In these circumstances, the insurance company is not liable to indemnify the insured.

7. The Claims Tribunal upon appreciation of pleadings and evidence brought on record by respective parties held that the deceased died on account of accidental injuries suffered by him in a road accident occurred due to rash and negligent

driving of offending truck by its driver i.e. non-applicant No.1; there was breach of policy condition; accordingly awarded Rs.15,30,464/- as total compensation and while exonerating insurance company from its liability held non-applicant No.1 & 2, driver & owner of offending truck, liable to satisfy the amount of compensation.

8. Mr. Manoj Paranjpe, learned counsel for appellants submits that the Claims Tribunal erred in assessing monthly income of deceased as Rs.11,797/- only. The deceased was a government servant working as Patwari and getting monthly salary of Rs.12,900/-. Income of deceased was proved by producing salary register as Ex.P-1-C & Ex.P-2C and examining one Shri K.K. Khuntiya (AW-1), Assistant Grade-II of Tehsil Office, Jagdalpur. He submits that AW-1 has stated in detail about monthly salary and deductions from salary towards DPF, GIS & HRA, deductions shown ought to have been treated as income but the Claims Tribunal has reduced the amount deducted towards savings from the gross salary of the deceased and calculated the amount of compensation on net salary only. For the purpose of calculation of just compensation, income of a government servant is to be considered as gross salary minus taxes. It is further contended that the Claims Tribunal has not awarded any amount towards future prospects, whereas the claimants are entitled for addition of 30% of established income towards future prospects because at the time of accident the deceased

was 41 years of age and was in government employment. In support of this submission, he places his reliance on the decision of Hon'ble Supreme Court in the case of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680.** Learned Counsel further submits that the Claims Tribunal has awarded meagre amount of Rs.42,000/- in total under other conventional heads. Relying upon the decision of Hon'ble Supreme Court in case of **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130** he submits that in the given facts of case, the Claims Tribunal ought to have awarded total sum of Rs.1,50,000/- towards other conventional heads. Lastly he submits that the Insurance policy is not in dispute, the deceased was a third party, who was travelling on motorcycle; the insurance company has been exonerated from its liability considering that on the date of accident, there was no valid permit in favour of offending truck. He submits that even if there is breach of policy condition for want of valid permit and respondent No.3-Insurance Company is not liable to pay the amount of compensation, but considering the difficulties of claimants/appellants who have lost their sole breadwinner, a direction be issued to respondent No.3 to first deposit the entire amount of compensation and then to recover the same from driver & owner of offending truck in accordance with law. In support of this submission, learned counsel places his reliance on the ruling of Hon'ble Supreme Court in case of

Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others reported in **(2018) 7 SCC 558.**

9. Mr. Praveen K Tulsiyaan, learned counsel appearing for respondent No.3-Insurance Company submits that the Claims Tribunal has awarded just amount of compensation after considering income of deceased as proved. He further points out that the Claims Tribunal has rightly exonerated insurance company from its liability as on the date of accident, the offending truck was not having valid permit. For plying a commercial / transport vehicle, valid permit is necessary as provided under Section 66 of the Act of 1988. As the Claims Tribunal has arrived at a categorical conclusion that on the date of accident, the offending truck was not having valid permit, the Claims Tribunal is justified in exonerating insurance company from its liability. He further submits that interest on the amount of compensation may be awarded from the date on which respondent No.3 has been impleaded as party respondent in this appeal. He submits that initially respondent No.3 has not been impleaded as party respondent and it has been impleaded by way of amendment vide order dated 14.3.2020.

10. There is no representation on behalf of respondents No.1 & 2.

11. Mr. Paranjpe, learned counsel for appellants submits that in compliance of the order dated 24.11.2020 passed by this

Court, the appellants have paid the process fee for issuance of notice to respondent No.2 by speed post as well as by way of substituted mode of service i.e. paper publication, and accordingly the notice got published in Hindi newspaper 'Highway Channel' dated 21.2.2021. Hence, service upon respondent No.2, owner of offending truck, is complete.

12. We have heard learned counsel for the parties and perused the record of the Claims Tribunal.

13. Respondent No.2-owner of offending truck, has not challenged the impugned award whereby the Claims Tribunal has held that there was breach of policy condition for want of valid permit of offending vehicle on the date of accident. This appeal is preferred by claimants/appellants seeking enhancement of amount of compensation. Insurance Policy and covering of risk of deceased being a third party is not in dispute. Learned counsel for appellants has pressed the grounds with regard to determination of income of deceased on lower side; not awarding any amount towards future prospects; award of lesser amount of compensation under other conventional heads. He also prays for a direction to respondent No.3- Insurance Company to first deposit the entire amount of compensation and thereafter to recover the same from respondent No.2.

14. So far as first ground raised by learned counsel for appellant with regard to fixation of monthly income of deceased by the

Claims Tribunal is concerned, the claimants in their claim application has pleaded income of deceased as Rs.12,900/- per month. They have produced copy of salary register as Ex.P-2C in which name of deceased Vijay Kumar Dave finds place at Sr. No.98 and his designation has been shown to be Patwari. To prove salary register, the claimants have examined one K.K. Khuntiya, Assistant Grade-II, Tahsil Office, Jagdalpur as AW-1. This witness has specifically stated in his statement that deceased was getting salary of Rs.12,902/- per month under different heads. He also stated about deductions of Rs.1105/- towards DPF, GIS & HRA from the salary of deceased. Considering the evidence placed on record by the claimants, the Claims Tribunal has reckoned income of deceased as Rs.11,797/- after deducting deductions from gross income of deceased. Deductions have been shown only towards DPF, GIS & HRA. Deductions towards DPF & GIS are made as savings of the deceased for which he was entitled for after his retirement or on any unfortunate happening. Hence, amount deducted under aforementioned two heads cannot be deducted from the income of deceased for the purpose of calculating total amount of compensation as the same are income of the deceased. Deduction towards HRA also cannot be reduced from the salary of deceased as the same is towards benefit of family members. Issue with regard to deductions from salary of deceased has been considered by Hon'ble Supreme Court in **Vimal Kanwar vs. Kishore Dan** reported in **(2013) 7 SCC 476**.

15. In view of above rulings of Hon'ble Supreme Court and considering the facts of the case, we are of the considered view that the gross salary of the deceased, as shown in salary slip, after deducting taxes is to be taken for the purpose of calculation of just compensation. As per income tax slab rate prevailing in the financial year 2009-10, income upto Rs.1,60,000/- is exempted from tax and income tax @ 10% is chargeable on the income exceeding Rs.1,60,000/- upto Rs.3,00,000/-.

16. The Claims Tribunal overlooking the fact that on the date of accident, deceased was 41 years of age and was in government job, has not added any amount towards future prospects and thereby committed mistake. Hon'ble Supreme Court in case of Pranay Sethi (supra) while dealing with the issue of grant of future prospects has held thus:

> "59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."

17. In view of above law laid down by Hon'ble Supreme Court and the fact that on the date of accident, deceased was 41 years of age and was in government job, the claimants/appellants

are entitled for an additional amount of 30% of established income of the deceased as future prospects. It is ordered accordingly.

18. Appellants-claimants are widow, children and mother of deceased. Award of compensation under other conventional heads has been dealt by Hon'ble Supreme Court in case of Pranay Sethi (supra) and it was held that there shall be compensation for loss of consortium, loss of estate and funeral expenses. Amount of compensation has also been quantified as Rs.40,000/-, Rs.15,000/- & Rs.15,000/- respectively. Award of compensation under the head of loss of consortium has further been clarified by Hon'ble Supreme Court in case of **Nanu Ram (supra)** and it was held that there shall be three types of consortium i.e. spousal consortium, parental consortium & filial consortium. In case at hand, the Claims Tribunal has not awarded just amount of compensation under other conventional heads, as held by Hon'ble Supreme Court in cases of **Pranay Sethi (supra)** & **Nanu Ram (supra).**

19. For the foregoing reasons, this Court proposes to recalculate and recompute the amount of compensation payable to appellants-claimants.

20. Accordingly, income of the deceased is taken as Rs.12,902/- and yearly income as Rs.1,54,824/-, as held above. Since at the time of accident, age of the deceased was between 40 to 50 years and was in permanent employment, in view of law

laid down in the matter of **Pranay Sethi** (supra), the income of deceased is required to be increased by 30% towards future prospects, which comes to Rs.16,773/- (12902+3871). Accordingly, annual income of deceased for the purpose of calculating compensation comes to Rs.2,01,276/- (16773 x 12). Income upto Rs.1,60,000/- is exempted from income tax, hence taxable income of deceased will be Rs.41,276/- (201276-160000). Income tax at the rate of 10% is payable on taxable income i.e. on Rs.41,276/-. After deducting income tax of Rs.4127-60 paise, which is rounded off to Rs.4128/-, net income of the deceased comes to Rs.1,97,148/-. Out of this amount, one-fourth is to be deducted towards personal & living expenses of the deceased, as deducted by the Claims Tribunal, and after deducting one-fourth, annual loss of dependency would come to Rs.1,47,861/- (197148-49287). By applying multiplier of 14, as applied by the Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.20,70,054/- (147861x14). Besides this, as per rulings of Hon'ble Supreme Court in the matters of **Nanu Ram (supra)** & **Pranay Sethi (supra),** claimants/appellant No.1 is entitled for Rs.40,000/- towards spousal consortium, appellant Nos.2 & 3 are entitled for Rs.40,000/- towards parental consortium and appellant No.4 is entitled for Rs.40,000/- towards filial consortium. The appellants-claimants are further entitled for Rs.15,000/- towards loss of estate; Rs.15,000/- for funeral expenses and Rs.2,000/- towards damage to motorcycle. Now the appellants-claimants are entitled for total amount of compensation of Rs.22,22,054/- instead of Rs.15,30,464/- as awarded by the Claims Tribunal. The submission of learned counsel for respondent No.3 that interest to be awarded from the date of impleadment of insurance company in appeal is not sustainable because in claim case respondent No.3 is non-applicant, after passing of award against respondent Nos.1 & 2, appellants have filed appeal diligently. Due to some mistake, Insurance Company could not be impleaded as respondent in memo of appeal. Even otherwise liability to pay compensation is upon respondent No.1 & 2. Hence, the amount of compensation shall carry simple interest @ 6% p.a. from the date of filing of application till actual realization. Other conditions as imposed by the Claims Tribunal shall remain intact.

21. Now we shall proceed to deal with the submission made by learned counsel for appellants with regard to issuance of direction to respondent No.3-Insurance Company to first deposit the entire amount of compensation and thereafter to recover it from the driver and owner of offending truck. In Paragraph -21 of the award the Claims Tribunal has held that on the date of accident, offending truck was not having valid permit, accordingly decided Issue No.3 and exonerated the insurance company from its liability. There is no dispute on the fact that absence of permit is an infraction. Deceased was a third party and application for grant of compensation is filed under the Act of 1988, which is a beneficial piece of

legislation. Issue with regard to breach of policy condition in absence of permit and direction issued to insurance company to first deposit entire amount of compensation and thereafter to recover the same has been considered by Hon'ble Supreme Court in **Amrit Paul's case (supra)** and held thus:-

> “24.In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. 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 Swaran Singh (supra) and Lakhmi Chand (supra) 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."

22. Considering the above ruling of Hon'ble Supreme Court in case of Amrit Paul (supra), the object of the Act of 1988 and the fact that deceased was a third party, in the larger interest of justice, we find it appropriate to direct respondent No.3-Insurance Company to first deposit the entire amount of compensation along with interest and thereafter to recover it from respondent No.1 & 2 i.e. driver & owner of offending truck, in accordance with law.

23. In the result, the appeal is allowed in part and the impugned award is modified to the extent indicated above.

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

roshan/-