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HIGH COURT OF CHHATTISGARH BILASPUR
MAC No. 83 of 2015

Pramod Kumar S/o Bholaram Yadav, Aged 25 Years, Occupation Vehicle Owner, R/o Turipara (Daradipa), Tahsil and District Raigarh (C.G.),

---- Appellant

Versus

1. Smt. Kiran W/o Ramdayal Nishad, Age 30 Years, Occupation-labour,
2. Minor Ayush S/o Ramdayal, Age 10 Years,
3. Minor Rishikesh S/o Ramdayal, Age 11/2 Years,
   2 & 3 through natural guardian Mother Smt. Kiran, W/o Ramdayal Nishad All of R/o Turipara, Chandmari, Raigarh, Tahsil & District Raigarh (C.G.),
4. Bantu @ Pawan Kumar S/o Bholaram Thethwar, Age 29 Years, Occupation Driver, R/o Turipara, Chandmari, District Raigarh (C.G.),
5. The Oriental Insurance Company Limited Through Divisional Manager, The Oriental Insurance Company Ltd., Branch Office, Sunday Market, Raigarh, Tahsil and District Raigarh (C.G.).

---- Respondents

MAC No. 96 of 2015

The Oriental Insurance Company Limited, Through its Divisional Manager, Divisional Office, Ist Floor, Rama Trade Centre Near Bus Stand, Bilaspur, Civil and Revenue District Bilaspur (C.G.) PIN- 495001,

---- Appellant

Versus

1. Smt. Kiran W/o Ramdayal Nishad, Aged About 30 Years, Occupation Labour;
2. Aayush S/o Ramdayal, aged 10 years,
3. Rishikesh S/o Ramdayal, aged about 1½ years
   Note: Respondents No. 2 and 3 are minor and represented through their natural guardian and mother Respondent No.1 Smt. Kiran, Wd/o Ramdayal.
   All are R/o Turipara, Chandmari, Raigarh, Tahsil and District Raigrh (C.G.),
4. Bantu @ Pawan Kumar S/o Bholaram Thethwar, Aged About 29 Years, Occupation Driver, R/o Turipara Chandmari Raigarh, Tahsil and District Raigarh C.G.
5. Pramod Kumar S/o Bholaram Yadav, Aged About 25 Years, Occupation Vehicle Owner, R/o Turipara (Darradipa) Tahsil and District Raigarh (C.G.).

---- Respondents

MAC No.83 of 2015

For Appellant	: Shri Amit Kumar Sharma, Advocate
For Respondents No.1 to 3	: Shri Vineet Kumar Pandey, Advocate
For Respondent No.4	: None
For Respondent No.5	: Shri Ratan Pusty, Advocate

MAC No.96 of 2015

For Appellant	: Shri Ratan Pusty, Advocate
For Respondents No.1 to 3	: Shri Vineet Kumar Pandey, Advocate
For Respondent No.4	: None
For Respondent No.5	: Shri Amit Kumar Sharma, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, Judge

11.01.2021

1. As both these appeals are arising out of common award dated 24.11.2014 passed by the Motor Accident Claims Tribunal, Raigarh, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.73 of 2013, hence, they are being disposed of by this common judgment.

2. MAC No.83 of 2015 is filed by the owner of offending vehicle challenging the liability fastened upon him while exonerating Insurance Company on the ground of licence. MAC No.96 of 2015 has been filed by the Insurance Company challenging the direction of pay and recover issued against it as also the quantum of compensation.

3. Facts relevant for disposal of these appeals, are that, on 23.02.2013, at about 3.00 P.M., Ramdayal Nishad was returning to his house after purchasing articles from grocery shop. When he reached near his house, non-applicant No.1 suddenly reversed back the Bolero Pickup vehicle bearing No.C.G.-13/L/4660 (hereinafter referred to as 'offending vehicle') and dashed Ramdayal Nishad. In the said accident, Ramdayal Nishad suffered grievous injuries over his person, he was taken to K.G. Hospital and thereafter, O.P. Jindal Hospital. During the course of treatment, he died on 15.03.2013.

4. Claimants who are widow and minor children of deceased Ramdayal Nishad filed an application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') pleading therein that on the date of accident, deceased was able-bodied person, aged about 34 years, working as wall-putty labourer, earning Rs.12,000/- per month (Rs.400/- per day) and claimed Rs.35,28,000/- as compensation on different heads.

5. Non-applicants No.1 and 2, who are driver and owner of offending vehicle submitted reply to claim application and denied the pleadings made therein as well as fact of accident with the offending vehicle. They have pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3/Insurance Company, therefore, liability, if any, to satisfy the amount of compensation would be upon the Insurance Company.

6. Non-applicant No.3/Insurance Company submitted reply to claim application and denied the pleadings made therein. The fact of accident was also denied. It was pleaded that on the date of accident, non-applicant No.1 was not possessed with valid and effective driving licence, offending vehicle was a 'Goods Carriage Vehicle', whereas non-applicant No.1 was possessed with licence authorizing him to drive 'Light Motor Vehicle', as such, there was breach of policy conditions.

7. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal arrived at a finding that Ramdayal Nishad died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1, non-applicant No.1 was not possessed with valid and effective driving licence, there was breach of policy condition, exonerated the Insurance Company from its liability and issued a direction of pay and recover to non-applicant No.3.

8. Shri Amit Kumar Sharma, learned counsel for the owner of offending vehicle submits that learned Claims Tribunal erred in arriving at a finding that there was breach of policy conditions. He further submits that learned Claims Tribunal has not considered the entire material and evidence available on record as well as definition of 'Light Motor Vehicle' as envisaged under Section 2(21) of the M.V. Act. It is contended that undisputedly, vehicle involved is a 'Goods Carriage Vehicle' and insurance policy (Ex.NA-1) is issued as 'GCCV-Public Carriers' showing gross vehicle weight of offending vehicle as 2880 Kgs. It is further contended that in view of ruling rendered by Hon'ble Supreme Court in case of **Mukund Dewangan v. Oriental Insurance Company Limited** reported in **(2017) 14 SCC 663**, on the date of accident, non-applicant No.1 was possessed with valid and effective driving licence, hence, the finding with regard to breach of policy conditions is not sustainable.

9. Per contra, Shri Ratan Pusty, learned counsel for the Insurance Company while opposing the submissions made by Shri Amit Kumar Sharma, learned counsel for owner of offending vehicle, submits that offending vehicle is a Transport vehicle as it is being insured as 'Goods Carriage Vehicle', hence, person driving the 'Goods Carriage Vehicle' should possess driving licence having endorsement to drive 'Transport Vehicle'. The ruling of **Mukund Dewangan** (supra) relied upon by learned counsel for the owner is doubted and has been referred to Larger Bench, which is pending consideration, hence, no benefit of said ruling can be extended to the owner of offending vehicle. It is contended that in absence of any valid and effective driving licence, learned Claims Tribunal ought not to have issued direction of pay and recover. It is further contended that claimants have not placed on record any admissible piece of evidence to prove the income of deceased as Rs.400/- per day as pleaded in claim application, but for oral evidence of Kiran Nishad (AW-1) and Deepak Yadav (AW-2), who is said to be co-worker of deceased. It is lastly contended that in absence of any evidence to prove the income and nature of occupation of deceased, learned Claims Tribunal ought to have assessed the income on notional basis.

10. Shri Vineet Kumar Pandey, learned counsel for the claimants submits that deceased was doing the work of wall-putty, which is work of a skilled work. To prove the income pleaded in the claim application, claimants have examined Deepak Yadav (AW-2), who is a co-worker of deceased and suggestion given to this witness in cross-examination that they were not being paid wages of Rs.400/- per day was denied. He further submits that looking to the nature of work, claimants were not in position to place on record any document or any other evidence. Tribunal was justified in accepting the income as pleaded and stated in evidence by the witness taking into consideration the date of accident i.e. 23.02.2013.

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

12. We shall first deal with the appeal filed by the owner of offending vehicle i.e. MAC No.83 of 2015.

13. To appreciate the submission made by learned counsel for owner of offending vehicle, we have minutely perused the record of claim case. Perusal of copy of insurance policy (Ex.NA-1) would show that it is insurance certificate-cum-policy schedule issued for 'GCCV-Public Carriers other than three wheelers and it is a

Package Policy-Zone C. In the column of particulars of insured vehicle, gross vehicle weight of vehicle insured is shown as 2880 Kgs. Definition of 'Light Motor Vehicle' as envisaged under Section 2(21) of the M.V. Act, which is extracted below for ready reference:

> "**2. Definitions.-**In this Act, unless the context otherwise requires,-
>
> x x xx xx
>
> (21) "Light Motor Vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed [7,500] kilograms;"

14. In the case at hand, gross vehicle weight of offending vehicle is less than 7500 Kgs., hence, offending vehicle will come within the definition of 'Light Motor Vehicle'. Extract of licence is placed on record as Ex.NA-2. It was issued for 'MCWG and LMV' on 16.11.2011 to 15.11.2031. The accident took place on 23.02.2013. Undisputedly, on that day, driver of offending vehicle was possessed with driving licence authorizing him to driver 'Motorcycle with Gear and Light Motor Vehicle'.

15. The issue with respect to persons having a licence authorizing to drive 'Light Motor Vehicle' on the date of accident found driving the 'Light Goods Vehicle' but of the same category, has been considered by the Hon'ble Supreme Court in case of **Mukund**

Dewangan (supra) and held as under :

> “59. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28-03-2001. Any other interpretation would be repugnant to the definition of “light motor vehicle” in Section 2(21) and the provisions of Section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of ‘light motor vehicles’ and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act ‘Transport Vehicle’ would

include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in Section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed.

60. Thus we answer the questions which are referred to us thus:

60.1. ''Light motor vehicle'' as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54 of 1994.

60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28-03-2001 in the form.

60.3. The effect of the amendment made by virtue of Act No.54 of 1994 w.e.f. 14-11-1994 while substituting clauses (e) to (h) of Section 10(2) which contained “medium goods vehicle” in Section 10(2)(e), “medium passenger motor vehicle” in Section 10(2)(f), “heavy goods vehicle” in Section 10(2)(g) and “heavy passenger motor vehicle” in Section 10(2)(h), with expression “transport vehicle” as substituted in Section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of Section 10(2)(d) and Section 2(41) of the Act i.e. light motor vehicle.

60.4. The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of “light motor vehicle”

> continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect."

16. In view of aforementioned ruling of Hon'ble Supreme Court, the person holding licence to drive 'Light Motor Vehicle' can also drive 'Light Goods Vehicle'.

17. So far as the submission made by learned counsel for the Insurance Company that case of **Mukund Dewangan** (supra) has been referred to Larger Bench in case of **Bajaj Alliance (*sic* Allianz) General Insurance Company Limited v. Rambha Devi and Others** reported in **(2019) 12 SCC 816**, which is pending consideration. Again, ruling of **Mukund Dewangan** (supra) was considered by Hon'ble Supreme Court in case of **M.S. Bhati v. National Insurance Company Limited** reported in **(2019) 12 SCC 248**, in which, Hon'ble Supreme Court while taking note of the case of **Rambha Devi** (supra) has held thus :

> "11. The law which has been laid down by a three-Judge Bench of this Court in ***Mukund Dewangan*** (supra) binds this Court. As a matter of judicial discipline, we are duty-bound to follow that decision which continues to hold

the field."

18. In view of aforementioned legal position as on date, we accept the submission of learned counsel for the owner of offending vehicle that learned Claims Tribunal erred in arriving at a finding that non-applicant No.1/driver of offending vehicle was not possessed with valid and effective driving licence. The said finding is not sustainable in the eyes of law and is hereby set aside. Owner of offending vehicle is exonerated from the liability fastened upon him and now, the liability to satisfy the amount of compensation is upon the Insurance Company.

19. Now, we will deal with the grounds raised by learned counsel for the Insurance Company in MAC No.96 of 2015.

20. The first ground raised by learned counsel for the Insurance Company with regard to direction of pay and recover is not sustainable in view of the discussions made in preceding paragraphs.

21. So far as the second ground raised by learned counsel for the Insurance Company with regard to quantum of compensation and income of deceased as assessed by learned Claims Tribunal is concerned, claimants except pleadings and oral evidence of claimant No.1-Kiran Nishad (AW-1) and Deepak Yadav (AW-2), who is said to be co-worker of deceased, no other evidence has been brought on record to prove the income of deceased. Deepak Yadav (AW-2) in his evidence stated that deceased was not himself taking any work of wall-putty on contract, but they were working under one Contractor, by name, Guddu. He further stated that all particulars and account of dates of work and payments are maintained by the Contractor in his register. The Contractor under whom deceased was working was not examined as witness before learned Claims Tribunal. Claimants could have proved the income by examining the Contractor under whom deceased was working, but somehow, they failed.

22. In absence of any admissible piece of evidence, income as pleaded by claimants based on oral evidence only cannot be accepted as gospel truth in the facts of the case. But the income of deceased is to be calculated on notional basis keeping in mind nature of occupation/work, date of accident, cost of living, price index and wage structure prevailing in the State/District. In the facts and circumstances of the case, we find it appropriate to assess the income of deceased as Rs.6,000/- per month on notional basis.

23. As this Court is considering quantum of compensation awarded to the claimants, it is the duty of this Court also to see that just amount of compensation is awarded to claimants, for which, amount of compensation to be awarded to claimants requires re-consideration and re-computation in the light of rulings rendered by Hon'ble Supreme Court in case of **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**, which is as under :

The monthly income of deceased is assessed as Rs.6,000/- per month and Rs.72,000/- per annum. On the date of accident, deceased was shown to be 34 years of age, therefore, in view of law laid down by Hon'ble Supreme Court in **Pranay Sethi** (supra), there will be an addition of 40% of established income towards future prospects, which makes the total annual income of deceased as Rs.1,00,800/- (72,000 x 40% = 28,800 and 72,000 + 28,800). After deducting 1/3rd towards his personal and living expenses of the deceased, yearly loss of dependency of claimants will come to Rs.67,200/- (1,00,800 / 3 = 33,600 and 1,00,800 – 33,600). There shall be application of multiplier of 16 as held by Hon'ble Supreme Court in case of **Sarla Verma (Smt.)** (supra), which makes the total loss of dependency as Rs.10,75,200/- (67,200 x 16).

Apart from above amount of loss of dependency, claimants will be further entitled to 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.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

24. Total compensation for which the claimants were entitled comes to Rs.11,85,200/- (10,75,200 + 40,000 + 40,000 + 15,000 + 15,000). As the claimants have not preferred any appeal for enhancement of the amount of compensation and this Court recomputed and recalculated the amount of compensation in an appeal of Insurance Company challenging the quantum, we are not inclined to enhance the amount of compensation awarded by the Tribunal. For the foregoing reasons, the second ground raised by the Insurance Company is also not sustainable and is hereby repelled. The claimants are entitled for the amount of compensation as awarded by the Tribunal.

25. In the result, MAC No.83 of 2015 is allowed and impugned award is modified to the extent as indicated herein-above. MAC No.96 of 2015 filed by Insurance Company is dismissed.

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

Yogesh