NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 87 of 2015

{Arising out of award dated 30.09.2014 passed by learned Additional Motor Accident Claims Tribunal,South Bastar, Dantewada in Claim Case No. 452 of 2014}

1. Kudiyam Mangali, Wd/o. Lt Kudiyam Ayatu, aged about 38 years;
2. Miss Sukmati, D/o. Late Kudiyam Ayatu, aged about 20 years;
3. Miss Soni, D/o. Late Kudiyam Ayatu, aged about 18 years;
4. Miss Narasi, D/o. Late Kudiyam Ayatu, aged about 16 years;
5. Master Kudiyam Mahesh, S/o. Late Kudiyam Ayatu, aged about 12 years;
6. Miss Pushpa, D/o. Late Kudiyam Ayatu, aged about 07 years;
7. Kudiyam Dhani (deleted)
8. Mastar Rinku, S/o. Late Kudiyam Ayatu, aged about 02 years;

Appellant's No. 4 to 8 are minor through their natural guardian mother Smt. Kudiyam Mangali (Appellant No. 1)

All are Residence of Village Pindumpal Post Gudma P.S. Kutaru, District Bijapur (C.G.)

----Appellants/Claimants

Versus

1. Virendra Uppal @ Chhotu, S/o. Harishankar, aged about 24 years, Residence of Village Rajapara Naimed, P.S. Jangla, Tahsil and District Bijapur (C.G.) (Driver)
2. Pramod Kumar Patel, S/o. S.L. Rathi, Residence of Village Naimed, P.S. Jangla, District Bijapur (C.G.) (Owner)
3. The Oriental Insurance Co. Ltd. Sadar Bazar, Main Road, Jagdalpur, District Bastar (C.G.)

---- Respondents/Non-claimants

MAC No. 234 of 2015

Oriental Insurance Company Ltd., Through – Divisional Manager, Sadar Bazar, Main Road, Jagdalpur- (C.G.)

---- Appellant/Insurer

Versus

1. Kudiyam Mangali, aged about 38 years, W/o. Lt Kudiyam Ayatu,
2. Ku. Sukmati, aged about 20 years, D/o. Late Kudiyam Ayatu;
3. Ku. Soni, Age About 18 years, D/o. Late Kudiyam Ayatu;
4. Ku. Narasi, Age about 16 years, D/o. Late Kudiyam Ayatu;
5. Kudiyam Mahesh, Aged about 12 years, S/o. Late Kudiyam Ayatu;
6. Ku. Pushpa, Age about 7 years, D/o. Late Kudiyam Ayatu ;
7. Kudiyam Dhani (deleted)
8. Kudiyam Rinku, Aged about 2 years, S/o. Late Kudiyam Ayatu,

All R/o Village – Pindumpal, Post – Gudma, P.S. - Kutru, District – Bijapur- (C.G.)

Respondents No. 4 to 8 are minor through natural guardian mother Kudiyam Mangli (Respondent No. 1){***Claimants No. 1 to 8***}

9. Virendra Uppal @ Chhotu, S/o Harishankar, Age 24 years, R/o Rajapara Naimerh, P.S. - Jangla, Tahsil & District – Bijapur- (C.G.) ***{Driver}***

10. Pramod Kumar Patel, S/o S.L. Rathi, R/o Naimerh, P.S. - Jangla, District – Bijapur- (C.G.) ***{Owner}***

---- Respondents

For Appellants/Claimants	:	Mr. Praveen Dhurandhar, Advocate.
For Respondents No. 1 & 2/ Driver & Owner	:	Mr. A.L. Singroul, Advocate
For Respondent No. 3/Insurer	:	Mr.i Raj Awasthi, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice N.K. Chandravanshi, Judge

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

07.05.2021

1. The issue projected in both the appeals are closely interlinked and are arising out of the same accident. MAC No. 87 of 2015 has been preferred by the Claimants seeking for enhancement of the compensation awarded by the Claims Tribunal whereas MAC No. 234 of 2015 has been filed by the Insurance Company to the extent, they are aggrieved with the award.

2. We heard Shri Praveen Dhurandhar, the learned counsel appearing for the Claimants, Shri A.L.Singroul, the learned counsel appearing for the Respondents/Driver and Owner, and Shri Raj Awasthi, the learned counsel appearing for the Insurance Company.

3. The sequence of events reveals that on the ill fated day, the deceased was riding a bi-cycle. While so, he was knocked down to death by the offending Jeep bearing registration No. C.G.-18/T-0126 driven by 1st respondent, owned by 2nd respondent and insured by 3rd respondent. This was sought to be compensated by filing a claim petition by the widow and the children. The claim was resisted mainly on quantum and negligence. The Insurance Company also put up a claim to the effect that the offending vehicle was being driven by 1st respondent without having a valid driving licence insofar as driver was not authorized to drive a transport vehicle.

4. After analyzing the pleadings and evidence on record, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the driver of the offending vehicle .

5. Coming to the fixation of quantum of compensation payable, the Tribunal reckoned the notional income of Rs.3,000/- per month and taking a multiplier

of 15 in view of the age of the deceased as 'above 40 years' and after deducting 1/3rd towards the personal expenses, the loss of dependency was worked out as Rs. 3,60,000/-. Awarding a further sum of Rs.5,000/- towards funeral expenses and another sum of Rs.20,000/- towards the love and affection, pain and suffering and loss of consortium, the total compensation was fixed as Rs.3,85,000/- which was directed to be satisfied with interest @ 7.5 % per annum also ordering penal interest @ 9% per annum, if the direction was not complied with on the time. The Claimants contend that the compensation awarded by the Tribunal is inadequate in all respects and hence the appeal preferred from their side.

6. The Insurer, as mentioned already, is aggrieved of the fact that there is clear violation of the statutory/policy condition insofar as there was no valid diving licence to drive a transport vehicle and that there is no power for the Tribunal to have ordered payment of penal interest which forms the subject matter of challenge in the appeal preferred by them.

7. It is true that the accident had occurred way back on 10.08.2009. Even though the Claimants had not adduced any specific evidence regarding the monthly income of the deceased, it cannot be lost sight of that the deceased, aged about 40 years was maintaining a family consisting of his wife and seven children. Considering the cost of living index, we are of the view that the notional income of Rs. 3,000/- per month fixed by the Tribunal is quite on a lower side and we find it appropriate to have it enhanced to Rs.4,000/- per month for re-computation of compensation.

8. Another aspect to be looked into is that the Tribunal has not reckoned any amount towards future prospects which shall be by way of an addition of 25% in the case of the persons above 40 years with no fixed income as held by the Apex Court in the matter of ***Sarla Verma v. Delhi Transportation Corporation***

reported in **(2009) 6 SCC 121** and affirmed by the Constitution Bench in ***National Insurance Company Limited v. Pranay Sethi & Others*** reported in **(2017) 16 SCC 680.** Enhancement is necessary under this head as well. As such, the multiplicand to be considered becomes Rs.4,000+(4000x25/100)= Rs.5,000/- per month.

9. The deduction towards the personal expenses reckoned by the Tribunal is to an extent of 1/3rd. It is settled law that in case of persons where the dependents are 4 to 6, deduction shall be only 1/4th and in the case of dependents above 6, it shall be 1/5th. Taking note of the number of claimants as 8, the appropriate extent of deduction could only have been 1/5th. We re-fix the same accordingly. There is no dispute with regard to the multiplier. In the said circumstance, on recomputing of figures as to the loss of dependency, it comes to Rs. 5000X12X4/5X15= Rs.7,20,000/-. Since the Tribunal has awarded only a sum of Rs.3,60,000/- towards loss of dependency, a balance sum of **Rs.3,60,000** is to be awarded to the claimants. It is awarded accordingly.

10. The amount awarded by the Tribunal towards the 'funeral expenses' is only a paltry sum of Rs.5,000. By virtue of the law declared by the Supreme Court in ***Sarla Verma*** (supra), it should be 15,000/-, as such a balance amount of **Rs.10,000/-** is payable under this head. Similarly, a sum of Rs.15,000 is payable towards the 'loss of estate'. Since nothing has been awarded by the Tribunal under this head, we award a sum of **Rs. 15,000/-** to the Appellants under this head. With regard to payment of compensation for consortium, the amount has been quantified as Rs.40,000/- payable to the spouse in the judgment of the Apex Court referred to the Constitution Bench.

11. The concept of 'consortium' has been further explained by the Apex Court in ***Magma General Insurance Company Limited vs Nanu Ram Alias Chuhru Ram & Others*** reported in **(2018) 18 SCC 130**. It can be of three types;

Parental consortium (payable to children because of the death of parents); **Spousal consortium** (payable to the spouse because of the death of the partner) and **Filial consortium** (payable to the parents because of the death of children).

12. In the instant case, since the Tribunal has awarded only Rs.20,000/-, we are of the view that a balance sum of **Rs.20,000/-** was payable to the widow of the deceased under the head 'spousal consortium'. It is awarded accordingly. The children, who are the Appellants No. 2 to 6 and 8 are entitled to get the 'Parental consortium' to an extent of **Rs. 40,000/-** which also stands awarded. Accordingly, the total additional compensation comes to **Rs. 4,45,000/-** (Four lakh forty five thousand). This shall carry interest at the rate of 7.5% per annum as awarded by the Tribunal from the date of application till its satisfaction. We set aside the direction given by the Tribunal directing payment of penal interest at the rate of 9% fixing the same upon the shoulders of the Insurance Company.

13. With regard to the contention of the Insurance Company who is the Appellant in MAC No. 234/2015 as to the alleged violation of statutory/policy condition with regard to non possession of the driving licence authorizing to drive transport vehicle, the position has been considered in detail by the Apex Court with reference to the nature of the vehicle concerned. Here, the offending vehicle is a Jeep which is a light motor vehicle as defined under Section 2(21) of the Motor Vehicles Act, 1988. As per the definition of the term 'light motor vehicle' under Section 2(21) of the Act, 1988 and the scope of authorization to drive a transport vehicle to be a valid driving licence was considered by the Apex Court in ***Mukund Dewangan v. Oriental Insurance Company Ltd.***; {(2017) 14 SCC 663. The Apex Court held that, insofar as the LMV is concerned, it is open for any person to drive the said vehicle if he is having a licence to drive an LMV,

without any separate authorization to drive a Transport Vehicle.

14. We are aware that the above decision was doubted by a subsequent Bench of the Apex Court in ***Bajaj Allianz General Insurance Company Limited v. Rambha Devi & Others***; {(2019) 12 SCC 816}, observing that many vital provisions in the Act as well as in the Rules which denotes the necessity to have an authorization to drive a Transport Vehicle (especially having obtained training in driving for a stipulated time) were omitted to be brought to the notice of the Apex Court while rendering their decision in ***Mukund Dewangan*** (supra). However, the fact remains that the reference is still to be answered and in the said circumstance, the Apex Court itself, as per the decision in ***M.S.Bhati v. National Insurance Company Limited,*** {(2019) 12 SCC 248}, has sought to apply the law in ***Mukund Dewangan*** (supra) in the given context and the position continues.

15. Since the existence of a valid insurance policy is admitted, we direct the Insurer of the offending vehicle to deposit the amount due with intimation to the Claimants before the Tribunal as expeditiously as possible at any rate within two months from the date of receipt of a copy of this judgment.

16. Both the appeals stand disposed of as above.

Sd/-	Sd/-
(P. R. Ramachandra Menon)	**(N.K.Chandravanshi)**
Chief Justice	**Judge**

Dubey