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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A(C) No.744 of 2015

National Insurance Company Ltd. Through - Branch Manager, Iind Floor, Mohin Mahal, Sahid Samarak, Infront Of Sahid Smarak Vehicle, G.E. Road Raipur District Raipur Chhattisgarh(insurer of the Truck No.CG-12S-1812)

---- Appellant

Versus

1. Fagu Ram Sahu, S/o Dhelau Ram Sahu Aged About 55 Years R/o Village Belaudi Kala, P.S. And Tahsil Berla, District Bemetara Chhattisgarh
2. Smt. Parwati Bai W/o Fagu Ram Sahu Aged About 50 Years R/o Village Belaudi Kala, P.S. And Tahsil Berla, District Bemetara Chhattisgarh
3. Dev Narayan Yadav S/o Pati Ram Yadav Aged About 58 Years R/o Bankimongra, Kudripara, P.S.- Bankimongra District Korba Chhattisgarh

   (Driver of the Truck No.CG-12S-1812)
4. Sanjay Yadav S/o Dev Narayan Yadav Aged About 26 Years R/o Bankimongra, Kudripara, P.S.- Bankimongra District Korba Chhattisgarh.

   (Owner of the Truck No.CG-12S-1812)

----Respondents

For Appellant:	Shri Raj Awasthi, Advocate.
For Respondents No.1 & 2:	Shri Raj Kumar Pali, Advocate.
For Respondents No.3 & 4:	None, though served.

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

Order on Board

06.08.2021

1. This Appeal has been preferred by the National Insurance Company Limited against the award dated 26.03.2015 passed by the Motor Accident Claims Tribunal, Bemetara (for short 'the Claims Tribunal') in Claim Case No.16/2014, whereby the Tribunal, while allowing the claim in part, has awarded total amount of compensation to the tune of Rs.3,31,000/- with 6% interest per annum from the date of filing of the claim Petition till its realization.

2. Briefly stated the facts of the case are that on 01.11.2013 at about 02.45 p.m, deceased Uttam Sahu along with his friend namely Dhaneshwar Nishad, was going by motorcycle to his village Belaudi Kala, Raipur from village Tarpongi and as soon as they reached near Sankra Tiraha, they were dashed vehemently by truck bearing its Registration No.CG-12S 1812, owned by Respondent No.4-Sanjay Yadav, owing to rash and negligent driving by its driver namely Dev Narayan Yadav, Respondent No.3. As a result of the said accident, deceased Uttam Sahu died on the spot.

3. On account of the said accident, the Claimants, who are the parents of the deceased, instituted a claim Petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') by submitting *inter alia* that the deceased, a 23 year old, was a tailor by profession and used to earn Rs.600/- per month. Thus, they claimed a total amount of compensation of Rs.10,25,000/- under various heads.

4. The aforesaid claim has been contested by the Respondents. According to the Appellant/Insurance Company, the vehicle in question was being used in violation of the policy as the driver of it was not holding valid and effective driving license at the relevant point of time.

5. After considering the evidence led by the parties, the Tribunal has arrived at a conclusion that the alleged accident occurred on 01.11.2013 due to the rash and negligent driving of its driver resulting into the death of said Uttam Sahu. It held further that the driver of the offending vehicle was not holding valid and effective driving license at the relevant point of time and that by considering the monthly income of the deceased to the tune of Rs.3,000/-, awarded a total amount of compensation as mentioned

hereinabove.

6. Learned Counsel for the Appellant submits that despite holding that the driver of the offending vehicle was not possessing valid and effective driving license, yet the liability has been fastened upon the Insurance Company. It is contended further while inviting attention to paragraph-22 of the award impugned that the Claims Tribunal, while applying the principles of pay and recover, has directed the Appellant/Insurance Company to first pay the amount of compensation to the Claimants and then to recover the same from the owner of the vehicle in question. In view of the said observation, the Claims Tribunal ought to have exonerated the Appellant/Insurance Company from its liability by applying the said principles.

7. On the other hand, learned Counsel for the Respondents have supported the award impugned as passed by the Claims Tribunal.

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

9. At the outset, the Claims Tribunal, while entertaining issue No.3, has arrived at a conclusion that the driver of the offending vehicle namely Dev Narayan Yadav was not possessing valid and effective driving license at the relevant point of time. In view of the said finding, the Claims Tribunal ought to have exonerated the Insurance Company by applying the principles of pay and recover with a direction to the Appellant/Insurance Company to first pay the said amount to the Claimants and then to recover the same from the owner and driver of the vehicle in question. In such circumstances, in order to serve the ends of justice, the Appellant/Insurance Company is hereby directed to pay the claim amount

i.e. Rs.3,31,000/- along with its interest @ 6% per annum from the date of filing of the claim Petition till its realization in the first instance to the Claimants with liberty to recover the same from the owner and driver of the vehicle in question namely Sanjay Yadav and Dev Narayan Yadav respectively by way of initiating the execution proceedings against them.

10. The award impugned is accordingly modified to the extent indicated above and the Appeal is accordingly disposed of. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE

Priya