

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 67 of 2015***(Arising out of order dated 26.08.2014 passed by the Chief Motor Accident Claims Tribunal, Raipur (C.G.) in Claim Case No. 06/2013)*

1. Thana Ram S/o Ram Bharosa Ram aged about 46 Years R/o Village- Nandel, P.S. Navagarh, Tah. and Distt. Bemetara C.G.
2. Vishnu Prasad S/o Hem Lal Sahu aged about 32 Years R/o Village- Nandel, P.S. Navagarh, Tah. And Distt. Bemetara C.G., C/o Guru Kripa Bus Services, Vill.- Nandel, P.S. Navagarh, Tah. and Distt. Bemetara C.G.

---- Appellants**Versus**

1. Janki Bai W/o Late Manharan Lal Nishad Aged About 23 Years R/o Village- Mohbhattha, Tah. Baloda Bazar, Distt. Baloda Bazar-Bhatapara C.G.
2. Krishan Kumar S/o Late Manharan Lal Nishad Aged About 7 Years Minor, Thru- Mother Smt. Janki Bai, R/o Village- Mohbhattha, Tah. Baloda Bazar, Distt. Baloda Bazar-Bhatapara C.G.
3. Indar S/o Late Manharan Lal Nishad Aged About 3 Years Minor, Thru- Mother Smt. Janki Bai, R/o Village- Mohbhattha, Tah. Baloda Bazar, Distt. Baloda Bazar-Bhatapara C.G.
4. Dhanesh Kumar S/o Firtu Ram Nishad Aged About 46 Years R/o Village- Mohbhattha, Tah. Baloda Bazar, Distt. Baloda Bazar-Bhatapara C.G.
5. Triveni Bai W/o Dhanesh Kumar Aged About 45 Years R/o Village- Mohbhattha, Tah. Baloda Bazar, Distt. Baloda Bazar-Bhatapara C.G.
6. Reliance Insurance Co. Ltd. Through-Incharge Officer, Reliance Insurance Co. Ltd., Ravi Bhawan, Jai Stambh Chowk, Raipur C.G.

---- Respondents

For Appellants	: Shri Ghanshyam Patel, Advocate.
For Respondents No. 1 to 5	: Shri Amiyakant Tiwari, Advocate.
For Respondent No. 6	: Shri Sourabh Sharma, Advocate.

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

Judgment on Board**Per Parth Prateem Sahu, Judge****15.03.2021**

1. This appeal under Section 173 of the Motor Vehicle Act, 1988 (for short' M.V. Act') has been filed by the owner of the offending vehicle challenging the

impugned order dated 26.08.2014 passed by the Chief Motor Accident Claims Tribunal, Raipur (C.G) in Claim Case No. 06/2013, whereby the learned Claims Tribunal allowed application under Section 166 of the M.V. Act and awarded Rs.8,84,000/- as total compensation in a fatal accident case fastening liability upon the Appellants and at the same time have issued a direction against the Respondent No.6/Insurance Company to first satisfy the amount of compensation and thereafter to recover the same from the Owner and Driver of the offending vehicle.

2. The facts of the case relevant for disposal of this appeal are that on 25.04.2012 at about 03:00 pm, the Bus bearing Registration No. C.G.10 EK-7877 driven by the Non-Applicant No.1 Vishnu Prasad dashed one Manharan Lal Nishad and caused accident. In the said accident Manharan Lal Nishad succumbed to injuries. The Respondents No. 1 to 5 who are widow, children and parents of the deceased filed an application under Section 166 of the M.V. Act, seeking compensation of Rs. 22,85,000/- on the grounds mentioned therein. The application was sought to be resisted by the Non-Applicants No. 1 and 2 pleading therein that on the date of accident the Non-Applicant No. 1 was having the valid and effective driving license and the offending vehicle was running with all the necessary permit and certificates. The offending vehicle was insured with Non-Applicant No.3 / Insurance Company as such the liability to satisfy the amount of compensation, if any, would be upon the Insurance Company. The Insurance Company have submitted reply to the claim application while denying the pleadings made therein further stated that the vehicle was being plied on public road without valid permit and as such there was breach of policy conditions. The specific plea was taken by the Insurance Company with regard to the absence of permit in their reply. The learned Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties held that Manharan Lal Nishad died on account of the

rash and negligent driving of the offending vehicle by Non-Applicant No. 1. Contributory negligence and the absence of driving license with the Non-Applicant No.1 driver of the offending vehicle was not found to be proved. The learned Claims Tribunal after considering the evidence have arrived at a find that the offending vehicle was being plied on other route than the permit issued by the Competent Authority for plying of the offending vehicle and held that there was breach of policy conditions. The learned Claims Tribunal considering the other evidence available on record has allowed the application and awarded Rs. 8,84,000/- of compensation in favour of the Respondents No.1 to 5/Claimants. The learned Claims Tribunal has fastened liability upon the Non-Applicants No. 1 and 2 Driver and Owner of the offending vehicle to satisfy the amount of compensation and further issued a direction to the Non-Applicant No. 3/Insurance Company to first satisfy the amount of compensation and thereafter to recover the same from Driver and Owner of the offending vehicle.

3. Shri Ghanshyam Patel, learned counsel appearing for the Appellants submits that the offending vehicle was having a valid temporary permit for a period from 24.04.2012 to 26.04.2012 for plying the Bus for carrying marriage party. He submits that inadvertently this copy of temporary permit could not be placed on record before the learned Claims Tribunal and the learned Claims Tribunal has arrived at a conclusion that there was breach of policy conditions. He further points out that the temporary permit was even seized by the police during the course of the investigation of the crime and mentioned in seizure memo Ex. P/8. The temporary permit was seized alongwith other documents of the offending vehicle. He submits that the accident took place on the route for which the temporary permit has been issued for carrying marriage party. He submits that an opportunity may be granted to Appellants, to prove the temporary permit filed alongwith application for taking additional evidence.

4. Shri Amiyakant Tiwari, learned counsel appearing for Claimants/ Respondents No.1 to 5, however support the award and submits that the learned Claims Tribunal has protected the interest of the Claimants and have directed the Insurance Company to first deposit the entire amount of compensation and thereafter to recover the same from the Owner and Driver of the offending vehicle.
5. Shri Sourabh Sharma, the learned counsel appearing for Respondent No. 6 submits that in compliance of the Award passed by the learned Claims Tribunal the Insurance Company has already deposited entire amount of compensation alongwith interest before the Claims Tribunal and thereby the interest of the Claimants have already been protected. He further pointed out that the Appellants have not placed on record the temporary permit before Tribunal which is filed before this Court alongwith an application for taking additional document on record and hence the matter may be remitted back to the Claims Tribunal for giving an opportunity to Appellants as well as the Insurance Company to prove whether the accident took place within the route which has been mentioned in the temporary permit for a period from 24.04.2012 to 26.04.2012.
6. We have heard the learned counsel for the respective parties.
7. To appreciate the submissions made by learned counsel for the Appellants, we have perused the record of claim case. Claimants in support of their case have filed 'Property Seizure Memo' prepared by Police on 11.05.2012 as Ex. P/8. In this document there is mention of seizure of 'Barat Permit' having validity from 24.04.2012 to 26.04.2012. *Prima facie*, it appears that on the date of accident i.e. 25.04.2012 there was permit for plying the vehicle for transporting / carrying marriage party. The document placed on record alongwith an application under Order 41 Rule 27 of CPC as Annexure-D/1 is extract of register issued by the office of Regional Transport Authority and the original 'Temporary Permit' is filed alongwith an application

for taking additional document on record. These documents in view of the submission made by learned counsel for Respondent require to be proved in accordance with law which is not possible before this Court. Keeping in mind the nature of proceedings, object of the act, we find it appropriate to allow the application under Order 41 Rule 27 of CPC and to remit back the case to the learned Claims Tribunal so as to provide an opportunity to lead evidence to prove that whether the place of accident is covered under the temporary permit dated 02.04.2012 and also to prove the validity of the temporary permit placed on record as additional document and copy of extract of register D-1.

8. As there is no challenge to the amount of compensation awarded, we affirm the said finding of the learned Claims Tribunal with regard to the calculation of the amount of compensation and awarding interest on the same. The case is remitted back before the learned Claims Tribunal only to ascertain the validity of the temporary permit and whether the accident took place within the route as prescribed in the temporary permit. The learned Claims Tribunal is directed to decide the issue with regard to the permit and the route after affording opportunity of hearing to the parties concerned and to pass appropriate award. The Appellants are also at liberty to place this temporary permit or any other documents as an additional document before the learned Claims Tribunal and to prove the same in accordance with law. The other parties to the claim case will be at liberty to lead further evidence in this regard by calling any other witness in their support. Looking to the pendency of the case since 2013, we direct the learned Claims Tribunal to decide the Claim Case No. 06/2013 within an outer limit of 'five months' from the date of receipt of the copy of the order passed by this Court. As all the parties are present before this Court, we find it appropriate to direct the parties to appear before the learned Claims Tribunal on 9th of April, 2021.

9. In view of the submissions made by learned counsel for the Appellant, we find it proper to return back the Appellants the original of 'Temporary Permit' filed alongwith application for taking additional document on record and the original of the copy of the extract of register of permit obtained from R.T.A., Raipur by keeping photocopies of the same.
10. With the aforesaid observations and directions, the appeal stands disposed off.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Hem