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HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No.432 of 2015

Branch Manager, Cholamandlam MS General Insurance Company Limited, Simran Tower 2nd Floor Pandri Raipur, Tehsil and District Raipur, Chhattisgarh Through its Authorized Office.

---- Appellant

Versus

1. Shailja Sharma W/o Late Satyendra Sharma, Aged About 38 Years,
2. Ku. Purva D/o Late Satyendra Sharma, Aged About 16 Years,
3. Ku. Pragya D/o Late Satyendra Sharma, Aged About 15 Years,

   Respondent No.2 and 3 are minor they are through their Natural Guardian Mother Smt. Shailja Sharma W/o Late Satyendra Sharma.

   Respondent No.1 to 3 are R/o "Shivom Nilyam" behind Vaishali Nagar Word No. 39, Rajnandgaon, Tehsil and District Rajnandgaon, Chhattisgarh.
4. Ramanand Pandey S/o Late Jailal Pandey, Aged About 85 Years,
5. Parvati Pandey W/o Ramanand Pandey, Aged About 80 Years,

   Respondent No.3 & 4 are Resident of Village Ghughwa (Karsa), Tehsil-Patan, District Durg, Chhattisgarh.
6. Gopal Soni S/o Dehra Lal Soni, Aged About 40 Years, Village Nandai Chowk, Rajnandgaon, Tehsil and District-Rajnandgaon, Chhattisgarh,
7. Principal Wesleyan English Medium School Rajnandgaon, Tehsil and District Rajnandgaon, Chhattisgarh.

---- Respondents

MAC No. 689 of 2015

Principal, Wesleyan English Medium School Rajnandgaon Tah.- Rajnandgaon, Civil and Revenue District-Rajnandgaon, Chhattisgarh.

---- Appellant

Versus

1. Shailja Sharma W/o Lt. Satyendra Sharma, Aged About 38 Years,
2. Ku. Purwa D/o Lt. Satyendra Sharma, Aged About 16 Years,
3. Ku. Pragya D/o Lt. Satyendra Sharma, Aged About 15 Years,

   No.2 and 3 are minor through Natural Guardian Mother Smt.

Shailja Sharma W/o Lt. Satyendra Sharma,
All of above R/o Shivom Nilyam, behind Vaishali Nagar, Ward No. - 39 Rajnandgaon, Tah.- Rajnandgaon, Civil and Revenue District- Rajnandgaon, Chhattisgarh.

4. Ramanand Pandey S/o Lt. Jailal Pandey, Aged About 85 Years.
5. Parvati Pandey W/o Ramanand Pandey, Aged About 80 Years.
   No.4 and 5 are R/o Village Ghughwa (Karsa), Tah.- Patan, Civil and Revenue District- Durg, Chhattisgarh.
6. Gopal Soni S/o Derhalal Soni, Aged About 40 Years, R/o Nandai Chowk, Rajnandgaon, Tah.- Rajnandgaon Civil and Revenue District- Rajnandgaon, Chhattisgarh.
7. Branch Manager, Cholamandalam MS General Insurance Co. Ltd. Simran Tower, Second Floor, Pandari Raipur, Tah.- Raipur, Civil and Revenue Distt.- Raipur, Chhattisgarh

---- Respondents

For Insurance Company : Shri Abhishek Sinha, Advocate
For Claimants : Shri A.D. Kuldeep, Advocate
For Driver & Owner : Shri Rakesh Thakur, 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

05.02.2021

1. As both the appeals are arising out of award dated 30.01.2015 passed by Motor Accident Claims Tribunal, Rajnandgaon, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.01 of 2014, they are being disposed of by this common judgment.

2. MAC No.432 of 2015 is filed by the Insurance Company challenging the liability fastened upon it on the ground of permit whereas MAC No.689 of 2015 is filed by the Owner of offending

vehicle on the ground that accident was a result of negligence on the part of deceased Satyendra Sharma himself, hence, claimants are not entitled for any amount of compensation.

3. Facts relevant for disposal of these appeals, are that, on 27.11.2013, Satyendra Sharma was travelling on motorcycle bearing No.CG-08/NA/9897 from Rajnandgaon to Durg, on the way, when he reached near village Anjora, one four-wheeler bearing No.CG-08/M/0249 (hereinafter referred to as 'offending vehicle'), driven by non-applicant No.1 dashed the motorcycle of Satyendra Sharma. In the aforementioned accident, Satyendra Sharma fell down, suffered grievous injuries over his person. He was taken to Apollo Hospital, Bhilai where he died. Accident was reported to concerned Police Station, based upon which, Crime No.410 of 2013 was registered against non-applicant No.1 for offences punishable under Sections 279 and 337 of the IPC.

4. Claimants who are widow, children and parents of deceased Satyendra Sharma filed an application under Section 166 of the M.V. Act before learned Claims Tribunal seeking compensation of Rs.43,35,000/- pleading therein that on the date of accident, deceased was working on the post of Dark Room Assistant at Government Hospital, Basantpur, District Rajnandgaon, earning Rs.21,000/- per month as salary and claimants were dependent upon the income of deceased.

5. Non-applicants No.1 and 2, who are driver and owner of offending

vehicle submitted reply to claim application, while denying the pleadings made therein, 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 non-applicant No.3/Insurance Company. It was further pleaded that amount of compensation claimed is highly exaggerated.

6. Non-applicant No.3/Insurance Company submitted reply to claim application, while denying the pleadings made therein, pleaded that on the date of accident, non-applicant No.1/driver of offending vehicle was not possessed with valid and effective driving licence, there was no valid permit of offending vehicle on the date of accident i.e. 27.11.2013. It was further pleaded that offending vehicle was being used as school vehicle, but it was registered as private vehicle.

7. Upon appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that deceased Satyendra Sharma died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1, breach of policy conditions was not found to be proved and awarded Rs.32,08,500/- as total compensation on different heads.

8. Shri Abhishek Sinha, learned counsel for appellant/Insurance Company submits that finding arrived at by learned Claims

Tribunal with regard to breach of policy conditions is erroneous. He further submits that Tribunal has not considered facts of the case in its entirety wherein it is a case of no permit and not a case of breach of condition of route permit. It is contended that plying of vehicle on public road without any permit is a fundamental breach, hence, Insurance Company cannot be held liable to satisfy the amount of compensation. In support of his contention, he placed reliance on the verdict rendered by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Challa Bharathamma and others** reported in **(2004) 8 SCC 517** and **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others** reported in **(2018) 7 SCC 558**.

9. Shri Rakesh Thakur, learned counsel for appellant/owner of offending vehicle in MAC No.689 of 2015 supported the award impugned passed by Claims Tribunal with regard to fastening of liability upon Insurance Company and submits that learned Claims Tribunal after considering the ruling rendered by High Court of Punjab & Haryana has rightly arrived at a finding that there was no breach of policy conditions. He places reliance on the verdict rendered by Hon'ble Supreme Court in case of **National Insurance Company Limited v. Rattani and others** reported in **(2009) 2 SCC 75**.

10. Shri A.D. Kuldeep, learned counsel submits that he is representing respondents No.1 to 5/claimants though memo of appearance has been filed only for respondent No.5. He submits

that insurance policy is not denied, coverage of risk of deceased is also not denied and if the Insurance Company is exonerated from its liability to satisfy the amount of compensation, then a direction may be issued to Insurance Company to first satisfy the amount of compensation and thereafter to recover the same from driver and owner of offending vehicle. In support of his contention, he places reliance on the verdict rendered by Hon'ble Supreme Court in case of **Amrit Paul Singh** (supra).

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

12. We will first deal with the appeal filed by Insurance Company as MAC No.432 of 2015. Learned counsel for the Insurance Company has raised sole ground that on the date of accident, offending vehicle was not having permit. To appreciate the submission made by learned counsel for Insurance Company, we have perused the record of claim case. Perusal of record would show that copy of insurance policy is placed on record as Ex.D/1 of Tempo Trax Crusier four-wheeler vehicle for a period from 28.06.2013 to 27.06.2014 and the type of policy is 'package policy for passenger carrying more than 6'. Ex.D/1 another document (appears erroneously marked as Ex.D/1), which is an information supplied by Additional Regional Transport Officer, Rajnandgaon on 19.11.2014 would show that temporary permit is being issued for three months for transporting children and school staff for vehicle in question. Ex.D/2 is extract of register maintained by

Regional Transport Office, Rajnandgaon of the permits issued for the vehicles. In the register, permit for vehicle in question is shown to be issued from 04.12.2013 to 03.03.2014 whereas date of accident is 27.11.2013. Gopal Soni, driver of offending vehicle was examined as NAW(1)-3, who in his evidence stated that on the date of accident, offending vehicle was being used for transporting teachers. Suryakant Mishra, who is one of the Lecturers in Wesleyan English Medium School was examined as NAW-2, who in his evidence stated that he could not able to say that offending vehicle was having valid permit or not.

13. In view of aforementioned documentary and oral evidence available on record, we are of the considered view that on the date of accident, offending vehicle was not having valid permit for plying the vehicle as 'passenger carrying vehicle'.

14. The issue with regard to plying the vehicle on public road was considered by Hon'ble Supreme Court recently in case of **Amrit Paul Singh** (supra) and held thus :

> “24..........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 **National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297** and

> **Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100** 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."

15. In the aforementioned ruling, Hon'ble Supreme Court in very categorical terms held that absence of permit is a fundamental breach of policy conditions and while exonerating the Insurance Company from its liability, issued a direction of pay and recover to be in consonance with the ruling of Hon'ble Supreme Court in case of **Swaran Singh** (supra).

16. For the foregoing reasons, finding recorded by learned Claims

Tribunal that there was no breach of policy conditions is not sustainable in the eyes of law and is hereby set aside.

17. Now, we will consider the grounds of challenge in MAC No.689 of 2015 filed by owner of offending vehicle. Shri Rakesh Thakur, learned counsel for owner of offending vehicle argued that it was accident by deceased with motorcycle to stationary offending vehicle, hence, non-applicant No.1 cannot be held negligent in driving offending vehicle. It is contended that it is sole negligence on the part of deceased himself in accident, therefore, claimants will not be entitled for any amount of compensation in the facts and circumstances of the case. In alternate, he argued that as there was head on collision between two motor vehicles, driver of motorcycle is also contributory negligent to the accident. He further argued that owner of offending vehicle has examined one of the occupants of offending vehicle, who was eyewitness and driver of offending vehicle and those witnesses have stated that it was deceased himself who drove his motorcycle rashly and negligently and met with an accident.

18. Shri A.D. Kuldeep, learned counsel representing the claimants vehemently opposes the submission made by learned counsel for owner of offending vehicle. He submits that owner and driver of offending vehicle has filed reply to claim application, but had not made any pleading that accident was a result of sole negligence on the part of deceased or there was any contributory negligence on his part. He further submits that in reply of claim application,

they have only denied pleadings made therein, income, amount of compensation claimed to be highly exaggerated and insurance of offending vehicle with non-applicant No.3. They have also not made any pleading with regard to any action taken against registration of criminal case against non-applicant No.1, but admitted that criminal case was registered against non-applicant No.1, which is pending consideration. In absence of any specific pleading in this regard, owner of offending vehicle cannot raise this ground in an appeal filed before this Court. It is contended that First Information Report (Ex.P/3) was lodged by a third person who is an eyewitness to the accident mentioning therein that accident was a result of rash and negligent driving of offending vehicle by non-applicant No.1.

19. To appreciate the submission made by learned counsel for owner of offending vehicle, we have perused the record of claim case. In reply to claim application, owner and driver of offending vehicle have not taken any specific plea with regard to negligence on the part of deceased, criminal case is registered against non-applicant No.1 and they have not challenged registration of criminal case. There is no pleading in reply that the motorcycle dashed with stationary vehicle. This submission of learned counsel for owner of offending vehicle that accident took place with a stationary offending vehicle appears to be an afterthought. He submits that Suryakant Mishra (NAW(1)-2) in his evidence stated that cause of accident was rash and negligent driving of two-wheeler by

deceased, but in view of evidence of Anup Soni eyewitness (AW-2) whose occupation is of Labourer evidence of (NAW(1)-2) do not weigh much because Suryakant Mishra (NAW(1)-2) is an employee of owner of offending vehicle, whereas Anup Soni (AW-2) is an eyewitness to the accident and is independent witness. The Police has also recorded statement of Suryakant Mishra (NAW(1)-2), which was denied by him that he was not given any statement to Police. In investigation, material collected by the Police submitted in the charge-sheet/final report is not put to challenge in any manner by owner or driver of offending vehicle before any forum.

20. The claim cases are to be decided on the touchstone of preponderance of probabilities taking into consideration entire facts and circumstances of the case, nature of evidence available on record, particularly, evidence of eyewitness Anup Soni (AW-2) who was by chance present on the spot. For the foregoing reasons, we are of the view that learned Claims Tribunal has rightly arrived at a finding that deceased was not negligent in the accident, but accident is a result of rash and negligent driving of non-applicant No.1/driver of offending vehicle.

21. Lastly, Shri Rakesh Thakur, learned counsel for owner of offending vehicle contended that claimant No.1-Shailja Sharma, widow of deceased Satyendra Sharma was given compassionate appointment and is also getting pension, hence, said amount is required to be deducted from the amount of compensation.

22. The issue of compassionate appointment and other benefits accrued by legal representative of deceased-Government employee has been considered by Hon'ble Supreme Court in case of **Vimal Kanwar and others v. Kishore Dan and others** reported in **(2013) 7 SCC 476** and held thus :

> “20. The second issue is “whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as “Pecuniary Advantage” liable for deduction.”
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> 21. “Compassionate appointment” can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one’s death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal

> course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as "Pecuniary Advantage" that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act."

23. In view of aforementioned ruling of Hon'ble Supreme Court, submission of learned counsel for owner of offending vehicle that amount of earning and income of claimant No.1-Shailja Sharma, widow of deceased Satyendra Sharma to be deducted is also not sustainable in the eyes of law and is hereby repelled.

24. In the result :

(i) MAC No.432 of 2015 filed by Insurance Company is allowed in part. Insurance Company is exonerated from its liability to satisfy the amount of compensation. As offending vehicle is insured and deceased was a third party, Insurance Company is directed to first deposit the entire amount of compensation with interest before learned Claims Tribunal and thereafter will be at liberty recover the same from non-applicants No.1 and 2/driver and owner of the offending vehicle in accordance with law.

(ii) MAC No.689 of 2015 filed by owner of offending vehicle is dismissed being devoid of any substance.

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

Yogesh