NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 23 of 2016

1. Smt. Bhagwati Devi W/o Late Sheelbhadra Upadhyay, aged about 51 years
2. Bhupendra Upadhyay S/o Late Sheelbhadra Upadhyay, aged about 25 years.
3. Rahul Upadhyay, S/o Late Sheelbhadra Upadhyay, aged about 20 years

   All are resident of Banerjee Gali, New Sarkanda, Tahsil and District Bilaspur (CG)

---- Appellants/Claimants

Versus

1. Darshanram S/o Sachura, aged about 42 years, R/o Village & Post Pipradih, Police Station Tahsil & District Mau (UP) Probable Address Gandhi Nagar, Deepka, Police Station Deepka, Tahsil & District Korba (CG)

   (Driver Vehicle Truck No. CG10-A-8378)
2. Reeta Singh W/o Yogendra Singh, R/o Katghora Road, Deepka Rajababu, Transport, District Korba

   (Owner Vehicle Truck No. CG10-A-8378)
3. Branch Manager, Shriram General Insurance Company Limited, Divisional Office E/8, EPIP RIICO Industrial Area Sitapur, Jaypur, Rajasthan 302022,

   Probable Address- Shriram General Insurance Company Limited, Branch Office Plot No.1, Fourth Floor, in front of Maruti Height, in front of Sky Automobiles, G.E. Road, Police Station Amanaka, District Raipur (CG) ....

   (Insurer Vehicle Truck No. CG10-A-8378)

---- Respondents

&

MAC No. 248 of 2016

- Shriram General Insurance Company Limited 10003-E-8, EPIP, RIICO, Industrial Area, Sitapura, Jaipur (Rajasthan) Present Address Shriram General Insurance Company Limited, Branch Office Plot No.1, 4th Floor, Maruti Heights, Opposite Sky Automobile, G.E. Road, Raipur (CG) (Insurer).

---- Appellant

Versus

1. Smt. Bhagwati Devi W/o Late Sheelbhadra Upadhyay, aged about 51 years.
2. Bhupendra Upadhyay S/o Late Sheelbhadra Upadhyay, aged about 25 years.

3. Rahul Upadhyay S/o Late Sheelbhadra Upadhyay, aged about 20 years R/o Banerjee Gali, Naya Sarkanda, Tahsil And District Bilaspur (CG) ....**Claimants**

4. Darshanram S/o Sachura, age 42 years R/o Village & Post Pipradih, Thana Tahsil and District Mou (U.P.) Present Address Gandhi Nagar, Deepka, Thana Deepka, Tahsil & District Korba (CG) ....**Driver**

5. Reeta Singh W/o Yogendra Singh, R/o Katghora Road, Deepka Rajababu, Transport, District Korba (CG) .....**Owner**

---- Respondents

MAC No.23/2016

For Appellants	:	Ms. Astha Sharma, Advocate on behalf of Mr. Gautam Khetrapal, Advocate
For Respondent No.1 & 2	:	None
For Respondent No.3	:	Mr. Sangeet Kumar Kushwaha, Advocate

MAC No.248/2016

For Appellant	:	Mr. Sangeet K Kushwaha, Adv.
For Respondent No.1 to 3	:	Ms. Ashta Sharma, Advocate on behalf of Mr. G.Khetrapal Advocate
For Respondent No.4 & 5	:	None

SB: Hon'ble Mr. Justice Parth Prateem Sahu

Order On Board

17/9/2021

1. As above two appeals arise out of common award dated 22.8.2015 passed by the 1st Additional Motor Accident Claims Tribunal, Bilaspur (for short 'the Claims Tribunal') in Claim Case No.91/2012, both are being heard together and disposed of by this common order.

2. MAC No.23/2016 is preferred by appellants-claimants seeking enhancement in amount of compensation awarded by the Claims Tribunal. Whereas, MAC No.248/2016 is preferred by appellant Insurance Company challenging liability fastened upon it by Claims Tribunal to pay entire amount of compensation.

3. Facts of the case, in nutshell, are that on 5.7.2012 Ramakant Upadhyay was travelling on motorcycle and going towards Seepat from Bilaspur. When he reached near village Pandhi, one truck bearing registration number CG10-A-8378 (for brevity 'the offending vehicle'), driven rashly and negligently by non-applicant No.1, dashed motorcycle of Ramakant and caused accident. He died due to grievous motor accidental injuries.

4. Claimants, who are mother & younger brothers of deceased Ramakant Upadhyay, filed an application under Section 166 of the Act of 1988 claiming total amount of Rs.13,60,000/- as compensation pleading therein that deceased was expert in handicraft works and thereby earning Rs.10,000/- per month. Claimants were dependent on income of deceased.

5. Non-applicants No.1 & 2, driver & owner of offending vehicle, did not choose to appear before Claims Tribunal, as such, they were proceeded ex-parte. Notice through paper publication was issued to non-applicant No.2.

6. Non-applicant No.3-Insurance Company submitted its reply to claim application and denied the facts pleaded therein. It was pleaded that there was contributory negligence on the part of deceased; non-applicant No.1-driver of offending vehicle was not possessed with valid and effective driving license; there was no effective permit to ply offending vehicle on public road. The offending vehicle was plied in breach of conditions of insurance policy, hence Insurance Company is not liable to

indemnify the insured.

7. Claims Tribunal upon considering pleadings and evidence brought on record by respective parties, held that deceased Ramakant died on account of motor accidental injuries due to rash and negligent driving of offending vehicle by non-applicant No.1-driver; there was no element of contributory negligence; there was no breach of any condition of insurance policy. While assessing monthly income of deceased as Rs.3,000/- (Rs. 36,000/- per annum), computed compensation and awarded Rs.3,38,000/- under different heads along with interest @ 6% p.a. from the date of filing of application.

8. Ms. Astha Sharma, learned counsel for appellant Claimants submits that Tribunal erred in assessing income of deceased as Rs.3,000/- per month (Rs.36,000/- per annum) overlooking the date of incident, age & occupation of deceased and number of dependant family members. She submits that in the given facts and circumstances of case, the Claims Tribunal ought to have assessed his monthly income as Rs.4,500/-. She contended that Tribunal has not awarded any amount towards future prospects and amount of compensation awarded under other conventional heads is also on lower side. Hence, the amount of compensation needs to be enhanced suitably.

9. No one appeared on behalf of respondent-driver & owner of offending vehicle.

10. Mr. Sangeet Kumar Kushwaha, learned counsel for Insurance

Company would submit that insurance company has also filed an appeal challenging the impugned award, whereby liability to pay entire amount of compensation is fastened upon it, on the ground that Tribunal erred in not considering that offending vehicle was not having valid permit on the date of accident. Accident took place on 5.7.2012 whereas at the time of seizure of offending vehicle as also documents of offending vehicle along with other relevant documents by police on 27.7.2012 from possession of driver, he produced temporary permit, which was valid from 17.7.2012 to 16.10.2012. Neither driver nor owner of offending vehicle produced permit valid on the date of accident i.e. 5.7.2012, hence there was breach of condition of insurance policy. He submits that insurance company by filing an application under Order 8 CPC produced copy of insurance policy, letter of RTO, RC Book of offending vehicle and prayed for summoning of RTO concerned to prove the documents and also the fact that on the date of accident, there was no valid permit in respect of offending vehicle. The Claims Tribunal accepted the documents filed along with aforementioned application but refused to summon RTO concerned as a witness. Hence, liability fastened upon insurance company is not sustainable and the matter deserves to be remitted back to the Claims Tribunal for reconsideration.

As regards the submissions made by learned counsel for appellant-claimants in MAC No.23/2016, he submits that in the given facts and circumstances of case, the Claims

Tribunal awarded just amount of compensation which does not call for any interference.

11. I have heard learned counsel for the parties and perused the record of the Claims Tribunal.

12. So far as grounds raised in appeal for enhancement of amount of compensation are concerned, perusal of record would show that Claims Tribunal based on post-mortem report, assessed age of deceased to be 35 years on the date of accident. Date of accident is 5.7.2012. In such a situation, even if occupation of deceased is considered to be of manual labourer, then also income of deceased could have been much more than what was assessed by Claims Tribunal. True it is that claimants failed to prove occupation and income of deceased by producing cogent and admissible piece of evidence, but in absence thereof income of deceased is to be assessed on notional basis taking into consideration the factors like age, nature of occupation of deceased, date of accident, cost of living, wage structure and price index prevailing on the date of accident. Considering aforementioned factors, this Court feels that it would be proper to assess income of deceased as Rs.4,000/- per month.

13. Perusal of impugned award would show that Claims Tribunal has not awarded any amount towards future prospects. Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** has held that where the deceased was below 40 years of

age and was not in permanent job, the claimant (s) shall be entitled for addition of 40% of established income of deceased towards future prospects. In case at hand, deceased was below 35 years of age and was not in permanent employment, hence the Claims Tribunal ought to have added 40% of established income of deceased towards future prospects for calculating total income of deceased. Hence, claimants shall be entitled for addition of 40% of established income of deceased towards future prospects.

14. As regards award of amount of compensation under other conventional heads. In case of **Pranay Sethi (supra)** Hon'ble Supreme Court has considered issue of award of compensation under other conventional heads and not only specified the heads under which compensation is to be awarded but also quantified amount of compensation on those heads. Award of compensation under other conventional heads is further considered by Hon'ble Apex Court in case of **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130** in which types of consortium is explained i.e. spousal, filial and parental consortium. Perusal of impugned award would show that Claims Tribunal has awarded total sum of Rs.30,000/- under other conventional heads i.e. Rs.10,000/- for loss of estate; Rs.10,000/- for loss of love & affection; and Rs.10,000/- for funeral and thereby committed mistake. Appellants-claimants are entitled for amount of compensation under other conventional heads as per aforementioned ruling

of Hon'ble Supreme Court. It is ordered accordingly.

15. For the foregoing discussions, this Court proposes to recalculate amount of compensation payable to claimants/ respondents No.1 to 5 herein.

16. As discussed above, income of deceased is taken as Rs.4,000/- per month and since at the time of accident deceased was 35 years of age and was not in permanent employment, therefore, income of deceased is required to be enhanced by 40% towards future prospects. Upon adding 40%, total income would come to Rs.5,600/- (4000+1600) and annual income comes to Rs.67,200/-(5600x12). Out of this amount, one-half is to be deducted towards personal & living expenses of deceased, as deducted by Claims Tribunal. After deducting one-half, annual loss of dependency comes to Rs.33,600/- (67200-33600). By applying multiplier of 16, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency comes to Rs.5,37,600/- (33600x16). Besides this, appellant No.1-mother of deceased is entitled for a sum of Rs.40,000/- for filial consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Thus, total amount of compensation comes to Rs.6,07,600/-. Now claimants/ appellants will be entitled for total sum of Rs.6,07,600/- as compensation in place of Rs.3,38,000/-, as awarded by Claims Tribunal. This amount of compensation shall carry simple interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of the conditions

mentioned in the impugned award shall remain intact. Any amount already paid to claimants as compensation shall be adjusted from the total amount of compensation as calculated above.

17. Coming to submission of learned counsel for appellant in MAC No.248/2016 that the Claims Tribunal erred in fastening liability upon Insurance Company by not considering that on the date of accident, there was no valid permit to ply offending vehicle on public road, as such, there was breach of condition of insurance policy.

18. Perusal of record of claim case would reveal that appellant Insurance Company in reply to claim application has taken specific plea that there was breach of policy condition as on the date of accident, driver of offending vehicle was not possessed with valid and effective driving license and further there was no valid permit in respect of offending vehicle. Despite service of summons, driver of offending vehicle did not appear before the Claims Tribunal, therefore, he was proceeded ex-parte. During investigation of criminal case, driver of offending vehicle produced documents relating to offending vehicle and the same were seized by police vide Seizure Memo of Ex.P-7. In Ex.P-7 apart from other documents, there is mention of temporary permit of offending vehicle, which was valid from 17.7.2012 to 16.10.2012. Driver or owner of offending vehicle chose not to appear before Tribunal nor produced copy of permit valid and effective as on

the date of accident i.e. 5.7.2012, and in absence thereof, this Court is of the opinion that Claims Tribunal erred in holding that there was no breach of condition of insurance policy, more so, when appellant Insurance Company has proved insurance policy as Ex.D-1. Perusal of insurance policy would show that offending vehicle is insured as public carriage (goods vehicle). Section 66 of the Act of 1988 envisages that no motor vehicle shall be used or permitted to be used as a transport vehicle in any public place, unless it obtains a permit in accordance with the said section. Thus, it is evident that on the date of accident, offending vehicle was plied on road in breach of condition of insurance policy i.e. without having valid and effective permit. It is ordered accordingly.

19. Coming to next submission of learned counsel for appellant Insurance Company that Claims Tribunal erred in rejecting prayer of insurance company to examine concerned RTO to prove the fact that on the date of accident, driver of offending vehicle was not possessed with valid and effective driving license. Claims Tribunal considering the documents placed on record by Insurance Company as Ex.D-2, which is an application filed on behalf of insurance company before the Regional Transport Officer, Bilaspur for supply of verification report of driving license of respondent No.4-driver, overleaf of which Licensing Authority has made an endorsement that as record of License No.D/1427/99 issued on 24.7.1999 was deteriorated and it was deleted, therefore, it is not possible to give information, has rejected the prayer of insurance

company to summon RTO to prove that on the date of accident, driver of offending vehicle was not possessed with valid and effective driving license. In view of aforementioned endorsement of Licensing Authority on overleaf of application placed on record by Insurance Company as Ex.D-2, this Court is of the view that Claims Tribunal erred in rejecting prayer made by Insurance Company for summoning RTO for proving license of non-applicant No.1, driver of offending vehicle, when copy of license is produced by non-applicant No.1 before the police, which was seized vide Seizure Memo of Ex.P-8. It is ordered accordingly.

20. Considering overall facts and circumstances of case, particularly that driver and owner of offending vehicle did not appear before Claims Tribunal to prove that on the date of accident, there was effective permit to ply offending vehicle on road; Seizure Memo (Ex.P-7) by which documents of offending vehicle, like RC Book, tax receipts, insurance policy, fitness certificate, temporary permit with its validity from 17.7.2012 to 16.10.2012, this Court is of the considered view that finding recorded by Claims Tribunal that there was no breach of condition of insurance policy is not sustainable, the same is liable to be and is hereby set aside. It is ordered that there was breach of condition of insurance policy as on the date of accident, there was no valid and effective permit to ply offending vehicle on public road. Consequently, appellant Insurance Company is exonerated from its liability to indemnify insured. Respondent Nos.4 & 5 / non-applicant

Nos.1 & 2 driver & owner of offending vehicle, are jointly and severally held liable to pay entire amount of compensation.

21. At this stage, learned counsel for appellant-claimants submits that it is not in dispute that insurance policy for offending vehicle was issued by insurance company, the same was effective on the date of accident; this Court exonerated insurance company from its liability only on the ground of non-availability of valid and effective permit to ply offending vehicle on public road on the date of accident, hence, in order to protect interest of claimants, the insurance company may be directed to first deposit entire amount of compensation before Claims Tribunal and thereafter to recover the same from driver and owner of offending vehicle in accordance with law.

22. Taking into consideration beneficial object of the Act of 1988 as also decisions of Hon'ble Supreme Court in case of **Amrit Paul Singh & anr vs. Tata AIG General Insurance** reported in **(2018) 9 SCC 650,** I find it appropriate to direct Insurance Company to first deposit entire amount of compensation with interest before Claims Tribunal and thereafter to recover the same from respondent No.1 & 2, driver and owner of offending vehicle in accordance with law. It is ordered accordingly.

23. In the result, both the appeals are allowed in part and award impugned stands modified to the extent indicated above.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-