NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 123 of 2015

- Radhakant Keshri S/o Madhav Shyam Keshri Aged About 37 Years R/o Dayalband, P.S. City Kotwali, Bilaspur, Distt. Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Ku. Radha @ Sadha Sahu (Handicap), d/o Late Santram Sahu Aged About 27 Years, Unmarried (Right and left part handicap) R/o Bazar Chowk, Nagar Bhanpuri, Raipur, Tah. And Distt. Raipur, Chhattisgarh (Applicant/claimant)
2. Ravi Kumar Nirmalkar S/o Banshilal Nirmalkar, Aged About 29 Years, R/o Devri Khurd, P.S. Torwa, District : Bilaspur, Chhattisgarh (Driver of vehicle Tata 1109-CG 10 C 1612)
3. The New India Insu.Co.Ltd. thru- Divisional Office, Madira Building, Jail Road, Raipur, District : Raipur, Chhattisgarh (Insurance Company of vehicle Tata 1109 No.CG 10 C- 1612)
4. Karmotin Bai Sahu W/o Late Khoduram Sahu Aged About 65 Years R/o Bazar Chowk, Nagar Bhanpuri, Raipur, Tah. And Distt. Raipur, Chhattisgarh (Non-applicant-4)

----Respondents

For Appellant	:	Shri CJK Rao, Advocate
For Respondent- 1	:	Ms Laxmeen Kashyap, Advocate on behalf of Shri CR Sahu, Advocate
For Respondent- 3	:	Shri Raj Awasthi, Advocate
For Respondent-2 and 4	:	None appears

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
01.02.2021

1. Appellant/Owner of offending vehicle or NA2 has filed this appeal under Section 173 of the Motor Vehicle Act, 1988 challenging impugned award dated 26.11.2014 passed by the Chief Motor Accident Claims Tribunal, Raipur (for short, Claims Tribunal) in Claim Case-39 of 2013 whereby learned Claims Tribunal allowed the application for grant of compensation in part and awarded Rs.5,27,500/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that Manoj Kumar Sahu was travelling on Motorcycle bearing No.CG 04DE-6668 along with Vedram Sahu and Manish Kumar Sahu. When they reached near village Bemta, one Truck bearing No.CG 10C-1612 (hereafter, referred to as 'offending vehicle') driven by NA1 dashed the Motorcycle and caused accident. In the said accident, Manoj Kumar Sahu suffered grievous injuries over his person and died during the course of treatment.

3. Respondent-1/claimant, sister of deceased Manoj Kumar Sahu filed an application under Section 166 of the Act of 1988 pleading therein that on the date of accident deceased was an able bodied person aged about 25 years. He was working with Public Works Department and earning Rs.5,000/- per month and from the work of Auto, earning Rs.3,000/- per month. Respondent-1/claimant was dependant on the deceased and has claimed a total sum of Rs.22,28,000/-.

4. NA2/ appellant, Owner of offending vehicle submitted reply to claim application. While denying the pleadings made therein, he further pleaded that accident was a result of negligence of deceased himself, who was driving Motorcycle, amount of compensation claimed is highly exaggerated. On the date of accident, NA1 was possessed with valid and effective driving license. Offending vehicle was insured with NA3/insurance Company hence the liability to pay amount of compensation would be upon the Insurance Company.

5. NA3/Insurance Company submitted reply to claim application denying the pleadings made therein claim application. It was further pleaded that offending vehicle was being used without valid permit and fitness certificate. Police while registering crime against NA1, driver of offending vehicle, registered case under

Section 56 of the Act of 1988 also, as such, there was breach of policy conditions. At the time of accident, three persons were travelling on Motorcycle, which is indicative of the fact that there was contributory negligence on the part of driver of Motorcycle. Insurance Company pleaded for its exoneration from the liability.

6. Shri CJK Rao, learned counsel for the appellant/NA1 driver of offending vehicle submits that learned Claims Tribunal erred in exonerating the Insurance Company and fastening liability upon driver and owner of offending vehicle, without there being any breach of policy conditions. He submits that issuance of policy and its existence on the date of accident is not in dispute. Deceased was a 3rd party, there was valid permit and NA1, driver of offending vehicle was possessing valid and effective driving license on the date of accident. Learned Claims Tribunal only considering the fact that on the date of accident there was no valid fitness certificate of offending vehicle, held that there was breach of policy conditions. He pointed out that necessity of valid fitness certificate is not part of terms and conditions of Insurance Policy, hence, merely absence of valid fitness certificate will not in itself be sufficient to hold that there was breach of policy conditions.

7. Shri Raj Awasthi, learned counsel for the Insurance Company submits that learned Claims Tribunal taking into consideration provisions under the Act of 1988, has rightly arrived at a finding that there was breach of policy conditions. He contended that unless and until a valid fitness certificate is issued by the competent authority, the vehicle/transport vehicle could not be registered with the Regional Transport Office/Transport Department. No vehicle can be plied without there being proper registration. He pointed out that fitness certificate of offending vehicle expired on 03.12.2011 and thereafter, new fitness certificate has been

issued only on 21.03.2012 for a period of one year, whereas, accident took place on 22.01.2012. Offending vehicle was not having valid fitness certificate on the date of accident.

8. Ms Laxmin Kashyap, learned counsel for respondent-1/claimant, sister of deceased submits that claimant has filed cross objection challenging the quantum of amount of compensation awarded by the Claims Tribunal. She submits that the Tribunal has not awarded any amount towards future prospects as held by Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others,** (2017) 16 SCC 680. Further, not awarded proper amount of compensation on other conventional heads as declared by Hon'ble Supreme Court, in case of **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others,** (2018) 18 SCC 130. She further submits that deceased was 3rd party, and there is no dispute with regard to the issuance of policy by the Insurance Company. When there is a policy, covering risk of deceased, who was 3rd party, Insurance Company be directed to deposit the entire amount of compensation first and thereafter, to recover the same from the appellant/owner of offending vehicle.

9. We have heard learned counsel for the respective parties and perused the record of claim case.

10. So far as the 1st submission made by learned counsel for the appellant/owner of offending vehicle with regard to exoneration of Insurance Company from its liability is concerned, perusal of record would show that during the investigation, Police seized offending vehicle vide Ex.P5, seizure of documents vide Ex.P6. In Ex.P6, Police seized RC Book, permit for a period

from 14.09.2009 to 13.09.2012 and copy of the Insurance Policy, effective from 21.06.2011 to 20.06.2012. Fitness certificate having its validity period from 04.12.2010 to 03.12.2011. Along with Memo of appeal, appellant submitted copy of permit of offending vehicle as Annexure A3, copy of registration certificate as Annexure A4, driving license as Annexure A5, fitness certificate as A6 and A7. Annexure A6 is the fitness certificate having its validity from 04.12.2010 to 03.12.2011. Another fitness certificate is filed as Annexure A7, effective from 21.03.2012 to 20.03.2013. Upon perusal of A6 and 7, would clearly show that after expiry of fitness certificate on 03.12.2011, there was no application for issuance of fitness certificate in continuation, but, new fitness certificate was issued only on 21.03.2012, after about more than three months of its expiry.

11. In the aforementioned facts, documentary and oral evidence available on record, it is apparent that on the date of accident offending vehicle was not having valid fitness certificate issued by competent authority. Necessity of fitness certificate, issued by the competent authority is envisaged under Section 56 of the Act of 1988. Section 56 is extracted below:

> Section 56 : **Certificate of fitness of transport vehicles Description:** (1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder: Provided that where the prescribed authority or the authorized testing station refuses is issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal. (2) The "authorized testing station" referred to in sub-section (1) means a vehicle service station or public or private garage which the State Government, having regard to the experience, training and ability of the

operator of such station or garage and the testing equipment and the testing personnel therein, may (5) A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India. specify in accordance with the rules made by the Central Government for regulation and control of such stations or garages. (3) Subject to the provisions of sub-section (4), a certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of this Act. (4) The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained: 1[Provided that no such cancellation shall be made by the prescribed authority unless such prescribed authority holds such technical qualification as may be prescribed or where the prescribed authority does not hold such technical qualification on the basis of the report of an officer having such qualifications.] (5) A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India. 1. Ins. by Act 54 of 1994, s. 16 (w.e.f. 14-11-1994).

12. Perusal of the above provision would show that fitness certificate is necessary for registration of Transport vehicle. Transport vehicle may not be registered unless the owner of Transport vehicle carries certificate of fitness. Section 39 of the Act of 1988 deals with necessity for registration. Section 39 is extracted below for ready reference:

<u>Section 39</u> **: Necessity for registration:** No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner: Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

13. This Court in **MAC 1289 of 2014**, **Adesh Kumar and another Vs Smt Satarupa Bai Yadav and others and connected cases** decided on 19.11.2020, has considered the issue with regard to breach of policy conditions for not having valid fitness certificate, taking note of ruling of five Judges' Bench of Kerala High Court in case of **Pareed Pillai Vs Oriental Insurance Company Ltd.**, AIR 2019 Kerala 9, and held that absence of fitness certificate for a Transport vehicle to be a fundamental breach of policy conditions.

14. In view of aforementioned facts and circumstances of the case and the ruling by this court in MAC-1289 of 2014 and connected cases, we do not find any force in the submission made by learned counsel for the appellant/owner of offending vehicle that learned Tribunal erred in exonerating Insurance Company from its liability on account of breach of policy conditions. The said submission of learned counsel for the appellant is hereby repelled.

15. The 2nd ground raised by learned counsel for the appellant with regard to quantum of amount of compensation is to be considered along with Cross-objection filed by the claimant.

16. Respondent-1/claimant in her cross-objection has raised only two grounds for enhancement of compensation. First ground is non-awarding future prospects and further, awarding meagre amount of compensation on other conventional heads.

17. So far as the 1st ground raised by the claimant with regard to non-awarding future prospects is concerned, it has been considered by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and held thus:

> "59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. xxxxx"

18. In the case at hand, age of the deceased has been mentioned as 25 years in the claim application and the same age was recorded in his post-mortem report. From the aforementioned pleading and copy of post-mortem report Ex.P8, age of the deceased is proved to be 25 years on the date of accident, ie below 45 years. In her evidence, claimant stated that deceased was working with Public Works Department as temporary labourer and earning Rs.4,877/- per month. As the deceased was not in permanent employment, therefore, there shall be addition of 40% of established income towards future prospects.

19. Learned Claims Tribunal has awarded Rs.10,000/- towards pains and suffering to the claimant and respondent-4, grandmother of deceased, Rs.20,000/- towards funeral expenses. Tribunal has not awarded any amount towards loss of estate. The amount awarded on other conventional head is much on lower side.

20. For the foregoing reasons, amount of compensation to be awarded to respondent-1/claimant and respondent-4/grandmother, is required to be recalculated and recomputed as under:

a) Income of deceased was proved as Rs.4,877/- per month and Rs.58,524/- per annum.

b) After adding 40% of established income towards future prospects, total yearly income comes to Rs.81,934/- {58524 + (58524 x 40%)}

c) Deceased was bachelor on the date of accident, hence, there shall be deduction of 50% of total yearly income towards his personal and living expenses, which makes yearly loss of dependency as Rs.40,967/- (81934/2)

d) Upon applying multiplier of 17, total loss of dependency comes to Rs.6,96,439/- (40967 x 17)

e) Apart from above total loss of dependency, respondents-1 and 4 are also entitled for Rs.10,000/- towards pain and suffering Rs.15,000/- towards funeral expenses and Rs.15,000/- for loss of estate.

21. Now, respondents-1 and 4 are entitled for total sum of **Rs.7,36,439/-** (696439 + 10000 + 15000 +15000) as compensation instead of 5,27,500/- as awarded by learned Claims Tribunal.

22. Above total amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realisation. Other conditions imposed by the Tribunal shall remain intact.

23. So far as the submission made by learned counsel for respondent-1 that direction be issued to respondent-3/Insurance Company to first pay the amount of compensation and thereafter, to recover the same, Hon'ble supreme Court in cases of **Shamanna and Another v. Divisional Manager, Oriental Insurance Company Limited and Others**, (2018) 9 SCC 650 and **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others**, (2018) 7 SCC 558, wherein Hon'ble Supreme Court in case of breach of policy conditions on account of not having valid and effective driving license and no valid permit, while exonerating the Insurance Company from its liability, directed to first pay the entire compensation and thereafter, to recover the same from the owner and driver of offending vehicle.

24. Taking support from the above rulings, we direct respondent-3/Insurance Company to first deposit entire amount of compensation along with interest before Claims Tribunal and thereafter, to recover the amount so deposited by it from the appellant/ as well as Respondent-2 driver of offending vehicle in accordance with law.

25. Insurance Company will deposit the amount of compensation after deducting the amount of compensation already deposited by the appellant/owner of offending vehicle. The Insurance Company may thereafter, recover the amount of compensation so deposited by it from appellant/owner and the driver of offending vehicle in accordance with law.

26. In the result,

(a) Appeal filed by the owner of offending vehicle being *sans merit* is dismissed.

(b) Cross-objection filed by respondent-1/claimant is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma