

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1237 of 2018**

Judgment Reserved On : 12/11/2021

Judgment Delivered On : 18/11/2021

- Oriental Insurance Company Limited The Branch Manager Branch Office Ambikapur, District Surguja, Chhattisgarh.
(Insurer)

---- Appellant/ Non-Applicant No. 3

Versus

1. Bhagwanti W/o Late Parshu Aged About 32 Years
2. Jumanti D/o Late Parshu Aged About 18 Years
3. Devnarayan S/o Late Parshu Aged About 12 Years
4. Tijnarayan S/o Late Parshu Aged About 10 Years
5. Gurucharan S/o Late Parshu Aged About 3 Years
6. Malti Wd/o Sawal Sai Aged About 65 Years

No.3 to 5 are minor, represented through mother and legal guardian
Smt. Bhagwanti, wife of late Parshu

All are by Caste Kanwar, R/o Village Amatoli, Police Station And Tahsil
Sitapur, District Surguja, (CG)

7. Chhotu @ Rajkumar Xalxo S/o Nehru Xalxo @ Nawal Sai Xalxo Aged About 22 Years Caste Uraon, R/o Village Bhanvradand, Police Station And Tahsil Sitapur, District Surguja, (CG)

(Driver Of The Vehicle C.G. 15 A 7469).

8. Surendra Choudhari S/o Rajendra Choudhari Aged About 43 Years R/o Village Namnakala, Police Station Gandhi Nagar, Tahsil Ambikapur, District Surguja, Chhattisgarh.

(Owner Of The Vehicle C.G. 15 A./7469)

---- Respondents

MAC No. 1707 of 2018

1. Bhagwanti Wd/o Parshu Aged About 32 Years

2. Jumanti D/o Parshu Aged About 18 Years
3. Devnarayan S/o Parshu Aged About 12 Years
4. Tijnarayan S/o Parshu Aged About 10 Years
5. Gurucharan S/o Parshu Aged About 3 Years
6. Malti Wd/o Sawal Sai Aged About 65 Years

Appellant No.3 to 5 are Minor, through their natural guardian/mother Bhagwanti, Wd/o Parshu, aged about 32 years,

All above, R/o Village Aamatoli, Police Station And Tahsil Sitapur, District- Surguja, Chhattisgarh.

---- Appellants

Versus

1. Chotu @ Rajkumar Khalkho S/o Nehru Khalkho @ Nawal Sai Khalkho Aged About 22 Years R/o Bhawaradand, Police Station And Tahsil Sitapur, District- Sarguja, Chhattisgarh.
2. Surendra Chowdhary S/o Rajendra Chowdhary Aged About 43 Years R/o Village Namnakala, Police Station Ghandhinagar, District- Surguja, (CG).
3. The Oriental Insurance Company Limited Through Branch Manager, Ambikapur, District- Surguja, Chhattisgarh

---- Respondents

For Appellant in MAC No. 1237/2018 : Shri Goutam Khetrapal, Advocate.

For Respondents 1 to 6 in MAC No.1237/2018 : Shri Manoj Paranjpe and Shri Bharat Sharma, Advocates

For Respondents No.7 & 8 in MAC No.1237/2018 : Shri Abhishek Pandey, Adv.

For Appellants in MAC No.1707/2018 : Shri Manoj Paranjpe and Shri Bharat Sharma, Advocate.

For Respondent No.3 in MAC No.1707/2018 : Shri Goutam Khetrapal, Advocate.

Hon'ble Shri Deepak Kumar Tiwari, J

CAV JUDGMENT

1. Both the Misc. Appeals are being disposed of by this common Judgment, as both the Appeals are arising out of award dated 30.1.2018 passed by the 3rd Additional Motor Accidents Claims

Tribunal, Ambikapur (for short 'the Tribunal') in Motor Accident Claim Case No.201/2016.

2. MAC No.1707/2018 has been preferred by the claimants seeking enhancement of the impugned award whereas MAC No.1237/2018 has been preferred by the Oriental Insurance Company Limited seeking setting aside the impugned award dated 30.1.2018.
3. Facts of the matter, in brief, are that the claimants are the mother, wife and children of deceased Parshuram, who died in an accident on 16.6.2016. The claim petition was filed before the Tribunal on the ground that deceased Parshuram was working as a Mason. On the date of the accident at about 8 am the deceased was going to Village Bhawradandh to fetch labours. The offending vehicle i.e. Tractor No.CG-15A/7469, which was coming from the opposite side, dashed the deceased, as a result of which the deceased sustained grievous injuries and died on the spot. It was further averred that the accident occurred on account of rash and negligent driving by the Chotu @ Rajkumar Khalkho. The deceased was aged about 35 years and was working as Mason and thereby used to earn Rs.15,000/- per month.
4. The respondents filed their reply and denied all the averments. It was alleged that the accident happened on account of fault on the part of the deceased and the deceased himself was responsible for the accident.
5. After hearing learned counsel for the parties and material available on record, the learned Tribunal passed the impugned award and granted compensation of Rs.9,20,500/- fastening liability on the Insurance

Company as well as the Owner and Driver of the vehicle jointly and severally.

MAC No. 1707 of 2018

6. The Claimants have assailed the impugned award on the ground that it is illegal, erroneous and contrary to law. The Claims Tribunal has erred in assessing the monthly income of the deceased to the tune of Rs.4,500/-. The multiplier of 15 has wrongly been applied. The Tribunal has failed to appreciate the law laid down by the Hon'ble Supreme Court in the matter of **National Insurance Company Ltd Vs. Pranay Sethi and Others** {(2017) 16 SCC 680} wherein it has been held that the addition towards the future prospects between the age group of 35-40 years should be 50% of the salary. The compensation awarded by the Tribunal is not just and proper. The amount awarded by the Tribunal towards consortium, love and affection and funeral expenses is on the lower side. While determining the income of the deceased the Tribunal has failed to appreciate the future prospects.

MAC No. 1237 of 2018

7. The Insurance Company has also assailed the impugned award on the ground that the deceased died due to his own negligence. On the date of the accident, the deceased was in inebriated condition and was trying to sit in a moving vehicle. In support of their defence, the Insurance Company has examined Rambhagat (NAW-3), who is the Clerk in RTO, Ambikapur. He has stated that the driving licence was issued in favour of respondent No.7, which was valid for the period 23.6.2016 to 22.6.2036 and the said licence was issued for driving Light Motor Vehicle whereas the subject vehicle is a Goods Carriage

vehicle. The Driver was not possessing valid licence to drive the heavy vehicle. Therefore, the impugned award fastening the liability upon the Insurance Company is unsustainable in law.

8. I have heard learned counsel for the parties at length and perused the record.
9. It is not disputed that on the date of the accident i.e. 16th June, 2016, the respondent No.7, Driver, was holding learning licence and the Insurance Company has specifically raised the issue before the Tribunal. Ramnath Rambhagat, Clerk of RTO, Ambikapur, has been examined on behalf of the Insurance Company as Witness No.3. He has also admitted in the cross-examination that at the time of accident, respondent No.7, Driver, was holding Learning Licence and his permanent licence was issued from 23rd June, 2016. In this case, the Driver and Owner have not been examined and their counsel on the date of hearing i.e. 21st September, 2017 stated that he does not want to give any evidence on behalf of the driver and owner.
10. In the matter of **Anaal Automobiles Vs. Ashish Kumar Shukla and Others** {2009 ACJ 1184}, this Court has elaborately dealt with the issue. In para-5 of the said judgment, the judgment rendered by the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd Vs. Swaran Singh**, {2004 ACJ 1 (SC)} was referred to hold that a learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that when a vehicle is being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not 'duly licensed' resulting in conferring a right on the insurer to avoid the claim

of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle.

11. In the aforesaid judgment in para-8, it was observed that 'although the driver possessed a learner's licence, the owner was required under the Rules, 1989 not only to ensure display of the "L-Board" on the vehicle but also that the learner/driver is accompanied by a duly qualified and licensed trainer so that the possibility of mishap could be avoided while learning to drive and such instructor is sitting in such a position to control or stop the vehicle. The owner by allowing the vehicle to be driven in violation of the rules created an extremely hazardous situation for the third party. When the owner of the vehicle did not enter the witness box to prove due diligence and care in allowing the motor vehicle to be driven by the learner, the Insurance Company successfully establishes that there was a breach of policy conditions.
12. Learned counsel for the Insurance Company also relied on a judgment in the matter of **The Divisional Manager Vs. Revanasidda Naika & Another** rendered by the Karnataka High Court on 16th April, 2013 in M.F.A. No.5870/2009 (MV). In the said judgment also, when the driver failed to comply with Rule 3(b) of the Central Motor Vehicle Rules, 1989, while driving with learning licence, liability of the Insurance Company was exonerated.
13. In view of the aforesaid appreciation, this Court is of the view that fastening liability on the Insurance Company is not correct. Though the deceased Parshuram, who was coming from the opposite side, was dashed by the Tractor and died. Therefore, he is a third party and

as per the judgment in the matter of **Swaran Singh**, (Supra), even after the Insurance Company successfully establishes breach of the policy conditions, the Insurance Company would be liable under the policy and the Insurer may recover the amount from the owner in the same execution proceedings without filing a separate suit. Therefore, this Court deems it appropriate to fasten the liability upon the owner i.e. respondent No.2.

14. Learned counsel for the Claimants would submit that the Tribunal has wrongly applied the multiplier of 15 though the deceased was aged below 36 years. According to the judgment of the Hon'ble Supreme Court in the matter of **Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another** (2009) 6 SCC 121}, where the deceased is of the age group of 31-35 years, multiplier of 16 ought to have been applied.
15. In the instant case, the date of birth of the deceased is 3rd July, 1980 for which his marksheet (Ex.-P/1) has been filed by the claimants, according to which, on the date of the accident, the age of the deceased was below 36 years. Therefore, the Tribunal ought to have applied multiplier of 16.
16. The Tribunal has rightly assessed the notional income of the deceased at Rs.4500/-, but no future prospects has been awarded. As per the judgment in the matter of **Pranay Sethi**, Supra, 40% should have been added on this head. The Tribunal has awarded towards the conservative head i.e. loss of spousal consortium Rs.40,000/-, for funeral expenses Rs.15,000/-, for loss of estate Rs.15,000/- and the same is held to be proper. But the Tribunal has not awarded any

amount towards the loss of parental consortium to the children, therefore, on this head, Rs.40,000/- ought to have been awarded.

17. Thus, the claimants would be entitled for the following compensation :-

Sr. No.	Head	Amount
1.	Annual income	Rs.4500x12 = Rs.54,000/-
2.	For Future Prospects	Rs.54,000/- x 40% = 21,600/-
3.	Income	Rs.54,000/- + Rs.21,600/- = Rs.75,600/-
4.	Total Income	Rs.75,600/- x 16 = Rs.12,09,600/-
5.	Personal expenses	Rs.12,09,600/- x $\frac{1}{4}$ = Rs.3,02,400/-
6.	Loss of dependency	Rs.12,09,600/- - Rs.3,02,400/- = Rs.9,07,200/-
7.	Loss of spousal consortium	Rs.40,000/-
8.	Loss of Parental consortium	Rs.40,000/-
9.	For Funeral expenses	Rs.15,000/-
10.	Loss of Estate	Rs.15,000/-
	Total Award	Rs.10,17,200/-
	Amount awarded	Rs.9,20,500/-
	Enhanced amount	Rs.96,700/-

18. The Claimants are held to be entitled for total compensation of Rs.10,17,200/- with 6% interest per annum from the date of filing of claim petition i.e. 27.8.2016 till its realization.

19. In view of the finding arrived at by this Court in the preceding paragraphs, it is directed that Insurance Company shall firstly pay the award amount of Rs.10,17,200/- to the claimants with 6% interest per annum from the date of filing of claim petition i.e. 27.8.2016 till its realization within a period of 2 months and thereafter shall recover the said amount from the Owner in the same execution proceeding without filing separate suit. Accordingly, MAC No.1237 of 2018 preferred by the Oriental Insurance Company is disposed of.

20. For the foregoing, MAC No.1707 of 2018 filed by the Claimants is allowed in part to the extent as indicated above.

21. Other conditions of the award passed by the learned Claims Tribunal shall remain in tact.

There shall be no order as to costs.

Sd/-
(Deepak Kumar Tiwari)
Judge

Barve

HEADLINES

Owner of the vehicle not entered the witness box to prove due diligence and care in allowing the vehicle to be driven by the person having learning licence, the Insurance Company successfully establishes breach of policy conditions.