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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1197 of 2015**

1. Smt. Kanti Bai, Wd/o. Omprakash Sahu, aged about 37 Years,
2. Himanshu, S/o Late Omprakash Sahu, aged about 17 Years,
3. Ku. Archana, D/o Late Omprakash Sahu, aged about 15 Years,
4. Vinod Kumar, S/o Late Omprakash Sahu, aged about 13 Years,
5. Aaju Ram, S/o Late Ganesh Ram Sahu, aged about 65 Years,
6. Mana Bai, W/o Aaju Ram Sahu, aged about 60 Years,

Appellants No. 2 to 4 are minor hence impleaded through their natural guardian i.e. appellant No.1 Smt. Kanti Bai, Wd/o. Omprakash Sahu, aged about 37 years,

Permanent R/o Village Kanji, Post Amera, District Raipur Chhattisgarh, Presently R/o Mova, P.S. Pandari, Raipur, District Raipur, Chhattisgarh. (Claimants)

---- Appellants**Versus**

1. Balram, S/o Ramdayal Verma, R/o Surajpura, P.O. Bhatapara, P.S. Bhatapara Rural, District Raipur Now Baloda Bazar Chhattisgarh. (Driver of Vehicle No. CG 04 /CH/ 7595)
2. Vikas Jasvani, S/o Kishan Chand Jaswani, R/o No. 1, D - 389, Taigore Nagar, Raipur, Near MLA Guest House, Raipur Chhattisgarh. (Owner of Vehicle No. CG 04 / CH / 7595)
3. The Oriental Insurance Co. Ltd., Through Divisional Manager, Division No. 1, The Oriental Insurance Co. Ltd. Jail Road, Raipur, District Raipur, Chhattisgarh. (Insurer of Vehicle No. CG 04 / CH / 7595)

----Respondents**MAC No. 934 of 2015**

1. Balram, S/o Ramdayal Verma, aged about 34 Years, R/o Surajpura, Post Office Bhatapara, P.S. Bhatapara Gramin, Civil and Revenue Distt. Raipur, Chhattisgarh. (Driver)
2. Vikas Jaswani, S/o Kishanchand Jaswani, aged about 32 Years, R/o No. 1, D-389 Taigore Nagar Raipur (Near MLA Rest House

Raipur) Tahsil and Civil and Revenue Distt. Raipur, Chhattisgarh.
(Owner)

---- Appellants

Versus

1. Kanti Bai, Wd/o Omprakash Sahu, aged about 37 Years,
2. Himanshu, S/o Om Prakash Sahu, aged about 17 Years,
3. Ku. Archana, D/o Om Prakash Sahu, aged about 15 Years,
4. Vinod Kumar, S/o Om Prakash Sahu, aged about 13 Years,
5. Aajuram, S/o Late Ganeshram Sahu, aged about 65 Years,
6. Mana Bai, W/o Aajuram Sahu, aged about 60 Years,

Respondent Nos. 2, 3 & 4 are minor through their natural guardian mother namely Kanti Bai.

All are permanent Address Village Kanji, Post Amera, Distt. Raipur Chhattisgarh,

Present Address Mova, P.S. - Pandri, Civil and Revenue Distt. Raipur, Chhattisgarh. (Claimants)

7. The Oriental Insurance Company Limited. Through The Divisional Manager, Division No.1, the Oriental Insurance Company Limited, Jail Road, Raipur Distt. Raipur Chhattisgarh. (Insurer)

---- Respondents

MAC No. 951 of 2015

- The Oriental Insurance Company Ltd., Through its Divisional Manager, Divisional Office No.-1, the Oriental Insurance Company Ltd. Jail Road, Raipur Zilla Raipur, Chhattisgarh. (Insurer)

---- Appellant

Versus

1. Kanti Bai, W/o Omprakash Sahu, aged about 37 Years,
2. Himanshu, S/o Omprakash Sahu, aged about 17 Years,
3. Kumari Archana, D/o Omprakash Sahu, aged about 15 Years,

4. Vinod Kumar, S/o Omprakash Sahu, aged about 13 Years,
5. Aajuram, S/o Late Ganeshram Sahu, aged about 65 Years,
6. Mana Bai, W/o Aajuram Sahu, aged about 60 Years,

Respondent Nos. 2, 3 & 4 under the guardianship of Mother Kanti Bai

All Permanent Address- Village Kanjee, Post-Amera Zilla Raipur,
Present Address- Thana Mowa Pandri, Zilla- Raipur
Chhattisgarh. (Claimants)

7. Balram, S/o Ramdayal Verma, R/o Surajpura, Post Office Bhatapara, Thana-Bhatapara, Gramin Zilla Raipur, Chhattisgarh (Driver)
8. Vikash Jaswani, S/o Kishanchand Jaswani, Address - No.-1, D-389 Tagor Nagar, Raipur, Near Vidhak Rest House Raipur Tahsil and Zilla Raipur, Chhattisgarh. (Owner)

---- Respondents

MAC No. 1197 of 2015

For Appellants	: Shri Amiyakant Tiwari and Shri Akash Shrivastava, Advocates.
For Respondents 1 & 2	: Shri Vivek Kumar Tripathi, Advocate
For Respondent 3	: Smt. Chitra Shrivastava, Advocate.

MAC No. 934 of 2015

For Appellants	: Shri Vivek Kumar Tripathi, Advocate
For Respondents 1 to 6	: Shri Akash Shrivastava, Advocate.
For Respondent 7	: Smt. Chitra Shrivastava, Advocate.

MAC No. 951 of 2015

For Appellant	: Smt. Chitra Shrivastava, Advocate.
For Respondents 1 to 6	: Shri Akash Shrivastava, Advocate.
For Respondent 7 & 8	: Shri Vivek Kumar Tripathi, Advocate.

HON'BLE SHRI JUSTICE RADHAKISHAN AGRAWAL

Judgment on Board
(29.09.2023)

1. Since all the aforesaid three appeals arise out of same impugned award dated 14.05.2015, they are being disposed of by this common judgment.
2. All the aforesaid three appeals have been filed by the Driver & Owner, Insurance Company as well as the claimants being aggrieved by the impugned award dated 14.05.2015 passed by the Principal Motor Accident Claims Tribunal, Raipur (for short, 'the Tribunal) in Claim Case No. 34/2011, whereby the Tribunal has allowed the claim petition in part, preferred by the claimants, by awarding total compensation of Rs.13,52,750/- along with interest at 6% per annum from the date of filing of claim petition till its realisation, while fastening liability upon the Non-applicants, i.e., Driver & Owner as well as the Insurance Company jointly and severally. It is also held that by the Tribunal that in case, the amount of compensation awarded by the Tribunal is paid by the Insurance Company, then the Insurance Company can recover the same from the owner. For the sake of convenience, the parties shall hereinafter be referred to as per their description before the Tribunal.
3. As per averments in the claim petition that on 04.11.2010 between 2:30 – 3:00 pm at village Binori before the waiting room, the motorcycle bearing registration No. CG-04-CH-7595 (hereinafter referred to as the offending vehicle) being driven by Non-applicant No.1 Balram in a rash and negligent manner,

dashed the motorcycle bearing registration No.CG-11-BB-3716, being driven by Omprakash Sahu (hereinafter referred to as the deceased), as a result of which, deceased received injuries and died during the course of treatment on 15.11.2010. At the relevant time and date, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

4. On account of death of deceased Omprakash Sahu in the vehicular accident, a claim petition was filed by the legal representatives of deceased stating, inter alia, therein that the deceased was 38 years and used to earn Rs.25,000/- per month by running R.C.M. Pick Up Center and claimed total compensation of Rs.57,90,000/- under various heads.
5. The Non-applicants No. 1 & 2, driver and owner, have contested the claim by filing written statement jointly while stating therein that deceased was fully responsible for cause of accident, at the time of accident. It was also specifically pleaded therein that the driver Balram was possessing valid and effective driving licence and therefore, in case of any liability being fastened, the same could be indemnified by the said insurance company, whereas the insurer of it, submitted that on the date of incident, the driver Balram was not possessing valid and effective driving licence and that the insurance company is not liable for payment of compensation due to violation of insurance policy conditions.
6. The Tribunal, vide impugned award dated 14.05.2015, after

considering the material placed on record and evidence led by the parties, has held driver (Non-applicant No.1- Balram) liable for cause of accident by driving the offending vehicle in a rash and negligent manner, resulting into, the said deceased person has died. It held further that there was contributory negligence on the part of the deceased to the extent of 30% and that on the date of incident, driver of the offending vehicle was not having a valid and effective driving licence and awarded a total compensation of Rs.13,52,750/- after deducting 30% from the total compensation of Rs.19,32,500/- towards contributory negligence on the part of the deceased, along with 6% interest per annum. While directing the non-applicants No. 1, 2 & 3 i.e. driver, owner & insurer jointly and severally to pay total compensation of Rs.13,52,750/-, it is also held by the Tribunal that in case, the amount of compensation awarded by the Tribunal is paid by the Insurance Company/non-applicant No.3, then the Insurance Company can recover the same from the owner/non-applicant No.2.

7. Being aggrieved by the said impugned order/award, the Non-applicant Nos.1 & 2/driver & owner has preferred an appeal being MAC No.934/2015 whereas the non-applicant No.3/the Oriental Insurance Limited has also preferred an appeal being MAC No.951/2015 seeking exoneration from liability to pay compensation. On the other hand, claimants have also preferred an appeal being MAC No.1197/2015 seeking enhancement of

compensation.

8. Learned counsel appearing for claimants in MAC No.1197/2015, submits that the amount of compensation awarded by the learned Tribunal is on lower side. He would also submit that the Tribunal has erred in holding that there was contributory negligence on the part of the deceased to the extent of 30% whereas the driver of the offending vehicle i.e. Balram has not been examined himself for proving contributory negligence. The Tribunal while granting compensation considered the future prospects of the deceased as 20% which is on lower side and looking to the cost of living and rate of inflation, it should be 50%. The Tribunal also erred in not granting sufficient amount towards conventional heads i.e. loss of consortium, loss of love and affection and loss of filial consortium, which needs to be enhanced suitably.
9. Learned counsel for the driver and owner/non-applicant Nos. 1 & 2, on the other hand, would submit that on the date of incident, driver of the offending vehicle was having a valid and effective driving licence to drive the offending vehicle and the driving licence issued in favour of driver was also brought on record but the Tribunal ignoring the said fact recorded a finding that the driver was not holding valid driving licence on the date of incident and thus fastened the liability which is not proper in the facts and circumstances of the case.

10. Per Contra, learned counsel for the Insurance Company, would submit that the driver of the offending vehicle was not having a valid and effective driving licence to drive the vehicle on the date of incident, which is a fundamental breach of policy condition. She would also submit that though the Insurance Company was exonerated by the Tribunal but the finding recorded by the Tribunal to the effect that in case, the amount of compensation awarded by the Tribunal is paid by the Insurance Company, then the Insurance Company can recover the same from the owner, is not just and proper.
11. I have heard learned counsel for the respective parties and perused the record of the Tribunal including the evidence adduced by the claimants minutely.

MAC No.1197/2015

12. So far as the contributory negligence on the part of the deceased is concerned, from perusal of the record, it is seen that one FIR Ex.P-1 has been lodged on behalf of the claimants on 08.11.2010 against the offending vehicle whereas the counter FIR Ex.D-2(C) has been filed after a delay of 11 days i.e. on 15.11.2010 against the vehicle being run by the deceased and for that no satisfactory explanation has been found on record regarding delay in lodging the FIR (Ex.D-2(C) by the driver and owner. Further, the driver of the offending vehicle- Balram has not been examined before the Tribunal so as to hold that there is

a contributory negligence. In absence of examination of the driver of the offending vehicle causing the accident and merely on the basis of it being a head on collision, it cannot be held that deceased was liable for the cause of accident in any manner. No evidence whatsoever has been adduced by the non-applicant Nos. 1 & 2 to prove negligence on the part of the deceased. Therefore, considering the evidence brought on record and facts and circumstances of the case, the manner in which the accident occurred as per the oral and documentary evidence available on record, this Court is of the opinion that the Tribunal was not justified in holding the deceased to the extent of 30% negligent in causing the accident and the said finding deserves to be and is hereby set aside and it is held that there was no contributory negligence on the part of the deceased.

13. So far as quantum of compensation is concerned, I do not find any error in assessment of the annual income of the deceased as Rs.1,28,000/- and looking to the age of the deceased as on the date of incident i.e. below 40 years, 40% from the income, i.e. Rs.51,200/- has to be added towards future prospects, in view of the law laid down by the Supreme Court in the case of ***National Insurance Company Limited vs. Pranay Sethi*** reported in **(2017) 16 SCC 680**. After adding 40% towards future prospects, the deceased's annual income would come to Rs.1,79,200/-. Thereafter, the Tribunal was justified in deducting $\frac{1}{4}$ towards personal and living expenses of the deceased looking

to the dependents of the deceased. Further, taking into account the date of birth of the deceased mentioned in IT Return form as 04.02.1971, the Tribunal determined the age of the deceased as below 40 years and used multiplier 15 considering the decision rendered in ***Smt. Sarla Verma and others v. Delhi Transport Corporation and others*** reported in **2009 ACJ 1298 : (2009) 6 SCC 121**, which I am of the considered view that the finding recorded by the Tribunal with respect to deduction towards personal and living expenses of the deceased, determination of age and use of multiplier is correct. If 1/4th of income from Rs.1,79,200/- is deducted towards deceased's personal and living expenses, then the total annual income would come to Rs.1,34,400/- (Rs.1,79,200 – Rs.44,800/-) and if the annual income of Rs.1,34,400/- is multiplied by 15, then the total loss of dependency would come to Rs.20,16,000/- instead of Rs.17,28,000/- as assessed by the Tribunal. The Tribunal has granted Rs.1,34,500/- towards expenses for medical treatment as loss of estate, which does not require any interference by this Court. The learned MACT has also awarded Rs.50,000/- towards loss of consortium to claimant No.1, loss of companionship to claimant Nos. 2 to 4 and loss of love and affection to claimants No.5 & 6 and Rs.20,000/- towards funeral expenses, however, the Tribunal was not justified in granting sufficient amount towards loss of consortium and towards loss of filial consortium. In view of dictum rendered in the case of ***Magma General***

Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others reported in **(2018) 18 SCC 130**, a sum of Rs.40,000/- is granted to each of the appellants No.1 to 6/claimants, i.e., Rs.40,000/- to wife towards loss of consortium, Rs.40,000/- each to the claimants No.2 to 4 towards loss of parental consortium and Rs.40,000/- each to claimants No. 5 & 6 towards filial consortium as it is the right of the parents to get compensation in the case of an accidental death of their son, as held by the Supreme Court in the **Magma's** case. In the light of aforesaid judgment, the amounts awarded under conventional heads is reassessed as Rs.2,40,000/- in place of Rs.50,000/- and Rs.15,000/- for funeral expenses in place of Rs.20,000/-. Thus, the claimants are entitled for total compensation of Rs.24,05,500/- with interest @ 6% per annum as awarded by the Tribunal.

MAC No.934/2015 (driver & owner) & MAC No.951/2015 (insurer)

14. Now, I shall deal with the validity of the driving licence of the driver of the offending vehicle, i.e., Balram at the time of accident.
15. Before the Claims Tribunal, evidence was adduced with respect to validity of the driving licence. Rajesh Kumar Bhargav (N.A.W.1), Licence Clerk in the Office of R.T.O., Raipur examined on behalf of the insurer/Non-applicant No.3. He has stated in cross-examination in para 6 that the document Ex.D.8 has been issued

from his department in favour of Balram Verma, which is valid. It is also admitted by him that previous No.B/4734/R (driving licence No.CG04/2002/0109578) in the said document (Ex.D.8) has been recorded by his Department, i.e., Transport Department, Government of Chhattisgarh. He also admitted that documents Ex.D.1 and Ex.D.8 are valid documents. The possibility of mentioning original licence number in Ex.D.8 by mistake at 'A to A' part is ruled out by this witness. He has further stated that as on date document Ex.D.8 has not been cancelled by his Department. He further admitted that the holder of the document Ex.D.8 has been authorised to drive motor vehicle with gear and light motor vehicle from 18.01.2002 to 17.01.2022. In order to substantiate the above evidence, the Non-applicants No. 1 & 2 have also examined one M.V.D.Prasad Rao, Asstt. Grade-II, R.T.O. Office, Raipur as N.A.W.1, who has stated that he has brought the extract copy of driving licence (Ex.D.6) of Balram Verma, which was issued on 26.09.2013 and its validity is from 18.01.2002 till 17.01.2022. The said driving licence was to drive non-transport vehicle, motorcycle and light motor vehicle and the computer extract of driving licence is marked as Ex.D-6, which bears the seal of his Office and also bears the signature of licence clerk Rajesh Bhargav (N.A.W.3(1)). As per Ex.D.6, the holder of driving licence was holding a valid driving licence to drive non-transport vehicle, motorcycle and light motor vehicle as on 04.11.2010. The original driving licence issued by his Office is exhibited as Ex.D-7 and the photocopy of

which is exhibited as Ex.D.7(C). According to the document Ex.D.6, which he has brought, the licence number of driver is mentioned as CG04/2002/0109578, which was issued through computer. As per our office records, earlier number of this licence was B/4734/R and on the basis of which new driving licence was issued and number CG04/2002/0109578 of it issued through computer has been entered in their records. This witness has also been subjected to cross-examination, in which, a query was put to him as to whether if the original licence No.B/4734/R mentioned in ExD.6 has been issued in the name of some other person, then Ex.D-6 would become illegal. In reply to this question, he has answered that since both the driving licences have been issued by the licensing authority, both the licenses will be considered valid. He has also admitted that such mistakes can happen from the Office. He has been further subjected to cross-examination, wherein, on a query being raised that whether the documents Ex.D.6 and Ex.D-1(C), both the driving licences are valid, to which, he replied in affirmative by stating that according to his view, since both the licences have been issued by the same competent licensing authority, therefore, both the driving licences are valid.

16. Thus, from the above evidence, oral and documentary available on record, it is clear that at the time of accident, the offending vehicle was insured from 19.08.2010 to 18.08.2011 with the Oriental Insurance Company Limited/non-applicant No.3 and the driver of the offending vehicle, i.e., Balram/Non-applicant No.1

was having a valid and effective driving licence to drive the offending vehicle and considering the evidence, this Court is of the opinion that the Tribunal was not justified in holding that the driver of the offending vehicle was not having a valid and effective driving licence at the time of accident.

17. In the result, **MAC No.1197/2015** filed by the claimants is allowed in part and the claimants are entitled for total compensation of Rs.24,05,500/-. Since the Tribunal has already awarded a sum of Rs.13,52,750/-, therefore, after deducting the same from the above amount, i.e., Rs.24,05,500/-, the claimants would be entitled for additional compensation of Rs.10,52,750/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact whereas in view of the aforesaid discussions, **MAC No.934/2015** filed by the driver and owner is allowed and they are exonerated from the liability to pay compensation and consequently, **MAC No.951/2015** filed by the Oriental Insurance Company Limited is hereby dismissed while directing that the insurer/Oriental Insurance Company Limited shall pay the compensation to the claimants with interest as awarded by the Tribunal.

Sd/-
(**Radhakishan Agrawal**)
Judge

