



2025:CGHC:48515



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 610 of 2021

1. Smt. Sujata Badhai W/o Late Shri Ritesh Badhai Aged About 26 Years R/o Village- Borgaon, Thana And Tahsil- Farasgaon, District Kondagaon Chhattisgarh.
2. Minor Harsh Badhai S/o Late Shri Ritesh Badhai Aged About 4 Years Minor Through Natural Guardian Mother Smt. Sujata Badhai W/o Late Shri Ritesh Badhai, Aged About 26 Years. R/o Village- Borgaon, Thana And Tahsil- Farasgaon, District Kondagaon Chhattisgarh.
3. Minor Ku. Shraddha Badhai D/o Late Shri Ritesh Badhai, Aged About 2 Years 6 Months Minor Through Natural Guardian Mother Smt. Sujata Badhai W/o Late Shri Ritesh Badhai, Aged About 26 Years, R/o Village- Borgaon, Thana And Tahsil- Farasgaon, District Kondagaon Chhattisgarh
4. Nitai Badhai S/o Shri Jogesh Badhai Aged About 66 Years R/o Village- Borgaon, Thana And Tahsil- Farasgaon, District Kondagaon Chhattisgarh.
5. Smt. Usha Badhai W/o Shri Nitai Badhai Aged About 66 Years R/o Village- Borgaon, Thana And Tahsil- Farasgaon, District Kondagaon Chhattisgarh.

--- Appellants-claimants

versus

1. Rajkumar Nainwani S/o Shri Kanhaiyalal Nainwani Aged About 60 Years R/o House No. A/8 Housing Board Colony Jagdalpur, Thana- Bodhghat District- Baster



Chhattisgarh.(Driver And Owner Of Vehicle No. C. G. 17/ga/1338)

2. The Oriental Insurance Company Limited Branch Office Hotel Laxman Avenue, Medical College Road Jagdalpur, District Baster, Chhattisgarh. Insurer Of The Vehicle No. C. G. 17/ga/ 1338)

--- Respondent(s)

MAC No. 1011 of 2024

1. The Oriental Insurance Company Limited By Branch Manager, Branch Office, Hotel Laxman Avenue, Hospital Road, Jagdalpur, District Bastar, (C.G.), Through Authorized Signatory, The Oriental Insurance Company Limited, Legal Hub, Rama Trade Centre, First Floor, Old Bus Stand Bilaspur, Chhattisgarh.

---Appellant

Versus

1. Smt. Supari Wd/o Late Sukuram Besara @ Sukhram Aged About 34 Years R/o Village Markel, Tehsil Jagdalpur District Bastar, (C.G.), Presently R/o Frazerpur Sahid Gundadhul Ward No. 45 Jagdalpur, District- Bastar, Chhattisgarh.
2. Minor Kumari Seema (Besara) D/o Late Sukuram Besara @ Sukhram Aged About 13 Years Minor Through Natural Guardian Mother Smt. Supal (Res. No.1), R/o Village Markel, Tehsil Jagdalpur District Bastar, (C.G.), Presently R/o Frazerpur Sahid Gundadhul Ward No. 45 Jagdalpur, District- Bastar, Chhattisgarh.
3. Minor Sagar Besara S/o Late Sukuram Besara @ Sukuram Aged About 10 Years Minor Through Natural Guardian Mother Smt. Supal (Res. No.1), R/o Village Markel, Tehsil Jagdalpur District Bastar, (C.G.), Presently R/o Frazerpur Sahid Gundadhul Ward No. 45 Jagdalpur, District- Bastar, Chhattisgarh.....(Claimants)



4. Raj Kumar Nainwani S/o Kanhaiyalal Nainwani Aged About 59 Years R/o A-08, Housing Board Colony, Bodhghat, Jagdalpur, Dist- Bastar, Chhattisgarh.....(Driver/owner)

--- Respondent(s)

MAC No. 786 of 2021

1. Rajkumar Nainwani S/o Shri Kanhaiyalal Nainwani Aged About 60 Years R/o House No. A/8, Housing Board Colony, Jagalpur, P. S. Bodhghat, District Bastar Chhattisgarh. Appellant N. A. No. 1

---Appellant

Versus

1. Smt. Sujata Badhai W/o Late Ritesh Badhai Aged About 26 Years R/o Boregaon, P. S. And Tahsil Farasgaon, District Kondagaon, Chhattisgarh. Claimants.
2. Harsh Badhai S/o Late Ritesh Badhai Aged About 4 Years Res. No. 2 And 3 Through Mother And Natural Guardian Smt. Sujata Badhai (Res. No. 1) Age 04 Yars, R/o Boregaon, P. S. And Tahsil Farasgaon, District Kondagaon, Chhattisgarh. Claimants.
3. Ku. Shradha Badhai D/o Late Ritesh Badhai Aged About 2 Years Res. No. 2 And 3 Through Mother And Natural Guardian Smt. Sujata Badhai (Res. No. 1) Aged About 2 Years 6 Months R/o Boregaon, P. S. And Tahsil Farasgaon, District Kondagaon, Chhattisgarh. Claimants.
4. Nitai Badhai S/o Jogesh Aged About 66 Years R/o Boregaon, P. S. And Tahsil Farasgaon, District Kondagaon, Chhattisgarh. Claimants.
5. Smt. Usha Badhai W/o Shri Nitai Badhai Aged About 66 Years R/o Boregaon, P. S. And Tahsil Farasgaon, District Kondagaon, Chhattisgarh. Claimants.



6. The Oriental Insurance Co. Ltd. Through- Branch Office,
Laxman Avenue, Medical College Road, Jagdalpur, District
Bastar Chhattisgarh. N.A. No. 2

--- Respondent(s)

MAC NO.610/2021

For Appellants	: Mr. Rajendra Patel, Advocate on behalf of Mr. Sunil Sahu, Advocate
For Respondents No.1	: Mr. Keshav Dewangan, Advocate.
For Respondent No.2	: Mr. Praveen Kumar Tulsiyan, Advocate

MAC NO.786/2021

For Appellant	: Mr. Keshav Dewangan, Advocate
For Respondent No.1 to 5	: Mr. Rajendra Patel, Advocate on behalf of Mr. Sunil Sahu, Advocate
For Respondent No.6	: Mr. Praveen Kumar Tulsiyan, Advocate

AND

MAC NO.1011/2024

For Appellant	: Mr. B.N. Nande, Advocate
For Respondent No.1 to 3	: Mr. Praveen K Dhurundhar, Advocate
For Respondent No.4	: Mr. Keshav Dewangan, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

7/8/2025

1. As the above appeals arise out of common accident, therefore, they are heard together and decided by this common order.
2. MAC No.610/2021 is preferred by claimants-appellants seeking enhancement of compensation awarded in Claim Case No.80/2019 vide award dated 23.8.2021 by which learned Motor Accident Claims Tribunal, North Bastar, Kanker allowed claim application in part filed by claimants against



death of Ritesh Besra, driver of vehicle bearing registration No.CG27-H-3077, awarded total compensation of Rs.41,01,000/-; exonerated insurance company on the ground of breach of insurance policy recording a finding that at the time of accident, driver of offending truck was not possessed with effective driving license and fastened liability upon owner of vehicle to satisfy the impugned award.

3. MAC No.786/2021 is preferred by appellant-owner of Truck bearing registration No.CG27-GA-1338, challenging the liability fastened upon him vide award dated 23.8.2021 passed in Claim Case No.80/2019 to pay the entire amount of compensation to claimants.
4. MAC No.1011/2024 is filed by appellant Insurance Company challenging the award dated 21.2.2024 passed in Claim Case No.266/2019 by which learned 3rd Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur allowed in part claim application filed by claimants against death of Sukuram Besra, awarded compensation of Rs.17,77,800/- and fastened liability upon insurance company to make payment of compensation observing that at the time of accident, it is the owner who was driving offending vehicle bearing registration No.CG17-GA-1338 and deceased was travelling in it as a Cleaner.
5. Learned counsel for appellant Insurance Company in MAC



No.1011/2024 submits that the Claims Tribunal fell into error in arriving at a conclusion that at the time of accident, non-applicant No.1-respondent No.4 (owner) was driving offending vehicle. Said conclusion arrived at by Claims Tribunal is perverse to the evidence available on record. It appears that Claims Tribunal misinterpreting the evidence of NAW-3 Investigating Officer, who conducted investigation of criminal case, held that it is non-applicant No.1 who was driving offending vehicle at the time of accident, which is beyond imagination in the facts of case as well as looking to the condition of offending vehicle immediately after accident. He next contended that photographs of damaged offending vehicle are also available in record of Claims Tribunal, which clearly show that offending vehicle met with accident with other vehicle from its driver's side i.e. right hand side of vehicle, and cabin of truck from right side was badly damaged. It would also suggest that driver who was driving vehicle at the time of accident may have suffered grievous injuries in accident. However, this fact has been completely overlooked by Claims Tribunal and relying on evidence of NAW-1 that he was driving offending vehicle and at the time of accident, he jumped out from it. Said defence taken by non-applicant No.1 is an afterthought as non-applicant No.1 has not suffered any injury, as stated by the Investigating



Officer in his evidence nor it is the case of non-applicant No.1 that he suffered injuries in said accident. Even if evidence of non-applicant No.1 is accepted that he jumped out from running vehicle, then he must have suffered some injuries over his person, which are missing, and therefore, defence taken by non-applicant No.1 is concocted on its face and not admissible.

6. Learned counsel for non-applicant No.1/respondent No.4, owner of offending vehicle, opposing submission of learned counsel for appellant, would submit that finding recorded by Claims Tribunal is based upon appreciation of evidence available on record. Insurance Company has admitted the fact that at the time of accident, non-applicant No.1/respondent No.4, owner, was driving offending vehicle and the Claims Tribunal has taken note of the said fact in Para-30 of the impugned award. Once there is admission on the part of insurance company that non-applicant No.1, owner of offending vehicle, was driving vehicle at the time of accident, it will not be permitted at this stage in appeal to take a somersault and raise other defence. He also contended that Investigating Officer Sandeep Kumar was examined as NAW2-3 and in his evidence he clearly stated that after investigation of crime, he found that offending truck was being driven by non-applicant No.1. He also pointed out that



this witness made statement before the Claims Tribunal that during investigation he recorded statement of complainant Vijay, who lodged FIR, in which also it has come that offending truck was being driven by non-applicant No.1. Non-applicant No.1/respondent No.4 was examined before Claims Tribunal as NAW1-1 and he clearly stated as to why he did not suffer serious injuries over his person in accident. As per explanation offered by him, right tyre of vehicle got burst, vehicle lost its control, therefore, he jumped out from vehicle. However, deceased-helper, who was sitting beside driver's seat, got stuck in truck, could not jump out, sustained injuries and died. Finding of Claims Tribunal is based on proper appreciation of oral and documentary evidence on record and there is no substance in this appeal, therefore, he prays that it be dismissed.

7. Learned counsel appearing on behalf of claimants/ respondents No.1 to 3 opposed submissions of learned counsel for appellant and supported the arguments advanced by learned counsel for respondent No.4-owner. He, however, submits that as breadwinner of claimants suffered fatal injuries in an accident with offending vehicle, which resulted into his death, the claimants are entitled for just compensation. He submits that as per evidence available in record, it is apparent that at the time of accident, deceased



was travelling in offending vehicle as a Cleaner and therefore, insurance company in order to escape from its liability has set-out a case in appeal that it is the deceased who was driving offending vehicle and not the owner of offending vehicle. In alternate, he submits that if this Court comes to conclusion that deceased was driving offending vehicle at the time of accident, then a direction be issued to appellant Insurance Company to first pay the entire amount of compensation to claimants and then to recover the same from owner of offending vehicle. It is not disputed that in motor accident, subject matter of this appeal, Sukhram suffered grievous injuries and died during course of treatment. He submits that as the compensation awarded by Claims Tribunal is adequate, he is not pressing cross-appeal filed on behalf of claimant for enhancement of compensation.

8. Learned counsel for appellant-owner of offending vehicle in MAC No.786/2021, arising out of Claim Case No.80/2019, would submit that appellant has challenged the impugned award on the ground that Claims Tribunal erred in recording finding that offending vehicle was being driven by cleaner namely Sukhram without having valid and effective driving license. He submits that finding of Claims Tribunal that deceased Sukhram was driving offending vehicle is contrary to the evidence available in record. Claims Tribunal has not



appreciated evidence in its proper perspective and came to wrong conclusion. In support of his contention, he read over evidence of NAW2-2 Piyush Tiwari, Investigator of Insurance Company and NAW2-3 Sandeep Kumar, Investigating Officer of criminal case.

9. Learned counsel for claimants would submit that being counsel representing claimants, he does not dispute submission of learned counsel for appellant-owner. He, however, submits that claimants have also filed an appeal for enhancement of compensation and if this Court reaches to the conclusion that appeal filed by owner of offending vehicle is meritless then a direction be issued to the insurance company to first pay the entire amount of compensation to claimants and then to recover the same from owner.
10. Learned counsel for respondent Oriental Insurance Co. Ltd. would also oppose submission of learned counsel for appellant owner and submit that finding recorded by Claims Tribunal is based on proper appreciation of oral and documentary evidence on record, which does not call for any interference. He further submits that Claims Tribunal has rightly exonerated insurance company from its liability, holding that on the date of accident, deceased Sukhram was driving offending vehicle without having valid and effective driving license.



11. Heard learned counsel for respective parties and perused record of claim case.
12. So far as MAC No.786/2021 filed by owner of offending vehicle is concerned, learned counsel for owner of offending vehicle raised a plea that he is the owner who was driving vehicle at the time of accident.
13. Perusal of record would show that appellant-owner has filed reply to claim application denying the pleadings made therein including that accident was result of negligence on the part of non-applicant No.1. It was further pleaded that at the time of accident, offending vehicle was insured with non-applicant No.2 and in case any compensation is awarded to claimants, insurance company is liable to pay the same. There is no mention in entire reply submitted by appellant-owner of offending vehicle that he jumped out from offending vehicle before accident or as to how the owner even if he was driving offending truck had not suffered any injury when accident was so severe in which driver side of truck was badly damaged. It is also not mentioned that when tyre had burst, he jumped out from offending truck.
14. Insurance Company took a specific plea in its reply by way of amendment that at the time of accident, offending vehicle was being driven by Sukhram and he was not travelling as a Cleaner.



15. Appellant-owner of offending vehicle during his examination before the Claims Tribunal, for the first time, disclosed that he jumped out from offending vehicle.
16. In FIR (Ex.P-1) it is mentioned that Sukhram got stuck in cabin of truck bearing No.CG17-GA-1338, suffered grievous injuries and died during treatment. Report was lodged against driver of truck. Photographs of damaged truck are also exhibited as Ex.D-3, Ex.D-4, Ex.D-5, Ex.D-6, Ex.D-7 and a glance of same would show that after accident, truck got badly damaged from driver side i.e. right side, its cabin was also got crushed and moved backside.
17. Evidence of Sandeep Kumar (NAW2-3), Investigating Officer of criminal case, is based on some material gathered/collected in the course of investigation. However, statement of witnesses recorded under Section 161 CrPC are not placed on record by marking it exhibits. Owner of offending vehicle neither examined himself nor any other person as witness. It is well settled that claim cases are to be decided considering attending circumstances and evidence on the touchstone of preponderance of probabilities rather than on the standard of proof beyond reasonable doubt which applies in criminal cases.
18. Learned Claims Tribunal in Para 10 to 18 of award passed in Claim Case No.80/2019 considered the question as to who



was driving offending vehicle and considering that driver's side of offending truck was completely damaged, photographs of damaged offending vehicle submitted by insurance company, recovery of driving license of appellant-owner and registration certificate of offending vehicle from inside the offending vehicle, appellant-owner has not received a single injury on his person, particularly when driver's side of cabin was totally damaged in such a terrible accident which resulted in death of two persons, non-mention of name of driver of offending vehicle in FIR, had concluded that it was deceased Sukhram Besra who was driving the offending vehicle at the time of accident and not appellant-owner, deceased Sukhram was not having valid and effective driving license in his name to drive offending vehicle.

19. Taking into consideration facts and circumstances of case, particularly the fact that appellant-owner in his reply to claim application had not taken any such plea as deposed by him in his statement recorded before learned Claims Tribunal, the fact of non-sustaining of injuries like abrasions etc., which could have been received by a person while jumping from a moving vehicle, damaged condition of cabin of driver side of offending vehicle, as reflecting in photographs, I am of the considered view that the story put-forth by appellant owner of



offending vehicle is highly improbable, the same could not be believed in the given facts and circumstances of case and appears to be an after-thought just to shift the liability to pay compensation as offending vehicle was insured by Insurance Company. Learned Claims Tribunal was right in recording the finding that appellant-owner was not driving offending vehicle at the time of accident; it was being driven by deceased Sukhram and he was not possessing license to drive offending vehicle. It is hereby maintained.

20. As it is held by this Court that the accident occurred due to sole negligence of deceased, who was driving offending vehicle without having driving license in his name, which resulted in his death, the claimants being legal representatives of deceased Sukhram are not entitled for any compensation under the Act of 1988 for the reason that they cannot take advantage of the fault of the deceased, who was tortfeasor, and seek compensation.
21. In view of above, MAC No.786/2021 filed by appellant owner of offending vehicle being *sans merit* is liable to be dismissed and is hereby dismissed.
22. MAC No.1011/2024 filed on behalf of appellant Insurance Company is allowed and the award dated 21.2.2024 passed in Claim Case No.266/2019 is hereby set aside in its entirety. Cross-objection filed on behalf of claimants is also dismissed.



23. Coming to MAC No.610/2021 preferred by appellants-claimants in Claim Case No.266/2019 seeking enhancement of compensation awarded by learned Claims Tribunal on the ground that income of deceased as assessed by learned Claims Tribunal is less and the amount awarded under the head of loss of consortium is also inadequate.
24. Claimants/appellants pleaded in claim application that deceased was owner of a truck, engaged in transportation work and earning Rs.20,000/- per month and in support thereof they have produced RC book of truck in the name of deceased. It was also pleaded that deceased was engaged in agriculture & dairy business and earning Rs.30,000/- per month. Thus, total income of deceased is pleaded as Rs.50,000/-. However, the claimants have not produced any document like income tax return etc. substantiating their claim regarding income of deceased. Looking to nature of work in which deceased was stated to be engaged, learned Claims Tribunal determined income of deceased as Rs.20,000/- per month on notional basis, which in the opinion of this Court cannot be said to be less and it is maintained.
25. Perusal of impugned award would show that the Claims Tribunal has awarded only Rs.44,000/- as compensation under the head of consortium. The amount of compensation



to be awarded as consortium is governed by the principles of awarding compensation under "loss of consortium" as laid down in the matter of **Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & ors** reported in **(2018) 18 SCC 130**, according to which each claimant is entitled to consortium at the rate of Rs.40,000/- each under spousal, filial and parental consortium respectively in case claimants are wife/husband, parents and children. In the instant case, appellant No.1 is wife, appellant Nos.2 & 3 are children and appellant No.4 & 5 are parents of deceased and therefore, they are entitled for compensation towards loss of spousal, parental and filial consortium. Hence, I deem it appropriate to award an amount of Rs 40,000/- each to appellant No.1 for loss of spousal consortium, appellant Nos.2 to 4 towards loss of parental consortium and appellant No.5 and 6 towards loss of filial consortium. Since, the amount of compensation awarded under the head of loss of consortium is to be increased by 10% after every three years in light of decision of Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi & ors**, reported in **(2017) 16 SCC 680** therefore, appellants will be entitled to get Rs.44,000/- each under the head of consortium.

26. Accordingly, it is ordered that appellants are entitled for a sum of Rs.44,000/- each i.e. Rs.2,20,000/- towards loss of



consortium i.e. spousal, parental and filial, in place of Rs.44,000/- as awarded by learned Claims Tribunal. Now the appellants-claimants will be entitled for total compensation of Rs.42,85,000/- in stead of Rs.41,09,000/-, as awarded by learned Claims Tribunal. This enhanced amount of compensation shall carry interest @ 8% p.a. from the date of filing of application till actual realization. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimants/appellants as compensation shall be adjusted from total amount of compensation as calculated above.

27. Coming to submission of learned counsel for appellant in MAC Nos.786/2021 challenging award passed in Claim Case No.80/2019 with respect to issuance of 'pay and recover' direction to Insurance Company.

28. In an appeal filed by owner, no such direction can be issued and therefore prayer of owner is rejected. However, considering that claimants have also filed appeal against award in Claim Case No.80/2019, to protect interest of the claimants, I will consider whether in facts of the case direction of pay and recover can be issued to insurance company or not.

29. Hon'ble Supreme Court in case of Swaran Singh and **Shamanna and another Vs. Divisional Manager Vs. the**



Oriental Insurance Co. Ltd. and others, [(2018) 9 SCC 650], has considered the issue with regard to issuance of direction to insurance company where offending vehicle was insured but driven by a person not having driving license on the date of accident and observed that direction to pay and recover can be issued to insurance company in such cases.

30. Even, once, the Insurance Company had agreed to indemnify the insured than it would be a dispute between the insured and the insurer as to whether the vehicle was being used contrary to the conditions of Insurance Policy or not? On account of such *inter se* dispute between the insured and the insurer, the claimants, who are completely stranger to the contract between them, cannot be made to suffer.
31. In case at hand, it is not in dispute that on the date of accident, the insurance policy was effective, the accident occurred during validity of the policy and offending vehicle was being driven by a person not having driving license in his name. Therefore, in the light of above decision of Hon'ble Supreme Court and considering the beneficial object of the Act of 1988, it would be just and appropriate to apply the principle of 'pay and recover' in the given facts and circumstances of the case. It is ordered accordingly.
32. Consequently, it is ordered that MAC Nos.610/2021 is allowed in part, compensation is enhanced to Rs.42,85,000/-



from Rs.41,09,000/-, as discussed in Para-26 of the order and insurance company is directed to first pay the entire amount of compensation to respective claimants and then to recover the same from owner of offending vehicle in accordance with the directives issues by Hon'ble Supreme Court in case of **Oriental Insurance Co. Ltd. vs. Nanjappa**, reported in **AIR 2004 SC 1631**.

33. MAC No.786/2021 filed by appellant-owner of offending vehicle is dismissed.
34. MAC No.1011/2024, arising out of Claim Case No.266/2019, filed by Insurance Company is allowed. Award dated 21.2.2024 is set aside. Consequently, cross-appeal filed by claimants is dismissed. In the facts of the case, it is ordered that any amount already paid to claimants pursuant to award dated 21.2.2024 shall not be recovered from them.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-