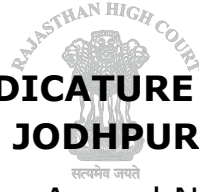




**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



S.B. Civil Misc. Appeal No. 2811/2019

Shriram General Insurance Co. Ltd., Through Manager, Bhanwar Lal Mufatlal Company, National Highway No. 15, Near Sindhari Chauraha, Barmer (Insurer Of Offending Vehicle)

----Appellant

Versus

1. Jethmal Singh S/o Kishan Singh, Aged About 44 Years, R/o Baiyan, Tehsil Sam, District Jaisalmer.
2. Sada Kanwar W/o Jethmal Singh, Aged About 40 Years, R/o Baiyan, Tehsil Sam, District Jaisalmer.
3. Moti Singh S/o Jethmal Singh, Aged About 8 Years, Minor Through His Father And Natural Guardian Jethmal Singh, R/o Baiyan, Tehsil Sam, District Jaisalmer.
4. Gopal Singh S/o Sukh Singh, R/o Khara Rathodan, Tehsil And Police Station, Ramsar, District Barmer (Driver Of Offending Vehicle)
5. Rama Ram S/o Karna Ram, R/o Khothon Ki Dhaani, Galaberi, Shivkar, Tehsil And District Barmer (Owner Of Offending Vehicle)

----Respondents

Connected With

S.B. Cross Objection (Civil) No. 243/2020

1. Jethmal Singh S/o Kishan Singh, Aged About 44 Years, B/c Rajput, R/o Baiyan, Tehsil Sam, District Jaisalmer.
2. Sada Kanwar W/o Jethmal Singh, Aged About 40 Years, R/o Baiyan, Tehsil Sam, District Jaisalmer.
3. Moti Singh S/o Jethmal Singh, Aged About 8 Years, Minor Through His Father And Natural Guardian Jethmal Singh R/o Baiyan, Tehsil Sam, District Jaisalmer.

----Appellant

Versus

1. Shriram General Insurance Co. Ltd., Through Manager, Bhanwar Lal Mufatlal Co., National Highway No. 15, Near Sindhari Chauraha, Barmer. (Insurer Of Offending Vehicle)
2. Gopal Singh S/o Sukh Singh, R/o Khara Rathodan, Tehsil And Police Station, Ramsar, District Barmer (Driver Of





Offending Vehicle)

3. Rama Ram S/o Karna Ram, R/o Khothon Ki Dhaani, Galaberi, Shivkar, Tehsil And District Barmer (Owner Of Offending Vehicle)

----Respondents

For Appellant(s)	:	Mr. Vishal Singhal for the Insurance Company
For Respondent(s)	:	Mr. Vineet Dave for the claimants Mr. R.J. Poonia for the non-claimants

HON'BLE DR. JUSTICE NUPUR BHATI

Judgment

Reserved on: 26/09/2024

Pronounced on: 01/10/2024

1. Both, the civil misc appeal, S.B. Civil Misc. Appeal No. 2811/2019 as well as the cross-objection, S.B. Cross Objection (Civil) No. 243/2020 are being decided by this common order, however facts of S.B. Civil Misc. Appeal No. 2811/2019 are illustratively taken for consideration.

2. The present civil misc. appeal has been filed by the appellant-Insurance Company, under Section 173 of the Motor Vehicles Act, 1988 ('MV Act') assailing the judgment and award passed by the Judge, Motor Accidents Claims Tribunal, Barmer (Raj.) ('Tribunal') dated 17.07.2019 in MAC Case No. 214/07, whereby the learned Tribunal has partly allowed the claim filed by the respondent-claimants under Section 166, while awarding Rs. 8,43,760/- with interest @ 7% p.a. from the date of filing the claim, while fastening the liability upon the appellant-Insurance Company.



3. The present cross-objection has been filed by the respondent-claimants under Order 41 Rule 22 of the Code of Civil Procedure, 1908 ('CPC'), assailing the award passed by the learned Tribunal whereby the respondent-claimants have been awarded a meager compensation of Rs. 8,43,760/- with interest @ 7% p.a from 25.09.2017, thus praying for enhancement of the award passed by the learned Tribunal.

4. Briefly stated, the facts of the case are that, the deceased, Dharampal Singh along with Chainaram (AW2) were going to Khara on 21.06.2017 on a Bolero Camper bearing no. RJ-04-GA-4311 to unload goods and after unloading the goods in Khara, when they were returning to Barmer, the vehicle met with an accident on account of which both Jethmal and Chainaram sustained injuries and subsequently, Dharampal Singh died. Thereafter the dependents of the deceased filed a claim before the learned Tribunal, claiming a sum of Rs, 89,90,000/- as compensation on account of the death of deceased.

5. In its reply to the claim petition the respondent-non-claimants denied the averments made in the claim petition while the appellant-Insurance Company submitted that the vehicle was being driven in violation of the terms of the Insurance Policy, at the time of the accident.

6. After hearing the parties, the learned Tribunal framed four issues which are as follows:

“[अ] क्या दिनांक 21.06.2017 को वाहन बोलेरो केम्पर सं. आरजे 04-जीए-4311 के चालक गोपालसिंह पुत्र सुखसिंह (विप्रार्थी संख्या 01) ने उपेक्षा व लापरवाहीपूर्वक चलाकर दुर्घटना कारित की तथा इस दुर्घटना में आई गंभीर चोटों



से धर्मपालसिंह उर्फ थानसिंह पुत्र जेठमालसिंह की मृत्यु हुई?
 प्रार्थीगण

(ब) क्या प्रार्थीगण मृतक के विधिक प्रतिनिधि की हैसियत से क्षतिपूर्ति प्रतिकर राशि रुपये 89,90,000/- प्राप्त करने के अधिकारी है? क्या प्रतिकर अदायगी का दायित्व विप्रार्थीगण का संयुक्तः व पृथक रूप से है?
 प्रार्थीगण

(स) क्या विप्रार्थी संख्या 03 बीमा कम्पनी अपने बचाव आधारों तथा विशेष आपत्तियों में वर्णित अभिकथनों के आधार पर क्षतिपूर्ति अदायगी से उन्मुक्ति की अधिकारी है, यदि ऐसा है तो क्लेम याचिका पर इसका क्या असर होगा? जिम्मे अप्रार्थी सं. 03

(द) उचित प्रतिकर।”

7. In support of the claim petition, 2 witnesses, namely Jethmal Singh, father of the deceased (AW1) and Chainaram (AW2) were examined and 13 documents were produced. On behalf of the Insurance Company, statement of one Rajesh Bishnoi was recorded and one document i.e. Insurance Policy (Ex.9) was produced in evidence.

8. After hearing the parties, the learned Tribunal fastened the liability upon the appellant-Insurance Company while observing that the deceased was not a gratuitous passenger traveling in the offending vehicle and also, there was no violation of the terms of the Insurance Policy inasmuch as the Insurance Policy stipulated the seating capacity of the offending vehicle to be 4+1, and at the time of accident only Chainaram and the deceased were traveling with the driver, thus, abiding by the terms of the Insurance Policy. Learned Tribunal also awarded a compensation to the tune of Rs. 8,43,760/- with an interest @ 7% from 25.09.2017. Aggrieved of



the judgment and award passed by the learned Tribunal, the appellant-Insurance Company has preferred this appeal.

9. It is submitted by the learned counsel appearing on behalf of the Appellant/insurance company that the deceased was not employed on the vehicle but was only engaged as casual labourer to unload the goods.

10. It is also submitted by the learned counsel appearing on behalf of the Appellant/insurance company that the insurance policy in the present case is a "Goods Carrying Commercial Vehicle-Public Carrier Other Than Three Wheelers Package Policy" where the premium was only charged for the owner, driver and cleaner of the vehicle. He further, submitted that risk of gratuitous passenger was not covered under the insurance policy.

11. It is further submitted by the learned counsel appearing on behalf of the Appellant/insurance company that the learned tribunal has erred in treating the deceased as representative of the goods as after unloading the goods they were returning in the vehicle and there were no goods in the vehicle at the time of the accident, thus, the deceased was a gratuitous passenger and not a representative of the owner of the goods. He places reliance on the judgment of the Hon'ble Andhra Pradesh High Court in **United India Insurance Co. Ltd. v. Mohd. Hussain and Ors.** [CMA No. 369 of 2004 decided on 14.09.2012] for this submission.

12. *Per Contra*, it is submitted by the learned counsel appearing on behalf of the Cross-objectors/Claimants that the policy in the vehicle in the present case was insured under a "Goods Carrying Commercial Vehicle-Public Carrier Other Than Three Wheelers Package Policy". He also submitted that the vehicle was a semi-



utility vehicle, having seating capacity of five persons including driver, in which goods could be carried at the rear part of the vehicle. He further submitted that no evidence was brought on record by the appellant/insurance company to the effect that the deceased was not coming back in the vehicle after unloading the goods. He also submitted that it is a common practice that someone who has been engaged as a worker for the purpose of unloading the goods being carried in a vehicle at a particular destination would return back in the vehicle itself after the unloading is done and would not be left out at such destination. He further submitted that in the present case the deceased was travelling in the vehicle to unload the goods at place ahead of Barmer at around 1 PM in the night and at such odd hours would not be left behind at the destination itself.

13. It is further submitted by the learned counsel appearing on behalf of the Cross-objectors/Claimants that the reliance placed by the appellant/insurance company on the judgment of the Hon'ble Andhra Pradesh High Court in **Mohd Hussain** (supra) is not correct as the facts of the case were different wherein the owner was travelling in the goods vehicle to purchase the goods, thus the same is not applicable in the present case. He further, pointed out the statement of the NAW1 (Manager of the appellant/insurance company) during cross examination, in which he pleaded ignorance as to whether the deceased was returning in the vehicle after unloading the goods at the destination, thus, he submitted that no positive statement has been made by the NAW1, Shri Bharat, Manager of the appellant-Insurance Company to show that



the deceased was not returning in the vehicle after unloading the goods.

14. It is submitted by the learned counsel appearing on behalf of the respondent no. 4/driver and respondent no. 5/owner that the insurance policy in the present case was a package policy and therefore the risk of the deceased was also covered under the said Policy.

15. Learned counsel for the respondent-claimants also submitted in their cross-objection that the learned Tribunal has erred in not providing the consortium to the respondent-claimants and thus, the award passed by the learned Tribunal deserves to be modified, in the light of judgment passed by the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. v. Pranay Sethi*** reported in **AIR 2017 SC 5157**.

16. In its reply to the cross-objection, the appellant-Insurance Company also submitted that the consortium cannot be granted to the brother of the deceased inasmuch as the Hon'ble Apex Court in the case of ***New India Assurance Company Ltd. v. Somwati*** reported in **2020 (9) SCC 644**, has taken into consideration only three types of consortium, i.e. spousal, filial and parental.

17. Heard learned counsel for the parties, perused material available on record and judgments cited at the Bar.

18. After hearing the parties, this Court finds that the following questions need to be adjudicated:

- (a) Whether the deceased was traveling in the capacity of the Owner or his authorized representative or he was a



gratituous passenger in the offending vehicle, even in the absence of goods in the vehicle at the time of accident?

(b) Are the siblings entitled to compensation towards consortium?

19. This Court, in limine finds it imperative to examine Section 147 of the MV Act to ascertain the liability of the Insurance Company in case of death or a bodily injury suffered to the claimants in a motor accident. Section 147 of the MV Act reads as follows:

“147. Requirements of policies and limits of liability.

—

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorized representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen’s Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability. Explanation.—For the removal of doubts, it is hereby declared that the death of



or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

xxxx”

Thus, upon a bare perusal of Section 147(1)(b)(i), it is apparent that the Insurance Policy covers the liability of death or bodily injury to any person, including the owner of the goods or his authorized representative, or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Moreover, it is also pertinent to take note of the fact that the Hon'ble Apex Court in the case of **New India Assurance Co. Ltd. V Asha Rani** reported in **AIR 2003 SC 607** has categorically held that the phrase “any person” shall be construed to involve only the third party and that, would also include owner or his authorized representative. Thus, in the light of the given facts and the controversy involved in the present case, the precise question before this Court is whether the deceased falls within the category of persons who is an owner or his authorized representative of the goods.

20. This Court, upon looking into the facts of the case, finds that the deceased was merely a labourer who was responsible for loading and unloading of the goods and admittedly, at the time of accident, there were no goods found in the offending vehicle. Thus, at this juncture, this Court deems it appropriate to analyse the role and responsibilities of the deceased as a person who was given the charge of loading and unloading the goods and for this purpose, it is apposite to examine the same, in light of an



illustration, whereby X is the person responsible for loading and unloading of goods and while X was traveling with the goods from Place A to Place B, certain goods fell down en route, thus, now it becomes the responsibility of X to ensure that the goods are kept back in the vehicle and transported back to Place B in a safe and secure manner. Not only this, X is also supposed to act with due care and caution while loading and unloading such goods for which he was hired so that the goods are not damaged while he was performing his duties.

21. Therefore, looking into the nature of duties discharged by a person who is hired for loading and unloading, it is prudent to concur with the findings of the learned Tribunal that the deceased, who was hired for the purpose of loading and unloading the goods, and consider him as the representative of owner of the goods inasmuch as he was responsible for loading and unloading the goods, with due care and caution.

22. To elaborate further, this Court also deems it fit to deal with a subsequent question posed before this Court that whether a person who is travelling in the capacity of the owner or the representative of the owner of the goods, will continue to remain the owner or his authorised representative even in absence of the goods. For the purpose of the same, this Court finds that admittedly there were no goods found in the offending vehicle at the time of accident and thus, it becomes important for this Court to deal with this aspect that whether the owner or the representative of the owner is required to have physical possession of goods while traveling back after unloading the goods



in order to be considered as an owner or his authorized representative. Looking into the facts and circumstances, the deceased along with Chainaram, AW2 had been hired for the purpose of loading and unloading the goods and it was after the goods were unloaded at Khara, and when they were coming back to Barmer, in the middle of the night that the accident took place.

23. This Court finds that a person who has been hired to unload goods at a certain place, would reasonably accompany the driver on the way back after unloading the goods at the respective place and it is apparent that while coming back, they would not have the goods with them, however, he will continue to remain an authorized representative of the goods for the journey back, provided that the person so authorized for the loading and unloading of goods, comes back to same place, from where he was hired to discharge the said duties.

24. Therefore, the first question (a) is answered in affirmative and the deceased herein is considered as the representative of the owner of goods, looking into the peculiar facts and circumstances of this case.

25. However, this Court also deems it necessary to observe distinctly here that the deceased has been considered as the representative of the owner of the goods while looking into the nature of duties discharged by him and it does not intend to provide a blanket exemption to all such persons who are traveling in the goods vehicle, claiming to be the owner or his authorised representative, in absence of goods at the time of accident. It is only after looking into the peculiar facts and circumstances of each



and every case that such persons ought to be considered as representative of the owner of the goods.

26. This Court also takes into account the Insurance Policy dated 25.01.2017 (Ex.9), which clearly provides for the seating capacity of the offending vehicle to be 4+1, including the driver and according to the deposition of AW2, Chainaram, he along with the deceased were sitting inside the offending vehicle at the time of the accident which points towards the fact that the deceased while being in the capacity of authorized representative of the owner was sitting in the vehicle and there was no violation of the Insurance Policy (Ex.9) inasmuch as they were seated within the prescribed limits of the Insurance Policy. Therefore, taking into consideration the capacity of the deceased while traveling along with the stipulations of the Insurance Policy read with Section 147 of the MV Act, the appellant-Insurance Company has been rightly held liable by the learned Tribunal for awarding compensation to the respondent-claimants.

27. This Court while dealing with question no. (b), takes into consideration the judgment passed by the Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram** [Civil Appeal No. 9581 of 2018 decided on 18.09.2018], has reiterated the observation made by the Hon'ble Apex Court in the case of **Pranay Sethi**, while upholding that the right to consortium includes the care, company, help, comfort, guidance, affection of the deceased, which is a loss to the family on account of the death of the deceased, and thus while applying this *ratio*, it is apposite to observe that even the brother, as in the



present case would be deprived of the care, company, guidance and affection of his deceased brother and for this reason, in view of this Court, the submission of the learned counsel for the appellant that the brother would not be entitled to receive consortium, is considered bereft of merit. This Court also finds that the Hon'ble Apex Court in the case of **Somwati (supra)**, has dealt with the same observation made by the Hon'ble Apex Court in the case of **Pranay Sethi (supra)**. Also, the Hon'ble Apex Court in the case of **Magma General (supra)**, while dealing with the types of consortium has taken into consideration the three types of consortium, i.e. spousal, filial and parental, however, Hon'ble Apex Court has simultaneously also awarded compensation towards the head of compensation, to the sister of the deceased. The relevant part of the judgment passed by the Hon'ble Apex Court in the case of **Magma General (supra)**, is reproduced as under:

"8.7 A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium. In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. **The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family.** With respect to a spouse, it would include sexual relations with the deceased spouse.

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation."

Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid,





protection, affection, society, discipline, guidance and training."

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra).

In the present case, ***we deem it appropriate to award the father and the sister of the deceased, an amount of Rs. 40,000 each for loss of Filial Consortium.***"

28. This Court also finds that, contrary to the pecuniary heads, where factors such as dependency are important to ascertain the loss, the consortium, being a non-pecuniary head is not to be considered in the light of dependency of a claimant upon the





deceased inasmuch as even the siblings, as in the present case, would be deprived of the love, care, affection and company of the deceased, which can not be quantified. Therefore, this Court deems it appropriate to grant compensation towards the head of consortium to the brother of the deceased also.

29. Thus, after arriving at a conclusion that the learned Tribunal has rightly fastened the liability upon the appellant-Insurance Company and that, the award passed by the learned Tribunal deserves to be enhanced, in the light of the judgment passed by the Hon'ble Apex Court in the case, which is as follows:

Particulars	Awarded by Tribunal	Awarded by the Court
Monthly Income of the deceased	Rs. 5,382/-	Rs. 5,382/-
Adding 40% towards future prospects, (5,382 + 40% of 5,382)	5,382 + 2,152.80 = Rs. 7,534.80	5,382 + 2,152.80 = Rs. 7,534.80
Deducting ½ towards personal expenses (7,534.80/2)	Rs. 3,767.40/-	Rs. 3,767.40/-
Applying a multiplier of 18, (3,767.40 x 12 x 18) [A]	Rs. 8,13,758.40/- Rounded off to Rs.8,13,760/-	Rs. 8,13,758.40/- Rounded off to Rs.8,13,760/-
Consortium (48,000 x 3) [B]	Nil	Rs. 1,44,000/-
Funeral Expenses [C]	Rs. 15,000/-	Rs. 18,000/-
Loss of Estate [D]	Rs.15,000/-	Rs.18,000/-
Total	Rs. 08,43,760/- [E]	Rs. 09,93,760/- [F]
Enhanced amount [F-E]		Rs. 01,50,000/-

30. Therefore, in the light of the discussion made hereinabove, this Court finds that looking at the facts and circumstances of this case, and the duties discharged by the deceased in the present case, wherein the deceased was hired to unload the goods to Khara, and after unloading them, while the deceased was coming back to Barmer, in the middle of the night as per the deposition of AW2, Chainaram, the offending vehicle met with an accident



where admittedly, there were no goods in the offending vehicle, in view of this Court, the deceased was traveling in the capacity of the authorized representative of the owner of the goods, inasmuch as it was only reasonable to come back in the same vehicle after unloading the goods, provided that the vehicle was being carried back to Barmer, where the deceased was hired for the purpose of unloading the goods. Furthermore, it is only in accordance with the peculiar facts of this case, that this Court arrives at a conclusion that the deceased was an authorized representative of goods, even when he was not accompanying the goods at the time of the accident. This Court also takes into account the fact that as per the deposition of AW2, Chainaram, while traveling in the capacity of representative of the owner was sitting inside the offending vehicle at the time of accident, and thus, there was no violation of the Insurance Policy (Ex.9) inasmuch as the seating capacity of the offending vehicle was 4+1 including the driver.

31. Thus, in the light of discussion made hereinabove, judgments cited, read with provisions of the MV Act, this Court deems it appropriate not to grant indulgence in the appeal filed by the appellant-Insurance Company. Accordingly, the S.B. Civil Misc. Appeal No. 2811/2019, filed by the appellant-Insurance Company is dismissed and the cross-objection, S.B. Cross Objection (Civil) No. 243/2020, filed by the respondent-claimants is partly allowed and the award passed by the learned Tribunal, dated 17.07.2019 is modified. The appellant-Insurance Company shall pay the enhanced amount of **Rs. 1,05,000/-** to the respondent-



claimants, with an interest @ 7% from 25.09.2017, as determined by the learned Tribunal.

32. Record be sent back forthwith. No costs.

(DR. NUPUR BHATI),J

196-197/devesh/-

