HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 849 of 2013

1. Smt. Maya Thakur, W/o Late Mahanand Thakur Aged About 32 Years
2. Ku. Anusuiya Thakur D/o Late Mahanand Thakur Aged About 14 Years
3. Ku. Ishwari Thakur D/o Late Mahanand Thakur Aged About 14 Years
4. Roshan Thakur S/o Late Mahanand Thakur Aged About 5 Years
5. Smt. Fulmat Bai Wd/o Late Ramsay Aged About 70 Years

Appellants No.2 to 4 are minor hence impleaded through their Natural Guardian Mother/Appellant No.1 Smt. Maya Thakur, Wd/o Late Mahanand Thakur, aged about 32 years

All resident of Village Mudkhusara, Post- Bhimkanhar, P.S. & Tah. Doundi Lohara, Distt. Balod C.G.

---- Appellants

Versus

1. Mahendra Kumar Barsel S/o Krishna Barsel Aged About 25 Years R/o Bhimkanhar, P.S. & Tah. Doundi Lohara, Distt. Balod C.G.
2. National Insurance Company Limited, Through- Branch Manager, Branch Office- Durg C.G.

---- Respondents

For appellants – Shri Amiyakant Tiwari, Advocate.
For Respondent No.2 – Shri Q. Aziz, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

9/10/2015

1. Appeal is against the award dated 18/06/2013 passed by the Second Additional Motor Accident Claims Tribunal, Balod in Claim Case No.110/12.

2. The brief facts of the case as was pleaded are that a claim petition was filed by widow, three minor children and mother of the deceased namely Mahanand Thakur on the ground that on 15/07/2012 at the instance of original non-applicant No.1 Mahendra Kumar Barsel the deceased was going on a motorcycle bearing No. C.G. –07–LX–6405 from village Mudkusra to Bhimkanhar. At about 5 in the evening near Talin

Talab of village Mudkusra brake shoe of the vehicle got jammed, thereby deceased fell down from the motorcycle and sustained injuries. Subsequently, while being treated he died on 19/07/2012. Therefore, on different heads an amount of Rs.19 lakhs was claimed. Learned tribunal after assessment of the evidence passed an award of Rs.4,48,800/-. It was contended that the said vehicle was insured with National Insurance Company Limited, non-applicant No.2. In such award insurance company was exonerated on the ground that policy which was placed on record with respect to the policy of the vehicle it was not existing on the date of accident i.e. on 15/07/2012.

3. The appeal having been preferred, in the appeal an application was filed under Order 41 Rule 27 r/w 33 of C.P.C. wherein it was contended that in the claim petition previous existing policy of ICICI was pleaded at para 3 whereas on the date of accident on 15/07/2012 it was insured with National Insurance Company Limited and the copy of the policy was presented at appellate stage.

4. On the previous date, learned counsel for the insurance company was directed to verify the fact as to whether policy was existing in respect of the offending vehicle or not? Insurance company has come out with the reply and would submit that on the date of accident offending vehicle was insured with National Insurance Company Limited and copy of the policy is placed along with application under Order 41 Rule 27 r/w 33 of C.P.C. The insurance company in their reply, accepted that the policy was existing with company and has also placed on record the insurance policy. Thereby it is fortified that on the date of accident the offending vehicle was insured with National Insurance Company Limited.

5. Learned counsel for the appellants and respondent No.2 submit

that quantum of award is not in dispute, however only liability of the non-applicant was under challenge.

6. Having regard to the fact that it has been admitted by the insurance company that policy was existing in respect of offending vehicle at the time of accident which is filed along with application under Order 41 Rule 27 r/w 33 of CPC the same is admitted to the record as evidence. In the result, it is held that on the date of accident vehicle was insured with National Insurance Company Limited. Consequently, National Insurance Company Limited would be liable to make good the amount of compensation. It is therefore directed that for payment of the amount of award of Rs.4,48,800/- primarily liability would be that of the insurance company to make good the amount. The quantum of award of compensation shall remain as it is as has been awarded by the court below.

7. Now coming to the interest, the Supreme Court in ***Asha Verman & others V. Maharaj Singh & others (supra)*** held in para 19 that the High Court has erred in awarding an interest at the rate of 8% per annum only, instead of 9% per annum on the compensation amount as per the principles laid down in case of ***Municipal Corporation of Delhi V. Association of Victims of Uphaar Tragedy (2011) 14 SCC 481 : AIR 2012 SC 100***. Therefore, in the instant case, interest is enhanced from 6% to 9% per annum on the compensation amount from the date of filing of the application till the date of payment.

8. With such observation, appeal stands disposed of.

Sd/-
(Goutam Bhaduri)
JUDGE

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