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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal No.1276 of 2004

National Insurance Company Limited, Through : Divisional Manager, GE Road, Raipur, Tehsil and District Raipur Chhattisgarh

---- Appellant

versus

1. Lalita Bai, Wd/o Jagmohan Joshi, aged 30 years,
2. Raja, S/o Jagmohan Joshi, aged 7 years,
3. Rahul, S/o Jagmohan Joshi, aged 4 years,

   Respondents No. 2 & 3 are represented by legal guardian mother – Lalita Bai Wd/o Jagmohan Joshi
4. Ramgulal, S/o Bhanuram Joshi, aged 55 years,
5. Punni Bai, W/o Ramgulal Joshi, aged 52 years --- **Claimants**

   All residents of Village Budeni, P.O. Kholi, District – Raipur Chhattisgarh
6. Manoj Kumar, S/o Ganga Prasad Kosariya, aged 20 years, R/o Village Akolikala, P.S. Arang, District – Raipur Chhattisgarh –- **Driver**
7. Ganga Prasad, S/o Dhanauram Kosariya, aged about 50 years, R/o Village Akolikala, P.S. Arang, District – Raipur Chhattisgarh –- **Owner**

---- Respondents

And

Miscellaneous Appeal No.142 of 2005

1. Lalita Bai, Widow of Jagmohan Joshi, aged about 30 years,
2. Raja, S/o Jagmohan Joshi, aged about 7 years,
3. Rahul, S/o Jagmohan Joshi, aged about 4 years,
4. Ramgulal, S/o Manu Ram Joshi, aged about 55 years,
5. Punni Bai, W/o Ramgulal Joshi, aged about 52 years, Applicant No. 2 & 3 are represented by legal guardian Mother Lalita Bai

   All are resident of Village – Budeni, P.S. Khaili, District – Raipur (C.G.)

---- Appellants

versus

1. Manoj Kumar, S/o Ganga Prasad Kosariya, R/o Akolikala, P.S. Arang, District – Raipur (C.G.)
2. Ganga Prasad, S/o Dhanau Ram Kosariya, R/o Akolikala, P.S. Arang, District – Raipur (C.G.)
3. National Insurance Company Limited, Though : Divisional Manager, National Insurance Company Limited, G.E. Road, Raipur (C.G.)

---- Respondents

For Insurance Company	:	Shri Anand Kumar Gupta, Advocate
For Claimants	:	Shri Amiyakant Tiwari, Advocate
For Driver & Owner	:	Shri Sudeep Verma, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

13.01.2017

1. Since these two appeals arise out of award dated 28.10.2004 passed by the Thirteenth Motor Accident Claims Tribunal (FTC), Raipur in Claim Case No. 34/2004, they are being disposed of by this common judgment.

2. The claimants are widow, two minor children and parents of deceased Jagmohan Joshi. In the claim petition, it was alleged that the deceased was travelling in a trolley of the tractor bearing registration No. CG05/ZD/1035 and while returning from the market after selling rice, the tractor trolley over-turned, resulting in death of the deceased. In the claim petition, it was alleged that the income of the deceased was Rs. 150 per day or Rs. 4,500/- per month. The claim petition was filed under Section 163A of the Motor Vehicle Act, 1988 (for short, 'the Act'). Therefore, no negligence was required to be proved. The fact that the deceased died in a motor accident is not disputed. The only issue raised by the Insurance Company in its appeal is that the deceased was an unauthorized gratuitous passenger in a tractor trolley in which no passenger can be carried. Therefore, the Insurance Company could not be held liable.

3. On behalf of the Insurance Company, it is urged that as per the First Information Report, there were as many as 21 persons travelling in the vehicle. This fact is stated in the FIR, but nobody has stepped into the witness box to prove this fact specifically. The Insurance Policy has been proved on record as Ex.P-21. It is a Farmer's Insurance Policy. The Policy has been tendered in evidence and counsel for the parties have written that they accepted the Policy to be correct. The Policy does not contain any clause whereby there is coverage for a passenger. Even otherwise, this Court can take judicial notice of the fact that under the terms of the Motor Vehicles Act, no passenger can be permitted to travel in a trolley attached to the tractor. Therefore, the deceased was an unauthorized passenger. Hence, the plea of the Insurance Company has to be accepted.

4. Having held so, I am clearly of the view that the Insurance Company may pay / deposit the amount and thereafter it may recover the same from the owner of the tractor trolley.

5. As far as quantum of compensation is concerned, I am of the view that the amount awarded is absolutely reasonable. On behalf of the claimants, it is urged that the deceased was earning Rs.150/- per day. If that has been true, then the income would be more than Rs. 40,000/- per annum and the claim petition itself would not be maintainable under Section 163A of the Act in view of the law laid down by the Apex Court in *Deepal Girishbhai Soni v. United India Insurance Co. Ltd., Baroda, (2004) 5 SCC 385.* Learned Tribunal has come to a finding that the deceased was earning Rs.18,000/- per annum, which cannot be said to be a perverse finding and therefore, I do not enhance the amount of compensation, which has been awarded strictly as per the terms of Schedule-II of the Act.

6. In view of the above discussion, the appeal filed by the Claimants (M.A. No. 142/2005) is dismissed. However, the appeal filed by the

Insurance Company (M.A. No. 1276/2004) is partly allowed. The Insurance Company may recover the amount paid by it from the owner of the vehicle. It is made clear that for this purpose, it would not be required to file a separate suit, but can initiate certificate proceedings under Section 174 of the Act.

Sd/-
(**Deepak Gupta**)
CHIEF JUSTICE

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