

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 474 of 2017**

Magma H. D. I. General Insurance Company Branch office- 7th Floor,
Neera Towers, D.N.27 Sector V West Side Salt, Lake City, Kolkata
(West Bengal) Pin Code- 700091, At Present- 5th Floor, Dainik
Bhaskar Press Complex, G.E.Road, Raipur, Chhattisgarh
(Insurer of Tractor Eicher No. C.G.22 D 0205) (Policy No.
P001340000/4107/173148, Period 29.03.2013 To 28.03.2014).

---- Appellant**Versus**

1. Smt. Rajeshwari Bai Wd/o Late Laxmiprasad Sahu, aged about 29 Years
2. Minor Ku. Chandrika D/o Late Laxmiprasad Sahu, aged about 8 Years
3. Minor Gopal S/o Late Laxmiprasad Sahu, aged about 6 Years
4. Minor Ku. Anju D/o Laxmiprasad Sahu, aged about 4 Years
5. All three minors are representing through their mother Res. No.1 Smt. Rajeshwari Bai Sahu Wd/o Late Laxmiprasad Sahu,
6. Shyamlal Sahu S/o Late Chamru Sahu, aged about 52 Years
7. Smt. Kheek Bai W/o Shyamlal Sahu,
8. All R/o Village Kodopali, Post Gedapali, Thana and Tahsil Bilaigarh, Distt. Balodabazar-Bhatapara, Chhattisgarh (Claimants).
9. Bhushan Prasad S/o Punitram Sahu, aged about 36 Years R/o Village Pirda (Bhorkadipa) Thana and Tahsil Biligarh Distt. Balodabazar-Bhatapara, Chhattisgarh(Driver of Tractor Eicher No. C.G.22 D 0205)
10. Gangadhar Bariha S/o Gopal Bariha, aged about 60 Years R/o Village Pirda (Bhorkadipa) Thana and Tahsil Biligarh Distt. Balodabazar-Bhatapara, Chhattisgarh(Owner of Tractor Eicher No. C.G.22 D 0205)
11. Subhash Chandra Devangan S/o Jailal Devangan, R/o Quarter No. M.O./ E/8, Balgi Project, Korba, Distt. Korba, Chhattisgarh, Pin No. 495677(Registered Owner of Motor Cycle No. C.G.12 A 7180).
12. National Insurance Company Limited, Address- 13, Minu Complex, Main Road, Kosabadi, Korba, Distt. Korba, Chhattisgarh (Insurer of Motor Cycle No. C.G.12 A 7180) (Policy No. 285301/31/12/6700010926-Period 26.02.2013 To 25.02.2014).

---- Respondents

For Appellant	:	Shri Shokie Yadav, Advocate.
For respondents No.7&8	:	Shri CK Sahu, Advocate.
For respondent No.10	:	Shri PK Tulsyan, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****19/07/2017**

1. The present is an appeal filed by the insurance company under Section 173 of the Motor Vehicles Act assailing the award dated 24.01.2017 passed by the 3rd Additional Motor Accident Claims Tribunal, Baloda Bazar (for short, the Tribunal), in Claim Case No.10/2014. Vide the said impugned award, the Tribunal has in a proceeding under Section 166 of the Motor Vehicle Act on the death of deceased Laxmi Prasad, aged about 30 years, have granted compensation of Rs.15,42,750/- along with interest @ 7 percent per annum from the date of application.
2. This court does not feel it necessary to give factual details of the case as the date of accident, the vehicle involved in the accident and the vehicle being insured with the present appellant is not in dispute.
3. The present is an appeal on behalf of the insurance company on two grounds firstly, fastening of liability upon the Insurance Company in the present case is erroneous for the reason that there is a dispute in respect of the actual driver who was driving the vehicle at the relevant point of time. The other ground raised by the Appellant is the fact that the calculation of compensation by adding 50% of income towards future prospects is again erroneous.
4. So far as the issue of uncertainty in respect of driver who was driving the offending vehicle is concerned, the Insurance Company had called upon the Investigating officer of the criminal case registered

against the driver of the offending vehicle. The said investigating officer, Vinod Singh, NAW-3 has been examined and he has in a very categorical terms said that at the time of lodging of FIR it was alleged that the offending vehicle tractor was being driven by one Sonu Valia whereas, in the course of investigation it was found that it was not infact Sonu Valia but was Bhushan Prasad, Respondent No.7, who was driving the vehicle at the relevant point of time and accordingly at the time of filing of Charge sheet, the said Bhushan Prasad was made an accused and not Sonu Valia. Thus the finding which has been brought on record by the Insurance Company itself establishes the fact that accident occur on the hands of the Respondent No.7 who was driving the offending vehicle as is clear from the evidence of NAW-3, Vinod Singh. Thus, the ground so raised by the Insurance Company stands negated.

5. So far as the issue of adding 50 percent income towards future prospects for the purpose of quantifying the compensation is concerned, the same is no longer res-integra in view of Judgments of Supreme Court right from Sarla Verma and Others Vs. Delhi Transport Corporation and Another, 2009(6) SCC 121 till Amrit Bhanu Shali and Others Vs. National Insurance Company Limited and Others, 2011 (12) SCC 748 as also the judgment in case of Rajesh and Others Vs. Rajbir Singh and Others, 2013(9)SCC-54, wherein the issue of adding income towards future prospects have been settled. Thus, both the grounds raised by the Insurance Company stand negated.

6. For the aforesaid reasons, this court does not find any strong ground to interfere with the award impugned. Thus, the appeal fails and is rejected.

Sd/-
(P. Sam Koshy)
Judge

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