NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1239 of 2017

Branch Manager, The Oriental Insurance Company Limited, Rajnandgaon, Through Branch Office, M. B. Trade Center Makai Chowk Dhamtari, Tehsil And District Dahamtari Chhattisgarh.

---- Appellant

Versus

1. Smt. Rekha Bai W/o Rekhram, Aged About 35 Years Caste Satnami,
2. Rekhram S/o Late Makunda, Aged About 43 Years Caste Satnami,
3. Tikamchand S/o Rekhram Aged About 18 Years Caste Satnami,
4. Ku. Dhaneshwari D/o Rekhram Aged About 18 Years Caste Satnami,
5. Ku. Purnima D/o Rekhram, Aged About 16 Years
   Above respondent No.5 is Minor, Through Mother Respondent No. 1 Smt. Rekha Bai W/o Rekhram, Caste Satnami,
   All R/o Village Anvari, Tehsil Kurud, District Dhamtari (CG).
6. Chitranjan Patel S/o Itwari Ram, Aged About 26 Years Caste Marar, R/o Ward No. 12, Camp-1, Kelabadi Dallirajhara, Post Dallirajhara, Tehsil And Distict Balod (CG).
7. Pannalal Agrawal S/o Hriram Agrawal, R/o Old Bazar Dallirajhara, Post Dallirajhara, Tehsil And District Balod Chhattisgarh.

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

27.09.2017.

1. The present is an appeal under Section 173 of the Motor Vehicles Act against the award dated 30.11.2016 passed by the Additional Motor Accident Claims Tribunal (FTC) Dhamtari, in Claim Case No.100/2015. Vide the said impugned award, the Tribunal in a proceeding under Section 166 of the MV Act has awarded compensation of Rs.7,64,000/- along with interest @ 6 percent per annum from the date of application.
2. The present is an appeal by the insurance company solely on the ground that deduction of 1/4th made by the Tribunal while assessing

the compensation is erroneous and that the Tribunal ought to have deducted 50 percent of the income of the deceased as he was a bachelor aged around 19 years. In support of his contentions he refers to paragraph 31 of the judgment of Supreme Court in case of Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.2009 (6)SCC 121 wherein it has been said that deduction in the case of death of bachelor should be 50 percent.

3. Having perused the records what is reflected from the proceeding is that there were five claimants before the Tribunal who were father, mother as also three siblings. Thus, it was a family consisting of six members including the deceased who was aged around 19 years.

4. A perusal of record shows that the insurance company in the instant case has not led any evidence both oral as well as documentary to substantiate their contention. There also does not appear to be any evidence on record to show that the father and mother of the deceased were well off and were able to sustain entire family of six members.

5. So far as judgment of Supreme Court in case of Sarla Verma (Supra) is concerned, if we read the same paragraph that has been relied upon by the appellant, it says that normally 50 percent is to be deducted in the event of death of deceased towards personal expenses and the maximum may be 1/3rd. However, the Supreme Court in the same judgment in paragraph 48 has held as under :

> "48. The appellants next contended that having regard to the fact that the family of deceased consisted of 8 members including himself and as the entire family was dependent on him, the deduction on account of personal and living expenses of the deceased should be neither the standard one-third, nor

> one-fourth as assessed by the High Court, but one-eighth. We agree with the contention that the deduction on account of personal living expenses cannot be at a fixed one-third in all cases (unless the calculation is under section 163-A read with Second Schedule to the MV Act). The percentage of deduction on account personal and living expenses can certainly vary with reference to the number of dependant members in the family. But as noticed earlier, the personal living expenses of the deceased need not exactly correspond to the number of dependants."

6. The aforesaid observation of the Supreme Court in the said judgment clearly says that it is not hard and fast rule that in every case of death of a bachelor the deduction would be either 50 percent or with the maximum of 1/3rd. It can vary in the given facts and circumstances of the case.
7. In the instant case there could be possibility where the earning capacity of the parents as well as other members of the family might not have been sound enough and deceased must have contributing substantially towards the income of the family. Under the given circumstances, if the Tribunal has deducted 1/4th of the income towards personal expenses from the monthly income of the deceased assessed at Rs.4500/-, the same cannot be said to be totally erroneous or in contravention to the decision of the Supreme Court in case of Sarla Verma (Supra).
8. Since no other grounds have been raised, this court is of the opinion that no strong case is made out for interference with the findings of the Tribunal.
9. The appeal thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder