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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1342 OF 2017

Shriram General Insurance Company Limited, through Branch Manager, Branch Office E-8, RIICO Industrial Area, Sitapura, Rajasthan (Insurer of Truck No. CG15/A/9360)

… Appellant

Versus

1. Rukshana Bano, W/o Late Mohd. Ehsan Ansari, aged about 49 years, occupation housewife.
2. Ku. Shabana Parveen, D/o Late Mohd. Ehsan Ansari, aged about 30 years, occupation student.
3. Abbu Hujaifa, S/o Late Mohd. Ehsan Ansari, aged about 27 years, occupation student.
4. Ku. Shaista Parveen, D/o Late Mohd. Ehsan Ansari, aged about 22 years.
5. Abbu Talaha, S/o Late Mohd. Ehsan Ansari, aged about 21 years.
6. Vasim Akram, S/o Late Mohd. Ehsan Ansari, aged about 21 years.
7. Mehandi Hasan, S/o Late Mohd. Ehsan Ansari, aged about 16 years, minor through natural guardian mother Smt. Rukshana Bano

All are caste- Julaha, R/o- Mominpura, near Sarvodaya School, Ambikapur, P.S. and Tehsil Ambikapur, District Sarguja (C.G.)

… Respondents

For Appellant : Mr. Sachin Singh Rajput, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/09/2017

1. Heard on I.A. No.1 of 2017, which is an application for condoning the delay of 62 days which has occurred in the filing of the present appeal.

2. Finding the reasons assigned in the application to be satisfactory, I.A. No.1 of 2017 is allowed and the delay of 62 days occurred in the filing of the present appeal stands condoned.

3. The present appeal under Section 173 of the Motor Vehicles Act, 1988, has been filed by the insurance company assailing the award dated 24.3.2017 passed by the Motor Accidents Claims Tribunal, Ambikapur, District Surguja, in Motor Accident Claim Case No. 145/2016.

4. Vide the impugned award dated 24.3.2017, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, in a death case, has awarded a compensation of Rs. 7,53,078/- to the claimants, with interest thereon at the rate of 7% per annum from the date of filing of the claim application and has also imposed penal interest of 9% per annum in the event of the entire awarded amount is not deposited within 30 days.

5. Brief facts of the case are that the deceased in the instant case, named, Mohd. Ehsan Ansari, was a driver of Bus No. CG10/G-0147 which met with a head on collision with a Truck No. CG15/A-9360, on 28.6.2015. As a result of the said accident, the deceased-Mohd. Ehsan Ansari sustained grievous injuries to which he succumbed later on. The claimants being the dependants of the deceased-Mohd. Ehsan Ansari filed the claim application before the Tribunal and the Tribunal vide the impugned award after taking into consideration the entire facts and circumstances of the claim case, has awarded the aforesaid compensation in favour of the claimants, which gave rise to the filing of the present appeal by the insurance company.

6. The ground of challenge in the present appeal of the insurance company is that there was an element of contributory negligence on the part of the deceased and the Tribunal has not appreciated this aspect while quantifying the compensation. Further, the deduction of 1/5th which has been made by the Tribunal was erroneous, for the reason that most of the claimants were all independent major persons and the deduction ought to had been only 1/3rd. In addition, in the light of the deceased being more than 50 years of age, he was not entitled for any compensation towards future prospects. Furthermore, the monthly income of Rs.6000/- as assessed by the Tribunal is exorbitantly high. The challenge also is to the finding of imposing penal interest by the Tribunal which, according to the insurance company, could not have been passed by the Tribunal.

7. However, perusal of the impugned award would reveal that no eye-witness has been examined before the Tribunal with which it could be said that there was an element of contributory negligence on the part of the deceased-Mohd. Ehsan Ansari who was driving the bus involved in the accident. The only evidence which has been relied on is that of an owner who was not the eye-witness. Perusal of the record would show that there is a statement of one Saleem Javed, a transporter, who had reached the spot immediately after the accident and had found the Truck involved in the accident was on the wrong side of the road when the accident occurred. In view of the same, the ground of contributory negligence contended by the insurance company does not sustain and the same thus stands negated.

8. So far as the income of the deceased assessed by the Tribunal is concerned, this Court cannot lose sight of the fact that the accident occurred on 28.6.2015. It is anybody's guess that a person particularly a driver would be getting much more than what has been assessed by the Tribunal, i.e., Rs.6000/-, at the time of accident, and therefore Rs.6000/- assessed by the Tribunal cannot be in any manner said to be exorbitant or on the higher side.

9. Insofar as the future prospects, true it is that the issue involved is pending consideration before the Hon'ble Supreme Court in the case of **National Insurance Company Limited** v. **Pushpa**, as is reflected from **2015 (9) SCC 166.** But, taking into consideration the fact that the Hon'ble Supreme Court in the case of **Rajesh and Others** v. **Rajbir Singh and Others**, **2013 (9) SCC 54**, considering all the previous decisions, has ordered for taking 15% of income towards future prospects while quantifying the compensation, this Court is of the opinion that considering the fact that the claim case under the Motor Vehicles Act is a beneficial piece of legislation, the finding of the Tribunal as long as the decision is passed by the Supreme Court holding that the decision in the case of **Rajesh** (supra) is a bad law, the finding of the Tribunal cannot be found fault with. The said ground also thus deserves to be and is accordingly negated.

10. As regards the deduction of 1/5th being made by the Tribunal, this Court is of the opinion that there is no sufficient evidence which have come on record with which it could be said that the claimants though most of them are major but were not dependent to the deceased. Moreover, for the reason that all the claimants were unmarried persons which all the more gives strength of drawing an inference of they being dependant upon the deceased. Thus, the finding of deduction of 1/5th also cannot be said to be bad in law or erroneous.

11. So far as the issue of penal interest is concerned, this Court is of the opinion that the issue in this regard already stands decided by the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd.** v. **Keshav Bahadur and Others, 2004 (2) SCC 370**, wherein it has been categorically held that the Tribunal should not impose penal interest while awarding compensation.

12. In view of the above, the appeal of the Insurance Company is allowed in part, to the extent that the finding of penal interest passed by the Tribunal is set aside. Rest of the award as has been passed by the Tribunal stands affirmed.

13. With the aforesaid modification of the award, the appeal of the Insurance Company stands allowed in part.

Sd/-
(P. Sam Koshy)
Judge

/sharad/