

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1536 of 2017

IFFCO Tokiyo General Insurance Company Limited Through Its Assistant Manager, 2nd Floor, 205 MM Plaza, Udyog Bhawan, Near Mining Office, Ring Road No. 1, Raipur, District Raipur, Chhattisgarh

---- Appellant

Versus

1. Smt. Sumitra Devi W/o Late Shri Ambika Prasad Sahu, Aged About 52 Years
2. Manoj Kumar Sahu S/o Late Shri Ambika Prasad Sahu, Aged About 35 Years
3. Rajesh Kumar Sahu S/o Late Shri Ambika Prasad Sahu, Aged About 30 Years

Respondent No.1 to 3 are R/o Village Targavan, P. S. Patna, Tahsil Baikunthpur, District Korea, Chhattisgarh.

4. Smt. Kunti Bai W/o Chandhuram Sahu, Aged About 85 Years R/o Village Targavan, P. S. Patna, Tahsil Baikunthpur, District Korea, Chhattisgarh...(Claimants).
5. Arjun Kumar Sahu S/o Shri Govind Prasad Sahu, Aged About 38 Years R/o Village Kasra (Khutrapara) P.S. Patna, Tahsil Baikunthpur, District Korea, Chhattisgarh.....(Driver).
6. Bharat Singh S/o Shri N. Singh, R/o Vinobha Nagar Near Gayatri Mandir, Bilaspur, District Bilaspur, Chhattisgarh.....(Owner).
7. Rajendra Kumar S/o Radhelal, Aged About 25 Years R/o Kalika Nagar, Tifra Bilaspur, District Bilaspur, Chhattisgarh.
8. Branch Manager, Bajaj Alliance General Insurance Co. Ltd., Gurukripa Tower, Near I.C.I.C.I Bank, Vyapara Vihar, Bilaspur, Chhattisgarh.....(Insurer).

---Respondents

For Appellant	:	Mr. P.R. Patankar, Advocate
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/11/2017

1. Heard on I.A. No.1, which is an application for condonation of delay.

For the reasons assigned in the application and finding them to be satisfactory, I.A. No.1 is allowed and delay of 63 days in filing the application stands condoned.

2. Present is an appeal by the Insurance Company assailing the award dated 19.05.2017, passed by the Motor Accident Claims Tribunal (FTC), Baikunthpur, Chhattisgarh, in Motor Accident Claim Case No. 12/2017.
3. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.48,20,070/- with interest @ 7.5% per annum from the date of application. The challenge to the present award is quantum.
4. Counsel for the appellant submits that the quantum of compensation awarded by the Tribunal is on a higher side as the deduction made towards personal expenses should have been $\frac{1}{3}^{\text{rd}}$ and not $\frac{1}{5}^{\text{th}}$ which has been assessed by the Tribunal.
5. The ground so raised was on account of the Claimants No. 2 & 3 being major sons of the deceased and therefore they would not have been dependent upon the deceased and they should have been excluded from the list of Claimants.
6. Further, it was contended by the counsel for the Insurance Company that the Claimant No.3 Rajesh Kumar Sahu has already been granted employment by the employer under the compassionate appointment scheme. Since, the Claimants have been compensated suitably by providing compassionate appointment; the quantum of compensation awarded should have been reduced.
7. So far as the deduction sought for in the quantum of compensation on the ground that the dependent of the deceased having been granted compassionate appointment, this Court is of the opinion that

the said grounds so raised by the Insurance Company is not sustainable in the light of the decision of the Hon'ble Supreme Court in the case of ***"Vimal Kanwar & Others vs. Kishore Dan & Others"* (2013) 7 SCC 476**. The said ground so raised stands negated.

8. A perusal of record would show that there is no evidence to show that the Claimants No. 2 & 3 were not dependent upon the deceased or that they were employed elsewhere or they having their own source of income and were living separately from that of the deceased. Rather it shows that since the Claimant No.3 has been granted compassionate appointment it establishes that he was not employed elsewhere and that was the reason he took compassionate appointment. Thus, the grounds raised by the Claimants stands negated.
9. As far as the quantum of compensation is concerned, this Court is of the opinion that perusal of the record show that the Claimants have not been granted compensation under the future prospects head and as per the recent Larger Bench Decision of the Hon'ble Supreme Court in the case of ***"National Insurance Company Limited vs. Pranay Setthy and Others"* decided on 31.10.2017, in Civil Appeal No. 25590/2014**, the Claimants would had been entitled for 15% of his income under the future prospects head.
10. If that is added to the present amount of compensation awarded, then even if the deduction as claimed for by the Claimants under personal expenses is reduced from 1/5th to 1/4th even then the compensation would had been much higher than what has been

awarded by the Tribunal. Therefore, this Court is of the opinion that no strong case has been made out by the appellant at this juncture worth admitting the appeal and the appeal thus being devoid of merit, stands rejected.

11. Thus, the appeal of the appellant stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved