

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1671 of 2017

Branch Manager, The National Insurance Co. Ltd. Gill Complex, Near Gurudwara, Station Road, Durg Chhattisgarh, Represented Through The Divisional Manager, Divisional Office, B-1, Taha Complex, Vyapar Vihar Road, Bilaspur Chhattisgarh. 495001.

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Versus

1. Smt. Kiran Deshlahre W/o Late Yashwant Kumar Deshlahre @ Ashok Kumar Deshlahre, Aged About 25 Years,
2. Ku. Mansi Deshlahre D/o Late Yashwant Kumar Deshlahre @ Ashok Kumar Deshlahre, Aged About 7 Years Minor Represented Through Mother Smt. Kiran Deshlahre, W/o Late Yashwant Kumar Deshlahre @ Ashok Kumar Deshlahre, Aged About 25 Years,
3. Kapoor Das Deshlahre S/o Babulal Deshlahre, Aged About 49 Years
4. Smt. Usha Bai, W/o Kapoor Das Deshlahre, Aged About 44 Years
All the respondents No. 1 to 4 are R/o Village Aheri, Post Office Dhaur, Police Station Nandininagar, District Durg Chhattisgarh.....(Claimants)
5. Kanhaiyalal Tandan, S/o Samaru Lal, Aged About 47 Years R/o Qtr. No. 3 - F, Sadak No. 56, Sector - 6, Bhilai Nagar, Tahsil And District Durg Chhattisgarh.(Driver)
6. Govardhan Das Jaswani, S/o Late H. D. Jaswani, Aged About 61 Years R/o House No. 9/3, Nehrunagar West, Bhilai, Police Station Supela, Tahsil And District Durg Chhattisgarh.....(Owner)

---Respondents

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

Order on Board

08/12/2017

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 18 days in filing the appeal stands condoned.
2. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act. The challenge is to the award dated

22.07.2017, passed by the 8th Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh, in Motor Accident Claim Case No. 28/2015. Vide the impugned award the Tribunal in a death case has awarded a compensation of Rs.4,58,300/- with interest @9% per annum from the date of application.

3. The two grounds raised by the Insurance Company in the instant case is that the accident occurred when the deceased person traveling in a motorcycle dashed into a stationary Truck from the back and the contentions of the counsel for the Insurance Company is the fact that the Truck was stationary and the accident occurred because of a dash on the rear portion of the Truck, there is a great element of contributory negligence on the part of the person driving the motorcycle and the compensation part should had been apportioned accordingly.
4. The second ground is that there is an evidence before the Tribunal is that the deceased was driving motorcycle at the time of accident along with two other persons on the motorcycle, which apparently is a violation of the provisions of Section 128 of the Motor Vehicles Act and therefore also there is some element of contributory negligence which led to the accident. Both these issues raised by the Insurance Company does not have much force any further in the light of the recent larger Bench decision of the Hon'ble Supreme Court in the case of ***“United India Insurance Co. Ltd. vs. Sunil Kumar & Anr”*** decided on the 24th of November. 2017, wherein in paragraph No.8 it has been mentioned as under:-

“8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication

thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163-A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163-A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.”

5. Further, what is apparent from the record, which has come before the Court is that the stationary Truck, to which the deceased person had dashed, was parked without showing any parking indication or parking lights on. This finding also all the more weakens the case of the Insurance Company.
6. The appeal of the Insurance Company thus being devoid of merit stands rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved