NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1523 of 2017

United India Insurance Company Limited Through Its Divisional Manager, Divisional Office- Bramha Road Near Kumkum Hotel, Ambikapur District Surguja Chhattisgarh

---- Appellant

Versus

1. Smt. Raniya Rohidas, Wd/o. Late Jagsai @ Jaisai, Aged about 42 years, R/o Village Kusmusi, Police Station Basdei, Tahsil Surajpur, At present R/o. Bhatgaon, Police Station and Tahsil Bhatgaon, District Surajpur, Chhattisgarh
2. Kanhaiya Yadav S/o Bilas Yadav Aged About 23 Years R/o Village Narmadapur (Manpat), P. S. & Tahsil Manpat, District Surguja Chhattisgarh (Driver)
3. Ramakant Prasad Gupta S/o Jeetan Prasad Gupta R/o Bazarpara, Wadroffnagar, O. P. Wadroffnagar, District Balrampur Chhattisgarh (Owner)
4. Sundari Bai Wd/o Late Vifal Aged About 55 Years Caste - Chamar, Occupation Housewife,
5. Sagmen D/o Late Vifal Aged About 33 Years

Respondent No. 4 & 5 are R/o Village Kusmusi, P. O. Banja, P. S. Basdai, Tahsil Bhaiyathan, District Surajpur Chhattisgarh

----Respondents

For Appellant	:	Mr. Dashrath Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

13/11/2017

1. Present is an appeal under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 22.08.2017, passed by the Motor Accident Claims Tribunal, Ambikapur, District Surguja, Chhattisgarh, in Motor Accident Claim Case No. 19/2016.

2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.33,15,820/- with interest @7% per annum and also has

imposed penal interest in case if the amount is not deposited within a stipulated period.

3. The challenge to the said award is on the ground that the death of deceased is not directly related to the injury that sustained in an accident on 07.11.2014. According to the counsel for the Insurance Company the accident took place on 07.11.2014 and the deceased died after more than one year on 23.11.2015 and therefore it cannot be said that the deceased died because of the accidental injuries. He further submits that even the postmortem was not conducted to ascertain the accidental death.

4. He further submits that the quantum of compensation awarded is on the higher side, particularly the amount of compensation awarded under the conventional head. He further submits that the Tribunal also ought to have deducted the income tax from the amount of compensation awarded.

5. So far as the ground whether the death had a direct nexus to the accident or not, it is relevant to refer to the evidence of AW/4-Dr. Sumit Sharma, a Doctor from the Apollo Hospital, Bilaspur, who has categorically stated before the Tribunal that the deceased had met with an accident on 07.11.2014. It has also come before the Tribunal that he was initially treated at Ambikapur and subsequently was shifted on reference to the Apollo Hospital, Bilaspur, from where he was undertaking treatment and the last time he came for treatment was on 03.03.2015 when he was discharged to continue with the treatment prescribed and to come for checkup after three months.

The Doctor in his evidence also states that even on 03.03.2015, when he had checked up the patient he was not able to speak properly because of the injuries that he had sustained. The Doctor has mentioned that it was because of injury to the brain that the deceased was hit by paralysis. Thus, this Court finds sufficient evidence before the Tribunal led by the Claimant to show the direct nexus between the accident and the death of the deceased.

6. So far as the quantum part is concerned, this Court does not find the income assessed by the Tribunal to be on higher side nor can it be said that the compensation under the conventional head also on the higher side, particularly taking into consideration the decision of Hon'ble Supreme Court in the case of ***"Rajesh and others vs. Rajbir Singh and others" (2013(9) SCC 54).*** Award under challenge is one, which was passed on 22.08.2017 and under the then prevailing settled position of law, the award seems to be just and reasonable.

7. So far as the deduction to the income tax is concerned, this Court is not inclined to accept the said contention for the reason that the Tribunal as it is has taken only the average income of the deceased and therefore since there is a difference between the actual income and average income assessed by the Tribunal, the grounds raised of the Tribunal not having deducted income tax from the compensation awarded would not be of much relevance.

8. For all the aforesaid reasons, this Court is of the opinion that no strong case worth admitting the appeal has been made out and the

appeal of the Insurance Company thus deserves to be and is accordingly rejected.

9. However, it is made clear that the order so far as awarding of penal interest is concerned, the same is not proper, legal and justified and is set-aside.

Sd/-
(P. Sam Koshy)
Judge

Ved