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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No. 36 of 2005

United India Insurance Company Limited through Branch Manager, Branch
Office Rajendra Nagar Chowk, District Bilaspur (Chhattisgarh).

---- Appellant

Versus

1. Smt. Shukwara Bai w/o Late Shri Dev Prasad, aged about 29 years.
2. Rajau S/o Late Dev Prasad, aged about 6 years.
3. Ku. Rajni D/o Late Dev Prasad, aged about 4 years.
4. Ku. Fagni D/o Late Dev Prasad, aged about 2 years.
5. Smt. Mangli Bai W/o Late Bodhi Ram, aged about 60 years.

Respondents 2 to 4, minor through their natural guardian mother respondent no.1 Smt. Shukwara Bai

Respondents 1 to 5 are R/o Village Rahangi, Post Chakarbhata, Tah.Bilha, District Bilasur (Chhattisgarh).

6. Munna Yadav alias Kartik Yadav S/o Keju Yadav, Truck Driver, R/o Tikrapara, Kanna Chowk, Bilaspur, Tah. and District Bilaspur (Chhattisgarh).
7. Raffiullah S/o Yasin Bhai Beg, aged about 70 years, Caste Muslim, Truck owner, R/o Tarbhar, Bilaspur (Chhattisgarh).

---- Respondents

For Appellant : Shri H. B. Agrawal, Sr. Advocate assisted
by Shri Pankaj Agrawal, Advocates

Hon'ble Shri Justice P. Sam Koshy

Order On Board

28/07/2017

Present is an appeal under Section 173 of the Motor Vehicles Act assailing the award dated 19.10.2004 passed by the Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No. 59 of 2003. Vide the impugned award a compensation of Rs.2,13,000/- has been granted to the claimants with interest.

2. Since the facts of the case are admitted so far as the accident, the resultant injury sustained by Dev Prasad since expired, the offending vehicle involved in the accident being that of respondent no.7, driven by respondent no.6 and which was insured with the present appellant is concerned, this Court is refraining itself from giving the details of the accident.



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3. The challenge in the present appeal is the compensation awarded under the head of loss of income. Counsel for the appellant submits that the original application was filed by the injured Dev Prasad himself, who later on died pending the case before the Court below and therefore the provision of Section 306 of Indian Succession Act shall apply in the present case and the claimants would be entitled only for the pecuniary loss sustained by the family and not under any other heads for the personal injury caused to the injured. He submits that the present respondents 1 to 5 had been impleaded before the Court below after death of Dev Prasad as his legal representatives and therefore, the impugned award may be modified suitably. He further submits that the award of the Tribunal is also erroneous to the extent that the rate of interest has not been quantified by the Tribunal. Thus, prayed for an appropriate order in this regard also.

4. Having considered the contention put forth by the counsel for the appellant and on perusal of the record particularly the evidence of the claimants as well as the postmortem report which has been brought on record it clearly reflects that Dev Prasad as a result of the accident had suffered traumatic paralysis resulting in 100 per cent permanent disability. He was confined to bed and was undergoing treatment on the date when the claim application was filed and after about 5 months from the date of filing of the application, he died. The postmortem report which is enclosed with the record shows that the death of Dev Prasad was due to septicemia. The age of the deceased at the time of accident was 30 years. If we co-relate all these facts, it can be safely inferred that the death of Dev Prasad had a nexus to the injury that he had sustained in the course of accident and therefore the provisions of Section 306 of the Indian Succession Act would not be applicable in the instant case.

5. Thus, the ground so raised by the appellant in the instant case is not sustainable. It would be relevant at this juncture to refer to the judgment of the Full Bench of Madhya Pradesh High Court reported in **AIR 2007 MP 38** in the case of **Smt. Bhagwati Bai and Anr. V. Bablu and Ors.** wherein it has been very



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categorically held that where the accident does not cause death of the party and only cause personal injury and he dies subsequently and there was no nexus of the death to the accident, the legal representatives of the deceased would be given only the claim so far as the pecuniary loss to the claimants are concerned. In the instant case, since there is sufficient material to conclusively infer that the death of Dev Prasad had a direct nexus to the injury sustained by him at the time of accident, the provision of Section 306 of the Indian Succession Act would not attract. So far as the contention of the appellant regarding the quantification of the interest is concerned, since the Tribunal has not specified any rate of interest, this Court quantifies the same as 6% per annum from the date of application filed before the Tribunal i.e. 09.07.2003.

6. In view of the same, the present appeal being devoid of merits deserves to be and is accordingly dismissed. The interim relief earlier granted also stands vacated.

Sd/-

(P. Sam Koshy)
JUDGE

Bhola ✓