

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 595 of 2017**

Shriram General Insurance Company Ltd. 4th Floor, Maruti Heights, Beside
Sky Automobiles, G.E .Road, Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Smt. Kamla W/o Late Madan Lal Sharma, Aged About 48 Years
2. Kavar Pal S/o Late Madan Lal Sharma, Aged About 29 Years
3. Mukesh S/o Madan Lal Sharma, Aged About 27 Years
All R/o Gajmandi, Durg, Chhattisgarh(Claimants).
4. Kuwar Singh S/o Shri Agnu Nishad, Aged About 28 Years R/o Mahmara,
P.S. Anjora, District Durg, Chhattisgarh(Driver Of Truck Bearing
No. C.G.04 J.C. 9377)
5. Jagat Sharma S/o Bhagwan Sharma, R/o L.I.G.-2, Veer Shawarkar Nagar,
Raipur, District Raipur, Chhattisgarh(Owner Of Truck Bearing
No. C.G.04 J.C. 9377).

---- Respondents

For Appellant	:	Shri SS Rajput, Advocate.
For Respondents No.1to3	:	Shri BP Singh, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****27.09.2017.**

1. The present is an appeal by the insurance company under Section 173 of the Motor Vehicles Act against the award dated 24.01.2017 passed by the 8th Additional Motor Accident Claims Tribunal, Durg, in Claim Case No.59 of 2016. Vide the said impugned award, the Tribunal in a proceeding under Section 166 of the MV Act has awarded compensation of Rs.6,90,400/- along with interest @ 9 percent per annum from the date of application.
2. The brief facts of the case is that deceased who was travelling on the motorcycle bearing registration No.CG-04-LM-7310 was hit by TATA Dumper bearing registration No.CG-04-JC-9377. The deceased at

the time of accident was more than 50 years.

3. The challenge by the insurance company to the award is on the ground that the accident itself is doubtful inasmuch as the date of accident is said to be 03.01.2014 whereas, the FIR was lodged on 28.04.2014 i.e. after a period of four months time. He further submits that the deposition of the witness who has been examined on behalf of the claimants also is not reliable as there are many contradictory statements given by these witnesses. He further relied upon the statement of NAW-2-Driver of the offending vehicle who has categorically denied of any accident to have occurred from his vehicle and thus, prayed for setting aside of the award.
4. Apart from this, counsel for the appellant also challenges the quantum of compensation awarded. According to appellant, it is a case where the Tribunal has assessed 15 percent of the income towards future prospects for quantifying the compensation, however, as the age of the deceased was more than 50 years, in view of judgment of Supreme Court in case of Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. 2009(6)SCC 121, the income under future prospects could not have been added while quantifying the compensation.
5. This court is of the opinion that considering the judgment of Supreme Court in case of Rajesh & Ors. Vs. Rajbir Singh & Ors., 2013(9) SCC 54, though the said judgment is pending consideration before the larger Bench of the Supreme Court, but as long as the same has not been held to be bad law, and also keeping in mind the fact that the

Supreme Court while deciding the said judgment of Rajesh (Supra) had taken into consideration the case of Sarla Verma (Supra), this court is of the opinion that as the claim petition is a beneficial piece of legislation, the interest of the claimants have to be given due weightage and this court does not find any strong case for interfering with the said adding of 15 percent income towards future prospects while quantifying the compensation.

6. It was also contended by the counsel for the appellant that the compensation awarded by the Tribunal under other heads also is on the higher side, however, considering the total number of claimants and the age of the deceased, this court is of the opinion that compensation awarded by the Tribunal under conventional heads also cannot be said to be on the higher side keeping in view the ratio of law laid down by the Supreme Court in case of Rajesh (Supra).
7. As regards the doubting of the accident upon which the liability has been fastened upon the insurance company is concerned, this court is of the opinion that the driver who had deposed before Tribunal himself has stated that in the event if the motorcycle is hit from the side of the Truck, he may not be aware of such accident. Further, the driver himself has admitted the fact that he is being prosecuted in a criminal case for the said accident and there is statement of one Mahendra Sharma who is said to have deposed before the Tribunal that he was travelling along with the deceased on the said motorcycle when the accident occurred and he too had suffered injuries and was hospitalized which is sufficient to explain the delay in lodging the FIR.

8. Considering the aforesaid evidence which have come on record, this court does not find any substantive material to interfere with the award passed by the Tribunal. The appeal of the insurance company thus being devoid of merit deserves to be and is hereby dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder