

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 965 of 2017**

The Oriental Insurance Company Limited through Branch Manager, Branch Office Raipur, Madina Building Raipur, Tahsil and District Raipur, Chhattisgarh(Insurer Of Offending Vehicle No. C.G.04 DE- 9576).

---- Appellant**Versus**

1. Smt. Paraga Bai Wd/o Late Shri Shyamlal Joshi, Aged About 45 Years
2. Uday Joshi S/o Late Shri Shyam Lal Joshi, Aged About 9 Years Minor Through Natural Guardian Paraga Bai Wd/o Late Shri Shyam Lal Joshi, Aged About 45 Years, R/o Kelkarpara, Police Station Ganj Raipur, District Raipur, Chhattisgarh
3. Rameshwar Joshi S/o Late Shri Shyam Lal Joshi, Aged About 19 Years All R/o Kelkarpara, Police Station Ganj Raipur, District Raipur, Chhattisgarh.
4. Mohit Ram Dhruv S/o Shri Lilu Ram Dhruv, Aged About 24 Years R/o Village Bhatgaon, Police Station Abhanpur, District Raipur, Chhattisgarh(Driver Of Offending Vehicle No. C.G.04 D E 9576)
5. Manish Kumar Netam S/o Shri Jailal Prasad Netam, R/o Village Bhatgaon, Police Station Abhanpur, District Raipur, Chhattisgarh(Owner Of Offending Vehicle No. C.G.04 D E 9576).

---- Respondents

For Appellant : Shri Raj Awasthy, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****12/07/2017**

1. For the reasons assigned in the application and finding them to be satisfactory, IA No.1 is allowed and delay in filing the appeal is condoned.
2. The present appeal under Section 173 of the Motor Vehicles Act has been preferred by the Insurance Company against the award dated 03.04.2017 passed by the 9th Additional Motor Accident Claims Tribunal, Raipur (in short, the Tribunal) in Claim Case No.650 of 2015.

3. The facts of the case is that, the claimants i.e. mother and two siblings of deceased Ku. Priyanka had filed an application before the Tribunal under Section 166 of the Motor Vehicles Act for grant of compensation on account of death of deceased Priyanka in a motor accident on 15.11.2012. The case of the claimant is that when Priyanka was walking on the road at Bus Stand of village Bharegabhata, she was dashed by a motorcycle bearing registration No.CG-04-DE-9576 which was being driven by respondent No.5 and was being owned by respondent No.4. The said motorcycle was insured by the present appellant. The deceased was a Student aged about 17 years.
4. The Tribunal, on a close scrutiny of evidence led, material placed and submissions made, allowed the claim application of the claimants and awarded an amount of Rs.7,50,000/- along with interest @ 6 percent per annum from the date of application. It is this award which is under challenge in this appeal by the insurance company.
5. The ground of challenge by the insurance company are, firstly; the amount of compensation awarded by the Tribunal is on the higher side, and the same deserves to be modified and suitably reduced; secondly, the driver of the offending motorcycle was not having driving licence at the relevant point of time.
6. So far as second ground raised by the appellant with regard to driver's not having driving license is concerned, the record shows that there was no evidence led whatsoever by the insurance company to substantiate this ground and as such the same is not sustainable.

7. So far as quantum is concerned, learned counsel for the appellant submits that the Tribunal has erroneously taken in to consideration Rs.4000/- as notional monthly income of the deceased and has also added 50 percent towards future prospects, and therefore, the calculation deserves to be interfered with.
8. On a perusal of records and evidence which have come on record, some of the undisputed facts of the case are that, the accident took place on 15.11.2012; Ku. Priyanka died in the said accident; deceased was 17 years old and was a student; the offending vehicle was motorcycle bearing registration No. CG-04-DE-9576 and the said vehicle was driven by respondent No.4 and owned by respondent No.5. It is also not in dispute that the said vehicle was duly insured by the appellant during the relevant point of time.
9. So far as quantum part is concerned, it is any body's guess that in the month of November, 2012, the minimum wages of even a daily wage worker was more than Rs.150-200/- a day and if that is taken into consideration, the monthly wages would be Rs.4500-6000/-, however, in instant case, the Tribunal has only taken notional income of less than of that amount of only Rs.4000/- which therefore cannot be said to be on higher side.
10. Considering the income which has been arrived at by the Tribunal so far as assessing quantum is concerned, it would have definitely got enhanced in due course of time and in the process, if the Tribunal has added 50 percent towards future prospect, it cannot, under any circumstances be said to be unreasonable or on the higher side.

11. Another aspect which forces this court not to interfere with the impugned award is the fact that the deceased was the second child in the family and that her mother was a widow and therefore it was all the more necessary for the deceased to have completed her education at the earliest and got some employment to sustain the family.
12. In the given facts and circumstances of the case, this court does not find any strong case to interfere with the award impugned. Thus, the appeal fails and is dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder