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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1122 OF 2017

The New India Assurance Company Limited, Through Divisional Manager, (Division Office No.1), Jail Road, Raipur, District Raipur, Chhattisgarh

… Appellant

versus

1. Smt. Jaya, Wd/o Heeralal Khemani, Aged About 39 Years,
2. Rahul, S/o Late Heeralal Khemani, Aged About 21 Years
3. Ketan, S/o Late Heeralal Khemani, Aged About 19 Years
4. Smt. Gopi Devi, Wd/o Govindram Khemani, Aged About 72 Years

All R/o Mahamaya Para, Imli Bagicha, Bhilai-3, Police Station Bhilai -3, District Durg, Chhattisgarh

5. Kamlesh, S/o Rajeev Yadav, Through Mukesh Sharma, Rahul Road, Career 200/2, Devendra Complex, Ring Road No. 2, Tatibandh, Police Station Amanaka, Raipur, Chhattisgarh
6. Mukesh Sharma, Rahul Road, Career 200/2, Devendra Complex, Ring Road No. 2, Tatibandh, Police Station Amanaka, Raipur, Chhattisgarh

… Respondents

For Appellant : Mr. Pankaj Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20/09/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the Insurance Company, assailing the award dated 6.4.2017 passed by First Additional Motor Accident Claims Tribunal, Raipur, in Claim Case No. 91/2014.

2. Vide the said impugned award, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, has awarded a compensation of only Rs.31,80,000/- to the claimants, with interest thereon at the rate of 7% per annum from the date of the filing of the claim application.

3. Challenge in the present appeal is on the ground that the claimants have not been able to lead substantive evidence to establish the age of the deceased and no proper documents have been adduced to show the date of birth of the deceased and therefore the multiplier which has been applied cannot be said to be proper and justified. According to the Insurance Company the offending vehicle involved in the accident did not have the permit or fitness certificate and the driver also was not having valid licence at the time of accident. Further, that the Tribunal has also wrongly made the deduction of 1/4th instead of 1/3th which should had been made towards the personal expenses. Lastly, that there was also no sufficient, strong evidence led by the claimants to establish the monthly income of the deceased.

4. However, on perusal of the record, particularly the finding so far as the issue no.3 is concerned which deals with the objection raised by the Insurance Company, it reflects that the Insurance Company has not led any evidence whatsoever before the Tribunal to prove or establish the contentions that they had raised. In the absence of any evidence led by the Insurance Company, the finding of the Tribunal cannot be said to be either contrary to the evidence or perverse in any manner. So far as the date of birth of the deceased is concerned, the Tribunal has taken into account the age of the deceased as has been assessed by the Doctor who had conducted the post-mortem, which also cannot be held to be improper finding of the Tribunal. So far as the income of the deceased and other aspects are concerned, no sufficient cross-examination appears to have been made to disprove the claimants' claim. Thus, the appeal of the Insurance Company being devoid of merit the same deserves to be and is accordingly dismissed.

5. In the result, the appeal is dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/