

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1091 of 2017**

Branch Manager, United India Insurance Company Limited Brahma Road, Near Kumkum Hotel, Nagar Police Station And Tahsil Ambikapur, District Surguja, Chhattisgarh.

---- Appellant**Versus**

1. Smt. Basanti Bai Wd/o Mangal Sai Kanwar, Aged About 32 Years
 2. Mandip S/o Late Mangal Sai Aged About 13 Years
 3. Kumari Manti Late Mangal Sai, Aged About 13 Years
 4. Golu S/o Late Mangal Sai Aged About 7 Years
 5. Kumari Rashma D/o Late Mahendarr Kanwar M/o Smt. Bhinsari, aged about 16 years.
 6. Kumari Yashoda D/o Late Mahendar Kanwar, aged about 13 years.
 7. Umashanker, S/o Late Mahendar Kanwar, Aged About 10 Years
- Respondents No.2 to 4 are Minor through natural guardian mother and No.5 to 7 are minor, through Aunt Smt Basanti Bai Wd/o Late Mangal Sai,
All R/o Village Kharkona, Post Police Station And Tahsil Shankergarh, District Balrampur- Ramanujganj, Chhattisgarh,Claimants.
8. Omprakash Kashyap S/o Parasnath Kashyap, Aged About 47 Years Caste Baniya, R/o Village Shankergarh, Police Statin And Tahsil Shankergarh, District Balrampur, Ramanujganj, Chhattisgarh. (Driver Of Offending Vehicle)
 9. Aadam Ali, S/o Amjad Ali, Aged About 58 Years R/o Village Chalgali, Post Ghughrikhurd, District Balrampur- Ramanujganj, Chhattisgarh.....Owner Of Offending Vehicle.

---- Respondents

For Appellant : Shri Raj Awasthy, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****10/08/2017**

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. This is insurer's appeal under Section 173 of the Motor Vehicles Act against the award dated 02.03.2017 passed by the Motor Accident

Claims Tribunal, Ambikapur (in short, the Tribunal) in Claim Case No.109/2016. Vide the said impugned award, the Tribunal in an application filed by the claimants under Section 166 of the Motor Vehicles Act, have awarded compensation of Rs.11,86,800/-along with interest @ 7 percent per annum from the date of application.

3. The insurance company has challenged the award on two grounds firstly; the deduction of 1/5th towards personal expenses was improper. According to appellant, the claimants No.5 to 7 are not entitled for any compensation as they are residing separately and not staying along with the other claimants. Second ground which has been raised is that, the accident arose because of the contributory negligence inasmuch as the deceased while driving motorcycle had dashed on the back side of stationary Tractor and Trolley which by itself prima facie establishes contributory negligence on the part of the deceased, and therefore, the award ought to have been reduced quantifying the contributory negligence on the part of the deceased also.
4. However, a perusal of record would show that the claimants No.5 to 7 are the children born out of first wife of the deceased and thus, when there is no dispute in respect of claimants No.5 to 7 also being the children born to the deceased, the deduction made i.e. 1/5th by the Tribunal cannot be faulted with.
5. So far as ground of contributory negligence is concerned, the evidence which has been made by the insurance company itself shows that there has been no cogent substantive evidence in their

favour to prove the contributory negligence. The Tribunal has rightly discussed in paragraph 12 of its award that in the cross examination of the witness of the insurance company it has come that investigation of the accident by the officer of the insurance company was conducted after nine months from the date of accident and that his report is based upon certain statements which were recorded from the persons who were residing nearby the locality. This by itself cannot be under any circumstances accepted as substantive piece of evidence for deciding the contributory negligence against the deceased who was travelling on motorcycle. Indisputably, the accident occurred in the evening. It must have been dark and if the Tractor and Trolley was parked on the road without giving any indication or parking light, chances of accident are always bright.

6. Therefore, the finding of the Tribunal cannot be faulted with and the appeal of the insurance company being devoid of merit deserves to be and is hereby dismissed.

Sd/-
(P. Sam Koshy)
Judge