NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1366 of 2016

1. Reliance General Insurance Company Limited Through: its Legal Officer, Reliance General Insurance Company, National Corporate House, 5th Floor, Shop No. 516, Opposite Maruti Business Park, G.E.Road, Raipur, Tahsil and District Raipur, Chhattisgarh .... (Insurer)

---- Appellant

Versus

1. Ku. Ishita Acharya D/o Late Avinash Acharya, aged About 7 years Caste Brahman, Minor Through Legal Guardian Abhay Acharya, aged about 47 Years, S/o Late Vishwanath Acharya, Caste Brahman, R/o Motilal Nehru Ward, Naya Para, Jagdalpur, District Bastar, Chhattisgarh ....(Claimant)

---- Respondent

For Appellant – Shri Sourabh Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18-01-2017

1. The present appeal has been preferred assailing the judgment dated 27-07-2016 passed by the Addl. M.A.C.T. Bastar at Jagdalpur in Motor Vehicle Claim Case No.108/2015 in a proceeding under Section 166 and 140 of the Motor Vehicles Act filed on behalf of the claimant in respect of death of her mother Smt. Kirti Acharya.

2. The facts, in brief, are that the parents of the claimant namely the deceased Kirti Acharya as well father of the present claimant Avinash Acharya were travelling on their Hyundai Santro Car bearing registration No. CG 17 SS 9909 . While traveling in the said vehicle they met with accident on 16-12-2011 when the vehicle which the father of the claimant was driving dashed against a tree. As a result of the accident, mother of the present claimant deceased Smt. Kirti Acharya sustained grievous injury and later died on 22-12-2011. The father had also died in the accident.

3. A claim application in this regard was filed by respondent No.1/claimant

before the M.A.C.T. where the case was registered as Claim Case No.108/15. After pleading and evidence were complete, the Tribunal vide its impugned judgment dated 27-07-2016 allowed the application and ordered for payment of Rs.10,94,000/- to respondent No.1. Since the vehicle involved in the accident was insured by the present appellant, the liability of payment of compensation was fastened upon the insurance company. It is this judgment which has been assailed by the appellant in the present appeal.

4. The ground for challenge by the insurance company is that the vehical involved in the accident was owned by the father of the present respondent No.1/claimant. According to the appellant, since the owner of that vehicle, i.e., father of the claimant had died, the present respondent No.1/claimant would step into the shoes of the father and would become the owner of the said vehicle and in the capacity of being owner of the said vehicle, she would not be liable to be a claimant as well as owner at the same time and as such there would a conflict of stand between the two and thus prayed for quashing of the impugned order holding it to be bad in law. Counsel for the appellant also assails the order on the ground that the amount of compensation awarded is exorbitant and on the higher side and that the income of the deceased, i.e. the mother of the claimant, has not been properly established and thus the same requires interference.

5. So far as the contention of the counsel for the appellant in respect of the claim application not being sustainable so far as the claimant is concerned, for the reason that just because father of the claimant/applicant was owner of the vehicle and who had died in the iccident, by itself would not absolve the daugher from claiming compensation in respect of the death of her mother from the said accident. What is also relevant at this juncture to be noted is the fact that the present claim application has been filed in respect of the compensation in respect of death of her mother and was not a claim of the

father, thus, the objection of the insurance company would not be applicable in the facts of present case and therefore rejected.

6. The decision of this Court stands fortified by the decision of this Court in Miscellaneous Appeal No.129/2006 and other connected appeal decided by this Court on 23-12-2016.

7. So far as the quantum of the compensation is concerned, this Court has no hesitation in reaching the conclusion that the Tribunal has rightly taken the notional income of the mother of the claimant to be Rs.6000/- per month as it was pleaded by the claimant that her mother was a fashion designer. Even otherwise, as per the facts of the case, Rs.6000/- would be an average income, even today unskilled labour is earning more than Rs.200/- per day which would be more than Rs.6000/- per month. Thus, the notional income taken by the Tribunal cannot be faulted at in the given factual matrix of the case.

8. This Court finds that no strong case has been made out calling for any interference with the impugned award. The appeal of the insurance company, thus, being devoid of merit and the same is rejected.

Sd/-
(P. Sam Koshy)
JUDGE

Aadil