NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 593 of 2010

1. Vijay Kumr Dhanwani, age about 39 years, S/o Lt. Banshila
2. Priya Dhanwani, age about 35 years, W/o Vijay Kumar Dhanwani
3. Kumari Dali, age about 13 years, D/o Vijay Kumr Dhanwani, minor through guardian father Vijay Kumar Dhanwani
4. Vikash Dhanwani, age about 9 years, S/o Vijay Kumar Dhanwani, minor through guardian father Vijay Kumar Dhanwani
5. Labina, age about 6 years, D/o Vijay Kumar Dhanwani, minor through guardian father Vijay Kumar Dhanwani

   All of them are resident of Choukhadiya Para Rajnandgaon (CG)

---- Appellants

Versus

1. Shashank @ Babu Ghosh, aged about 26 years, S/o Krishna Ghosh, R/o Subhashpalli, Post Bangaon, District North 24 Pargana (W.B.)
2. Pradeep Devnath S/o K. P. Devnath, R/o Vill. Jaypur, Chayagariya, Bangaon, 24-Pargana North, Post Chayagariya, Bangaon (W.B.)
3. National Insurance Co. Ltd. through Branch Manager Kamthi Line, Rajnandgaon (CG)
4. Motilal Dhanwani, aged about 55 years, S/o Chouthmal Dhanwani, R/o Sindhi Colony, Rajnandgaon (CG)

---- Respondents

For Appellants	:	Shri Rakesh Thakur, Advocate
For Respondent no.3	:	Shri B. N. Nande, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

05/10/2017

Present is an appeal by the claimants under Section 173 of the Motor Vehicles Act assailing the award dated 03.04.2010 passed by the Additional Motor Accident Claim Tribunal (FTC), Rajnandgaon (CG) in Claim Case No. 74/2008. Vide the impugned award, the Tribunal in a claim case under

Section 166 of MV Act has awarded a compensation of Rs.50,000/- under no fault liability to the claimants.

2. Counsel for the appellants submits that the finding of the Tribunal granting exoneration to the Insurance Company is bad in law. Similarly, the compensation awarded by the Tribunal is not just and reasonable considering the fact that it was a death case and the deceased was staying along with the claimants and was contributing substantial portion of his income to the claimants. Counsel for the appellant submits that it is a case where the claimants had submitted the cover note regarding insurance policy which was issued in respect of the offending vehicle yet the Tribunal has not properly appreciated the evidence which has come in this regard and has exonerated the Insurance Company fastening the liability of payment of compensation upon the owner. He further submits that the said cover note has not been properly verified by the witness of the Insurance Company and therefore an adverse inference should have been drawn by the Tribunal while fastening the liability upon the owner.

3. Having considered the contention put forth by the counsel appearing for the appellants and on perusal of the record what is clearly reflected is that the photo copy of the cover note produced during the course of hearing does not reflect the material details so far as the registration number of the vehicle, the office or branch from where the policy was issued and the agent who had issued the cover note. On the contrary, there is a witness examined by the Insurance Company who has categorically denied of any such cover note to have been issued from any of their office and no premium against the said cover note received by the Insurance Company. Thus, in the opinion of this Court, no strong case has been made out by the claimants for shifting the liability from the owner to the Insurance Company and the ground so raised as regards the liability stands negated.

4. So far as the claim for enhancement of compensation is concerned, this Court is of the opinion that the finding of the Tribunal in the instant case is just and reasonable and the same does not warrant interference for the simple reason that the claimants in the instant case are the nephews of the deceased. All the claimants are major persons having their independent source of income and none of the claimants have been able to establish before the Tribunal that they are directly dependent upon the deceased. In the absence of any such material and the facts which have come before the Tribunal, the only relief the Tribunal could have awarded was that of no fault liability which the Tribunal has rightly awarded. Hence, this Court does not find any strong case made out for interference with the impugned award.

5. Thus, the appeal fails and is accordingly dismissed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola