

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 776 of 2011**

IFFCO Tokio General Insurance Co. Ltd. 3rd Floor, Shop No.345-347
Ganga Shopping near Mata, GE Road, Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Aghan Singh son of Shri Bhaddu Singh, aged about 45 years
 2. Smt. Itwariya Bai W/o Aghan Singh, aged about 43 years.
 3. Bhuddu Singh, son of Shri Aghan Singh, aged about 11 years.
 4. Shukhsen Singh S/o Aghan Singh, aged about 7 years
- Respondent No. 3 & 4 being Minor are represented Through Father Aghan Singh, all are R/o Village Kargi Road, Kota, Thana And Tehsil Kota, Dist. Bilaspur.
5. Vijay Kumar Dwivedi son of Shri Anand Kumar Dwivedi, age not known to the appellant, resident of village Dhadhokoe, Thana Beyohari, Distt. Shahdol, MP

---- Respondents

For Appellant : Shri P. Acharya, Advocate, under
Instruction of Shri Amrito Das, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****11/07/2017**

1. The present is an appeal under Section 173 of Motor Vehicles Act against the award dated 25.03.2011 passed by the 5th Additional Motor Accident Claims Tribunal, Bilaspur (for short, the Tribunal), in Claim Case No.144/2010. Vide the said award, the Tribunal in a proceeding under Section 166 of MV Act awarded compensation of Rs.2,18,800/- to the parents of the deceased Amarbati (unmarried), who died in an accident took place on 08.04.2009 while she was traveling in a Truck bearing registration No.MP-17-C-0163, belonging to respondent No.5 and insured with the present appellant.

2. The facts in brief is that, the deceased Amarbati Bai was employed with respondent No.5 as labour on the said Truck and in the course of his employment, because of rash and negligent driving on the part of the driver of the said Truck on 08.04.2009 there was an accident resulted in grievous injuries caused to said Amarbati upon which she later on succumbed.
3. Claim application was moved by the family members of the deceased and the case was registered as Claim Case No.144 of 2010.
4. The Tribunal, on a close scrutiny of evidence led, material placed before the court and submissions made by the parties, vide award dated 25.03.2011 allowed the claim application of the claimants holding that that the claimants are entitled for compensation to the tune of Rs.2,18,800/- along with interest @ 7.5 percent per annum from the date of application. It is this award which has been assailed by the appellant in the present appeal.
5. The two grounds of challenge raised by the appellant are that, firstly the policy did not cover the risk of employee engaged by the respondent No.5. He relies upon the judgment of Supreme Court in case of National Insurance Co. Ltd. Vs. Choletti Bharatamma and Others, 2008 (1)SCC 423. Secondly, deduction towards the personal expenses that has been taken into consideration by the Tribunal at 1/3rd is also erroneous for the reason that since the deceased was unmarried daughter and the claimants are parents and further she was the employee in the Truck, it should had been $\frac{1}{2}$ of the monthly income of the deceased. Thus, the quantum of compensation

awarded is on higher side.

6. Counsel for the appellant submits that it is a case where the policy which was issued in favour of the respondent No.5 was that of Act Only Policy and it would not have covered the risk of any other person except the driver of said Truck. In the instant case, according to the claimants, the deceased was an employee of respondent No.5 and if that be so, the policy does not cover the risk of any of the employee of respondent No.5. Therefore, the insurance company should be exonerated from the liability of payment of compensation as it is not covered under the policy issued.
7. So far as the judgment which has been relied upon by the appellant is concerned, the facts of that case is entirely different, and therefore, ratio laid down in the said judgment is distinguishable on the facts of the present case. In the said judgment, the admitted position was that the deceased had boarded the lorry after paying Rs.20/- as transport charges which is not the facts of the present case. In the present case, the deceased was working for the respondent No.5 in the transportation of Bauxite from one place to another for which she was paid Rs.100/- a day. In the course of transportation of Bauxite, the Truck in which the deceased was engaged, met with an accident resulting in her death. Thus, the said judgment would not be applicable in the facts of the present case.
8. Moreover, if we look into the record, it clearly reflects that witness of the insurance company, non-applicant witness No.1-Devendra Patel, has admitted that the policy covers the risk of four persons. Further,

once when the witness of the insurance company itself has admitted the fact that policy issued covers the risk of four persons and there being no evidence to disprove the contention of the claimants that the deceased was not travelling in the cabin of the Truck, this court is of the opinion that no illegality or perversity has been committed at the hands of the Tribunal while reaching to the conclusion that the liability of payment of compensation fell upon the insurance company. In view of the aforesaid factual matrix of the case, the said contention of the appellant stands negated.

9. So far as question of quantum of compensation is concerned, this court is not inclined to accept the claim for the reason that firstly the award is now six years old and there was stay of disbursement issued by this court while entertaining the appeal. Further, there are four claimants and looking to the nature of work which was discharged by the deceased and also the socio economic background from where she came, it has to be presumed that from the wages she earned i.e. Rs.100/- on a day was being deposited with her parents and in the given factual situation the deduction of 1/3rd towards personal expenses by the Tribunal cannot be said to be unreasonable or bad in law. The said ground so raised by the appellant also stands negated.

10. As a consequence, the appeal fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge