

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MA No. 560 of 2006**

1. Brij Mohan Jhavar, age 52 years, S/o Deepchand Jhavar,
2. Smt. Sarla Devi Jhavar, age 48 year, W/o Brij Mohan Jhavar
3. Anurag Jhavar, age 20 years, S/o Brij Mohan Jhavar,
R/o 4, Ashoka Towers Shankar Nagar, Raipur (CG).

---- Appellants**Versus**

1. Sanat Choudhary S/o Manoj Choudhary R/o village Satwakuda Thana Garhbera Distt. Midnapur (WB) (Owner of Truck No. WB-33-7679)
2. National Insurance Co. Ltd. through Divisional Office, 1st Floor, Mobin Mahal, Above Central Bank Main Branch GE Road, Raipur (insurer of Truck No. WB-33-7679)
3. M/s BK Infrastructure (P) Ltd. through Jagdish Jhavar, 69 Mahalaxmi Cloth Market, Pandri, Raipur (CG) (Owner of Tata Indica Car No. CG-04-B-4079).
4. The Oriental Insurance Co. Ltd. through Branch Manager, CBO-2, Mahabir Goushala Complex, Moudhapara Raipur (CG) (Insurer of Indica Car No. CG-04-B-4079).

---- Respondents**MA No. 834 Of 2006**

The Oriental Insurance Co. Ltd. through Branch Manager, CBO-2, Mahabir Goushala Complex, Moudhapara Raipur (CG) (Insurer of Indica Car No. CG-04-B-4079).

---- Appellant**Versus**

1. Brij Mohan Jhavar, age 52 years, S/o Shri Deepchand Jhavar,
2. Smt. Sarla Devi Jhavar, age 48 year, W/o Brij Mohan Jhavar
3. Anurag Jhavar, aged about 20 years, S/o Brij Mohan Jhavar,
All R/o 4, Ashoka Towers Shankar Nagar, Raipur (CG).
4. Sanat Choudhary S/o Manoj Choudhary R/o village Satwakuda Thana Garhbera Distt. Midnapur (WB) (Owner of Truck No. WB-33-7679).
5. National Insurance Co. Ltd. through Divisional Office, 1st Floor, Mobin Mahal, Above Central Bank Main Branch GE Road, Raipur (insurer of Truck No. WB-33-7679).
6. M/s BK Infrastructure (P) Ltd. through Jagdish Jhavar, Civil Road and Water Supply Contractor, 69 Mahalaxmi Cloth Market, Pandri, Raipur (CG) (Owner of Tata Indica Car No. CG-04-B-4079).

---- Respondents

For Appellants/Claimants	:	Shri Sachin Singh Rajput, Advocate.
For Oriental Insurance Company :		Shri Ghanshyam Patel, Advocate.
For National Insurance Company:		Shri Qamrul Aziz, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****30/08/2017**

1. These are two appeals under Section 173 of the Motor Vehicles Act against the award dated 21.12.2005 passed by the 13th Additional Motor Accident Claims Tribunal (FTC) Raipur (in short, the Tribunal) in Claim Case No. 54 of 2005. MA No.560 of 2006 is an appeal filed by the claimants seeking for enhancement and MA No.834 of 2006 is an appeal filed by the insurance company.
2. The claim raised by the claimants before the Tribunal was one under Section 163-A of the Motor Vehicles Act (for short, MV Act) which has been adjudicated upon vide the impugned award. The Tribunal has reached to the conclusion that the total amount of compensation payable was Rs.4,90,000/- and the Tribunal also has given a finding of contributory involvement of 50 percent upon the driver of the two vehicles involved in the said accident and thereby saddling Rs.2,45,000/- upon the insurance company which had insured the Truck bearing registration No. WB-33-7679 involved in the accident which is under challenge in the appeal preferred by the insurance company.
3. At the outset, this court is of the opinion that since it is a case where the accident arose in the course of use of two motor vehicles and that there is a finding of contributory negligence, the claim of the claimants ought to have been one under Section 166 of the MV Act and not one under Section 163-A of the MV Act. Further, what also transpires is the fact that in the event if the claimants are permitted to

amend the claim and convert it to one under Section 166 of the MV Act, the quantum of compensation which they would be receiving considering the salary of the deceased, could be substantially more than what has been quantified by the Tribunal in a proceeding under Section 163-A of the MV Act. Therefore, without entering into the merits of the case, this court is of the view that ends of justice would meet if the award passed by the Tribunal is set aside and the matter is remitted back to the Tribunal with liberty to the appellant-claimant to move an appropriate amendment in the claim application by converting the application to one under Section 166 instead of one under Section 163-A of the MV Act. It is ordered accordingly.

4. The parties shall also be at liberty to move appropriate amendment application to their pleadings, if so required inclusive of the respondent-insurance company to take appropriate defence available to them. Needless to mention either of the parties shall also have right of leading fresh evidence before the Tribunal for proper adjudication upon their respective claims.
5. Accordingly, the impugned award dated 21.12.2005 is set aside. The matter is remitted back to the Tribunal for deciding the matter afresh. The claimants are at liberty to suitably amend the claim application.
6. It has been informed by the counsel for the insurance company that in compliance of the said award, the insurance company has satisfied the award and the amount has already been released to the claimants, therefore, any further amount awarded shall be subject to adjustment of the amount already awarded.

7. In the event if the Tribunal now reach to the conclusion that insurance company insuring the Indica Car, driven by the deceased at the time of accident, is not liable for payment of any compensation, then the amount so deposited by the said insurance company shall be permitted to be refunded or recovered from the concerned respondents who will be saddled with the responsibility of payment of said compensation. This part will also be considered and decided by the Tribunal while passing the final order afresh.
8. The parties are directed to remain present before the concerned Tribunal on 4th October, 2017. Considering the fact that it is a case where the claim case was filed in the year, 2005, all endeavors shall be made by the Tribunal for deciding the case at the earliest. Let the record of the court below be sent back forthwith.

Sd/-

(P. Sam Koshy)
Judge

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