

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1310 of 2017**

ICICI Lombard General Insurance Co. Limited Through Its In Charge Officer, ICICI Lombard General Insurance Co. Ltd. Lal Ganga Shopping Mall, G.E. Road, Raipur, District Raipur, Chhattisgarh

---- Appellant**Versus**

1. Smt. Purnavati W/o Late Shri Gajendra @ Gajju Banjare Aged About 42 Years
2. Birendra S/o Shri Gajendra @ Gajju Banjare Aged About 25 Years
3. Arvind S/o Shri Gajendra @ Gajju Banjare Aged About 23 Years
4. Lakshmesh S/o Shri Gajendra @ Gajju Banjare Aged About 17 Years
5. Ku. Baijanti D/o Late Shri Gajendra @ Gajju Banjare Aged About 15 Years

Respondents No. 4 & 5 are Minors and Hence Represented By Their Mother Smt. Purnavati (Respondent No.1)

All above are R/o. Village Pendri Tarai Thana Nandini Nagar, Tehsil And District Durg Chhattisgarh.

6. Human @ Hukum S/o Shri Shyamlal Jangde Aged About 41 Years R/o Village Accholi Thana Kharora District Raipur Chhattisgarh. Presently Residing At Kokadi (Kandai) Thana Nandini Nagar, Tehsil Dhamdha District Durg, Chhattisgarh.

----Respondents

For Appellant : Mr. Amrito Das, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****21/09/2017**

1. Heard on I.A. No.1, which is an application for condonation of delay. For the reasons assigned in the application and finding them to be satisfactory, I.A. No.1 is allowed and delay of 116 days in filing the appeal stands condoned.
2. Present is an appeal by the Insurance Company assailing the award dated 17.02.2017, passed by the 3rd Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh, in Claim Case No. 80/2015. Vide the said impugned award, the Tribunal in a death case under Section 163A of the Motor Vehicles Act, has awarded a

compensation of Rs.7,46,000/- with interest @ 6% per annum from the date of application.

3. The challenge to the impugned award is on two grounds, firstly the Tribunal has committed an error to the extent that it has added 30% of the income towards future prospects while quantifying the income of the deceased and in the process has crossed the maximum limit of Rs.40,000/- which could be assessed while quantifying the compensation.
4. According to Mr. Das, it is a case where in a claim case under Section 163A the yearly income cannot exceed more than Rs.40,000/- and in the instant case by adding of 30% of the yearly income towards the future prospects, the Tribunal has passed an award in contravention to the schedule-2 of the Motor Vehicles Act in as much as it has assessed the annual income of the deceased at Rs.52,000/-. The second ground of challenge is that there was a statutory violation in as much as there were three persons on the motorcycle, which was involved in the accident on account of State statutory violation; the Tribunal should have exonerated the Insurance Company.
5. So far as the first ground is concerned, this Court is of the opinion that the Rs.40,000/- ceiling which has been prescribed under the schedule is only maximum yearly income of a person, which the Tribunal could assess while quantifying the compensation. In the instant case also the Tribunal has assessed the annual income only at Rs.40,000/-. Only because future prospects gets added to the yearly income by itself would not make the assessment of the Tribunal bad for the reason that the Tribunal has only added the future prospects component while quantifying the total compensation which has to be paid to the claimants and it cannot be construed that this 30% towards future prospect would also merge with the actual yearly income of the deceased assessed by the Tribunal. Thus, the said ground of the appellant stands negated.
6. So far as the second ground of there being a statutory violation, the law in this regard is also well settled that only because there has a

statutory violation of three persons travelling in a motorcycle by itself would not absolve the Insurance Company from indemnifying the owner of the vehicle, to which it had insured. Even otherwise in the instant case the deceased was a pillion rider for which the said ground raised also may not be attracted. Thus, in the opinion of this Court there is no strong case is made out worth admitting the appeal and same fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved