

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 368 of 2017**

1. New India Assurance Company Limited Office- Supela Bhilai, District Durg, Chhattisgarh (Insurer Of Truck No. C.G.07 Z.C.3274) (Policy No. 4512012000006653).

---- Appellant**Versus**

1. Smt. Neelam Gada Wd/o Late Dinesh Kumar, Aged About 26 Years
2. Ku. Sagun Gada D/o Late Dinesh Kumar, Aged About 8 Years
3. Ku. Sargam Gada D/o Late Dinesh Kumar Gada, Aged About 4 Years
4. Ku. Shimar Gada D/o Late Dinesh Kumar, Aged About 2 Years
5. Smt. Durpat Bai Gada W/o Anupram, Aged About 52 Years
No. 2 to 4 are minor through natural guardian mother, claimant No.1.
All are R/o Purani Basti, Kohka, Bhilai, District Durg (CG).
6. Pushp Kumar Dewangan S/o Pitambar, Aged About 45 Years R/o Dabra Para, Bhilai-3, District Durg, Chhattisgarh(Driver Of Truck No. C.G.07 Z.C. 3274)
7. Varindar Kaur S/o Vijay Kumar, R/o House No.552, Sadak 6b, Shanti Nagar, Bhilai, District Durg, Chhattisgarh(Owner Of Truck No. C.G.07 Z.C. 3274/ Non-Applicant No.2).

---- Respondents

For Appellant : Shri Pankaj Agrawal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****04/07/2017**

1. Considering the grounds taken in the application and finding them to be satisfactory, IA No.1 is allowed and delay in filing the appeal is condoned.
2. The present petition has been filed against the award dated 18.11.2016 passed by the 7th Motor Accident Claims Tribunal, Durg (in short, the Tribunal) in Claim Case No.01 of 2014. Vide the said award, the Tribunal considering the facts and circumstances of the case has awarded an amount of Rs. 14,22,500/- to the claimants as

compensation on account of death of Dinesh Kumar along with interest @ 6 percent per annum from the date of application.

3. The ground raised for challenge in the present appeal is that there was a breach of policy and therefore the insurance company could not have been saddled with the liability of payment of compensation. According to appellant, the driver of the vehicle at the relevant point of time was not having valid and effective driving license. It was further contended that the amount of compensation awarded by the Tribunal under the other heads are also on the higher side and therefore the award needs modification to that extent. It was also the contention of the insurance company that the calculation of 50 percent under future prospects in income was also improper as the nature of employment and income of the deceased was uncertain and therefore taking 50 percent under future prospects for the purpose of calculation of compensation is also bad in law.
4. A perusal of the record would show that the witness adduced by the insurance company itself has in his cross examination, as is reflected at para-11 of the award, has accepted the fact that the driver of the offending vehicle at the relevant point of time had the license between 23.07.2010 to 22.07.2013 and that before the expiry of said license period, the Driver had already on 18.07.2013 moved an application before the concerned RTO seeking for renewal of his license and which was only after due process allowed on 09.12.2013 and in between on 05.12.2013 the untoward incident took place.
5. Thus, the evidence which has come before the Tribunal itself is sufficient to indicate that the Driver was not at fault for not having effective driving license at the time of accident as he had already before

the expiry of his license made an application for renewal which was under consideration before the RTO. Therefore, it cannot be said to be a case where the driver did not have a valid license. This ground raised by the insurance company is unsustainable and the same is accordingly rejected.

6. So far as challenge to the quantum part, more particularly, granting of 50 percent rise in income under the head of future prospects again by now is a well settled by catena of decisions of Supreme Court right from the decision rendered in case of Sarla Verma (Smt.) & others V. Delhi Transport Corporation and another¹, till the case of Rajesh and Others Vs. Rajbir Singh & Others, 2013(9)SCC 54. In addition, it is any body's guess that the deceased who was aged about 28 years at the time of accident would definitely have received more wages in times to come and which definitely is a loss to the claimants. Thus, this ground also is not strong enough calling for an interference with the award.
7. So far as grant of compensation under the other heads also is concerned, this court does not find any substantial reason to entertain with the said finding particularly taking into consideration the age of the deceased at the time of accident as also the number of dependents left by the deceased at his home.
8. Thus, the appeal fails. The same deserves to be and is accordingly dismissed.

Sd/-
(P.Sam Koshy)
Judge

inder