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HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 853 of 2017

The Oriental Insurance Company Limited Division Office, Shivnath Complex, G.E.Road, Supela Bhiali, Chhattisgarh, Through The Oriental Insurance Company Limited, Branch Office- Near Rajendra Park Chowk, Old R.T.O. Bhavan, Durg, District Durg, Chhattisgarh (Policy No. 192100/31/2015/6764 Validity 25.08.2014 To 24.08.2015)(Insurer Of Offending Vehicle Truck No. C.G.07 C A 9980)

---- Appellant

Versus

1. Smt. Bimla Bailard W/o Late Adward (Baran) Bailard, Aged About 49 Years (Widow Of Deceased And Legal Heir)
2. Smt. Silidiya Bailard W/o Shri Bharat, Aged About 27 Years (Married Elder Daughter Of Deceased And Legal Heir)
3. Andrew Bailard S/o Late Adward Bartan Bailard, Aged About 24 Years (Son Of Deceased And Legal Heir)
4. Garry Bailard S/o Adward Bartan Bailard, Aged About 20 Years (Son Of Deceased And Legal Heir)
 All R/o Mahadev Colony, Shanti Nagar, Bhiali, Police Station Supela, District Durg, Chhattisgarh(Claimant No. 1 To 4)
5. Rikhiram Sinha S/o Baisakhuram Sinha, Aged About 28 Years R/o Near Priyadarshini School, Laxmi Nagar, Durgapara, Supela, Bhilai, Tahsil And District Durg, Chhattisgarh ...(Driver Of Offending Vehicle Truck No. C.G. 07 C A 9980)
6. Sheikh Altaf Hussain S/o Nanhe Miya, Aged About 44 Years R/o Plot No.44, Sundar Nagar, Near Kamla Dairy, Kohka, Bhilai, Tahsil And District Durg, Chhattisgarh(Owner Of Truck No. C.G.07 C A 9980)

---- Respondents

MAC No. 681 of 2017

1. Smt. Bimla Bailward W/o Late Adward (Bartan) Bailard, Aged About 49 Years
2. Smt. Sildiya Bailard W/o Shri Bharat, Aged About 27 Years
3. Andrau Bailard S/o Late Adward Bartan Bailard, Aged About 24 Years
4. Gairy Bailard S/o Late Adward Bartan Bailard, Aged About 20 Years
 All R/o Mahadev Colony Shanti Nagar, Bhilai, P.S. Supela, District Durg, Chhattisgarh(Claimant)

---- Appellants

Versus

1. Rikhi Ram Sinha S/o Baisakhu Ram Sinha, Aged About 28 Years R/o Near Priyadarshini School, Laxmi Nagar, Durgapara, Supela, Laxmi Nagar, Durgapara, Supela, Bhilai, Tahsil And District Durg, Chhattisgarh (Driver Of Truck No. C.G.07 C A 9980)
2. Sheikh Altaf Hussain S/o Nanhe Miyan, R/o Plot No.44, Sundar Nagar, Near Kamla Dairy, Kohka, Bhilai, Tahsil And District Durg, Chhattisgarh(Owner Of Truck No. C.G.07 C A 9980)
3. The Oriental Insurance Company Limited, Divisional Office, Shivnath Complex, Through Branch Office- G.E.Road Supela Bhilai Near Rajendra Garden Chowk, Purana R T O Bhawan, Durg, Tehsil And District Durg, Chhattisgarh(Insurer Of Truck No. C.G.07 C A 9980).

---- Respondents

For Insurance company :	Shri Raj Awasthy, Advocate
For Claimants :	Shri Majid Ali, Advocate.
For Owner-Driver :	Shri Arvind Dubey, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

25/07/2017

1. These are two appeals arising out of the same award i.e. award dated 09/02/2017 passed by the Second Additional Motor Accident Claims Tribunal, Durg, in Claim Case No.101 of 2015.
2. The facts of the instant case is that deceased Adward Bailard met with an accidental death on 08/06/2015 when he was hit by a truck bearing Registration No.CG-07-CA-9980 while he was proceeding on his scooty bearing Registration No.CG-04-DG-7888. The deceased died on the spot and the scooter also was badly damaged. The legal representatives of deceased i.e. the widow as well as children had filed a claim application under section 166 of Motor Vehicles Act claiming compensation on the death of the deceased. The Tribunal considering facts and circumstances of the case and also taking note of the evidence which has been brought on record passed an award of compensation of Rs.19,51,000/- to the claimants along with interest at the rate of 6% per annum from the date of application. The liability has been fastened upon the Insurance Company of the offending vehicle to make the compensation.
3. The appeal has been preferred by the Insurance Company as well as by the claimants. The Insurance Company has questioned the liability

as well as the quantum part of compensation awarded. Likewise, the counsel for the claimants have sought for enhancement of the compensation suitably.

4. The contentions of the Insurance Company assailing the award is that the court below has committed an error in not appreciating the fact that there was contributory negligence in the accident to have been arisen. Further, it was also contended that the compensation awarded by the Tribunal to the claimants are also on the higher side. The multiplier and the salary part of the deceased have not been properly construed while quantify the compensation and the appeal of Insurance Company therefore deserves to be allowed.
5. Likewise, the counsel for the claimants also assails the impugned award on the ground that the court below has not properly granted compensation to the claimants inasmuch as the amount of compensation under the other heads are extremely on lower side and the same deserves to be enhanced suitably.
6. Having considered the contention put forth of either side and on perusal of record what reflects from the record is that Insurance Company has not been able to led any evidence to substantiate contributory negligence. Thus, the ground so raised stands negated.
7. So far as the quantum part is concern, if we take into consideration the wages which has been proved by the claimants before the court below and also the multiplier which has been applied considering the age of the deceased, there cannot be any dispute of the same, not being in accordance with the law laid down by the Supreme Court in case of Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.

8. Likewise, the compensation awarded to the claimants for love and affection and loss of consortium, if take into consideration also the award seems to be fair and reasonable as for the loss of consortium, the Tribunal has given Rs.1,00,000/- to the widow and so far as love and affection is concerned, Rs.30,000/- has been awarded to the claimants.
9. In the given factual matrix of the case this court does not find any strong case made out by the either of the appellants calling for any interference with the impugned award. The award thus being fair and reasonable is affirmed and both the appeals preferred by the Appellant-insurance company as well as claimants stand dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder