NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 762 of 2017

Cholamandlam MS General Insurance Company Ltd. Branch Opposite Bhadoriya Bhawan Above The Axix Bank Nayapara Geedam Road Jagdalpur, District Bastar Pin 494001 Through Officer In Charge, Cholamandlam Ms General Insurance Company, Opposite Life Insurance Corporation Pandri, P. S. Pandri, District Raipur, Chhattisgarh.

---- Appellant

Versus

1. Chhedi Lal Netam S/o Dariyap, Aged About 50 Years
2. Smt. Ghasnin Bai, W/ Chhedilal Aged About 45 Years
   Both are R/o Village- Makdi P. S. Makdi, Tehsil Makdi District Kondagaon, Chhattisgarh.
3. Lakhuram Yadav, Aged About 29 Years R/o Village- Makdi P. S. Makdi, Tehsil Makdi District Kondagaon, Chhattisgarh.
4. Manoj Kumar Sahu, S/o Pahruram Sahu, Aged About 28 Years R/o Village- Makdi P. S. Makdi, Tehsil Makdi District Kondagaon, Chhattisgarh.

---- Respondents

For Appellant : Shri Ghanshyam Patel, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

19/07/2017

1. For the reasons assigned in the application and finding them to be satisfactory, IA No.2 is allowed and delay in filing the appeal is condoned.
2. Present is an appeal under Section 173 of the Motor Vehicles Act assailing the award dated 28.01.2017 passed by the Motor Accident Claims Tribunal, Kondagaon (for short, the Tribunal), in Claim Case No.60/2015. Vide the said impugned award, the Tribunal has in a proceeding under Section 166 of MV Act has awarded compensation of Rs.8,14,000/- to the claimants along with interest @ 9 percent per annum from the date of application.

3. The award has been challenged by the appellant on three grounds, firstly, the liability fastened upon the appellant is bad in law as there was clear breach of policy conditions. Secondly, there was a contributory negligence inasmuch as, the deceased himself was driving the motorcycle which dashed against the offending vehicle and thirdly, challenge is on the quantum inasmuch as the amount added as future prospects for grant of compensation is bad in law on the ground that since the claimants are parents and the deceased was not having fixed income.
4. So far as grounds raised by the appellant, what is apparent from the record is that the insurance company has not led any evidence before the Tribunal to substantiate the contentions and allegations that they have been raised in their written statement. The Tribunal have framed the issues on the basis of the objections that were raised by the insurance company. However, since there was no evidence led by the insurance company, the Tribunal for want of evidence have decided the issues in favour of the claimants.
5. Admittedly, the insurance company has not led any evidence to substantiate their contentions both so far as contributory negligence as well as for breach of policy conditions.
6. So far as the issue of grant of future prospects is concerned, the claimants have made statement before the Tribunal that the deceased at the relevant point of time was working as a Mason by profession. Definitely the wages that were earned by a Mason is getting increased day by day and therefore there would have

definitely been rise in the income of the Mason in times to come and the fact that he was aged about 20 years at the time of accident, there is no doubt in the mind of this court that the income of the deceased would not have increased in times to come. Therefore, awarding of compensation under the head of future prospects cannot be said to be bad in law.

7. Indisputably, the offending vehicle in the instant case is Pickup Van which, if we take the laden weight, it would fall within the category of Light Motor Vehicle. The contention of the appellant is that it is a Pickup Van and therefore it has to be accepted as to be a Transport Vehicle. Therefore, even if there is no evidence led by the appellant, the Tribunal ought to have taken into consideration the policy and nature of vehicle and thereafter should have passed the award suitably.

8. This contention of the appellant cannot be accepted for the reason that once if the appellant takes a stand in the written statement, burden is upon them to prove the case before the Tribunal by producing cogent evidence in view of judgment of Supreme Court in case of National Insurance Co. Ltd. Vs. Swaran Singh & Ors, 2004(3) SCC 297.

9. In view of the same, this court is of the opinion that no strong case is made out calling for interference with the award. The appeal being devoid of merit is dismissed.

Sd/-

(P. Sam Koshy)
Judge

inder