

NAFR**HIGH COURT of CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1254 of 2017**

Shriram General Insurance Company Limited through Branch Manager,
Branch Office E 8, R I I C O Industrial Area, Sitapura, Rajasthan, through
Shriram General Insurance Company Limited, Vyapar Vihar Road,
Bilaspur, Chhattisgarh. (Insurer of Bolero No. C G 10 F 4518)

---- Appellant**Versus**

1. Teejo Bai W/o late Samay Lal, aged about 34 years, Occupation housewife, R/o Chingrajpara, Police Station Sarkanda, District Bilaspur, Chhattisgarh. (Claimant)
2. Ku. Kalesari D/o late Samay Lal, aged about 15 years, minor through natural guardian mother Smt. Teejo Bai Respondent No. 1, R/o Chingrajpara, Police Station Sarkanda, District Bilaspur, Chhattisgarh. (Claimant)
3. Narayan S/o late Samay Lal, aged about 14 years, minor through natural guardian mother Smt. Teejo Bai Res. No. 1 R/o Chingrajpara, Police Station Sarkanda, District Bilaspur, Chhattisgarh. (Claimant)
4. Ku. Chuman D/o late Samay Lal, aged about 12 years, minor through natural guardian mother Smt. Teejo Bai Respondent No. 1, R/o Chingrajpara, Police Station Sarkanda, District Bilaspur, Chhattisgarh. (Claimant)
5. Ghanshyam S/o Late Samay Lal, aged about 7 years, minor through natural guardian mother Smt. Teejo Bai Respondent No. 1, R/o Chingrajpara, Police Station Sarkanda, District Bilaspur, Chhattisgarh. (Claimant)
6. Ku. Neelam D/o late Samay Lal, aged about 1 year, minor through natural guardian mother Smt. Teejo Bai Respondent No. 1, R/o Chingrajpara, Police Station Sarkanda, District Bilaspur, Chhattisgarh. (Claimant)
7. Mus. Jagman W/o late Samay Lal, aged about 32 years, R/o Chingrajpara, Police Station Sarkanda, District Bilaspur, Chhattisgarh. (Claimant)
8. Uday Prasad S/o late Samay Lal, aged about 3 years, minor through natural guardian mother Smt. Mus. Jagman Respondent No. 7, R/o

Chingrajpara, Police Station Sarkanda, District Bilaspur, Chhattisgarh.
(Claimant)

9. Fuleshwari D/o late Samay Lal, aged about 01 month, minor through natural guardian mother Smt. Mus. Jagman Respondent No. 7, R/o Chingrajpara, Police Station Sarkanda, District Bilaspur, Chhattisgarh.
(Claimant)

10. Nandu S/o Jagesar, aged about 80 years, R/o Chingrajpara, Police Station Sarkanda, District Bilaspur, Chhattisgarh. (Claimant)

11. Vinod Kumar S/o Radheshyam Awasthi, aged about 27 years, R/o Mahalpara, Baikunthpur, Chhattisgarh. (Driver Bolero No. C G 10 F 4518)

12. Rajesh Shivhare S/o Bhayankar Prasad Shivhare, R/o Dabripara, Baikunthpur, Chhattisgarh (Owner Bolero No. C G 10 F 4518)

---- Respondents

For Appellant : Shri S. S. Rajput, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

01/09/2017

Heard on I.A. No. 01/2017 for condonation of delay in filing the appeal.

2. For the reasons assigned in the said application and finding them to be satisfactory, I.A. No.01 is allowed and the delay of 106 days in filing the appeal stands condoned.

3. The present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 14.02.2017 passed by the 2nd Additional Motor Accident Claims Tribunal, Bilaspur (CG) in Claim Case No. 861/2014. Vide the impugned award, the Tribunal, in a claim case under Section 166 of the MV Act has awarded a compensation of Rs.58,03,512.80/- with interest @ 6% per annum from the date of application. The liability of payment of compensation has been fastened upon the appellant Insurance Company.

4. The facts of the case in brief are that the deceased Samay Lal was an employee of SECL. He met with an accidental death on 30.06.2013 when he was going on his motor cycle was dashed against a Bolero Jeep bearing registration No. CG 10F/4518 owned by respondent no.12 and driven by respondent no.11. The legal representatives of the deceased Samay Lal filed an application under Section 166 of MV Act seeking for compensation.

5. The Tribunal, considering the pleadings and the evidences which have come on record, finally passed the impugned award dated 14.02.2017 in favour of the claimants awarding an amount of Rs.58,03,512.80/-.

6. It is this award which is challenged by the Insurance Company in this appeal.

7. Counsel for the appellant Insurance Company submitted that the finding of the Tribunal is not sustainable in the eye of law for the reason that there was no eye witness to the incident with which the negligence on the part of the driver of the offending vehicle could have been ascertained. Therefore, the Insurance Company could not have been saddled with the responsibility of making payment of compensation. It was the contention of the counsel for the appellant that the amount of compensation awarded is on the higher side and the interest part also could not have been fastened upon the Insurance Company for the reason that the Insurance Company was not responsible for the delay in conclusion of the case before the Tribunal. He further contended that the income which has been taken into consideration for the purpose of quantification was also on the higher side. Thus for all these reasons, counsel for the Insurance Company prayed for admission of the appeal and for staying the effect and operation of the impugned award.

8. However, on perusal of the record it shows that the Insurance Company has not led any evidence to substantiate their contention. What is also relevant is that the driver and the owner have also not rebutted or controverted the contention in respect of their vehicle being involved in the accident. What is all

the more reflected is that there is a criminal case lodged against the driver of the offending vehicle i.e. respondent no.11 vide Crime No. 60/2013 and an offence under Section 304A of IPC has also been lodged against him at Police Station Bhatgaon. The said case against the driver is pending before the concerned Court. Since there is a criminal case lodged against the driver of the offending vehicle and the fact that the driver and the owner had entered appearance before the Tribunal and filed their written statement not disputing the accident but only alleging the negligence on the part of the deceased, the contention so raised by the Insurance Company in respect of their being no negligence on the part of the driver and no eye witness to the accident would not sustain and the same deserves to be and is accordingly negated.

9. So far as the compensation is concerned, if we look into the records particularly the finding of the Tribunal, it clearly reflects that after all deductions, the deceased was getting an amount of Rs.41,642/- but considering the fact that there was certain allowances which were not fixed allowances, the Tribunal has taken into account the monthly wages of the deceased at Rs.34,736.93 for the purpose of calculating compensation. This by itself shows that the calculation has been done by accepting less amount than the net income which the deceased was drawing and therefore, it cannot be said that the amount of compensation given to the claimants was excessive calling for any interference.

10. So far as the contention of interest part is concerned, this Court is of the opinion that there is not much evidence brought on record to show that the delay in conclusion of the case before the Tribunal could be attributed only upon the claimants. In the absence of which, the said contention of the appellant also deserves to be rejected. The contention of the Insurance Company that the claimants would also be receiving pension and other benefits from the Department on the death of the deceased is also not tenable. It is settled position of law that merely because the family members of the deceased receive certain

emoluments like pension etc. the same would not be a ground for reducing or denying the compensation under the Motor Vehicles Act.

11. For all the aforesaid reasons this Court is of the opinion that no strong case has been made out by the Insurance Company for admitting the appeal. The present appeal thus fails and is accordingly dismissed.

12. At this juncture, counsel for the appellant prays for grant of reasonable time to deposit the amount within which the warrant of attachment may not be acted upon. This prayer seems to be fair and reasonable. Accordingly, the appellant is granted 30 days time from today to honour the award. Meanwhile, the warrant of attachment if any shall not be acted upon.

**Sd/-
(P. Sam Koshy)
JUDGE**