

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1459 of 2017**

Through Branch Manager The Oriental Insurance Company Lmt
Branch Office, Madina Building, Kachahari Chauk Raipur District
Raipur Chhattisgarh

---- Appellant**Versus**

1. Smt. Chandrika Sahu S/o W/o Late Heela Lal Sahu Aged About 37 Years
2. Ku Divya Sahu D/o Late Heela Lal Sahu Aged About 17 Years
3. Ku. Urvashi Sahu D/o Late Heela Lal Sahu Aged About 15 Years
4. Ku. Santoshi Sahu D/o Late Heera Lal Sahu Aged About 12 Years
5. Rajendra S/o Late Heela Lal Sahu Aged About 10 Years
6. Ganesh Sahu S/o Late Pitamber Sahu Aged About 60 Years
7. Smt. Dhaneshwari Bai Sahu W/o Shri Ganesh Sahu Aged About 58 Years

Claimant No. 2 to 5 are Minor through: Natural Guardian Mother
Appellant No. 1 Smt. Chandrika Sahu,

All R/o Gram Banka Police Station Jova Nuapara (Orrisa)

8. Ramesh Kumar Yadav S/o Shri M. R. Yadav Aged About 48 Years
R/o Main Road Gidam, Thana Gidam District Dantewada
Chhattisgarh
9. Bhulauram Kewat S/o. Shri Heera Singh Kewat Aged About 40 Years
R/o Tatibandh, Ring Raod No. 2, Police Thana Tatibandh District
Raipur Chhattisgarh

----Respondents

For Appellant : Mr. Deepak Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board**01/11/2017**

1. The challenge in the present appeal is the award dated 30.06.2017, passed by the 1st Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh, in Claim Case No. 129/2013.
2. Vide the impugned award, the Tribunal, in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation

of Rs.14,27,800/- with interest @ 9% per annum from the date of application.

3. The appeal is by the Insurance Company assailing the award on the two grounds; firstly, the vehicle at the relevant point of time did not have a valid permit and secondly, the quantum of compensation awarded is not proper. According to Mr. Gupta, the accident occurred in the State of Orissa and that the driving a vehicle in a different State, there has to be an Inter-State permit or National permit in possession of the Owner-cum-Driver and which in the instant case was not found and therefore the Insurance Company should have been exonerated of its liability and the liability should have been fastened upon the Owner-cum-Driver. He submits that the Insurance Company has led the evidence of the Transport Authority as well as officer from the Insurance Company in this regard.
4. So far as the issue of the quantum of the compensation is concerned, if we look into the wages, which has been calculated by the Tribunal and the date of accident and other things this Court does not find any strong material made out by the appellant calling for interference with the quantification of compensation awarded. However, in paragraph No.27, there seems to be a clerical error on the part of the Tribunal while quantifying the income under the future prospects is concerned, the Tribunal has rightly assessed the income under the future prospects applicable to the claimants at 30%. However, 30% of the annual income assessed by the Tribunal is incorrect in as much as it should be Rs.21,600/- instead of Rs.32,400/- as assessed by the Tribunal. For the reason that 30% of

Rs.72,000/- comes to Rs.21,600/- and adding Rs.21,600/- to the annual income of Rs.72,000/- the amount would come to Rs.93,600/- instead of Rs.1,04,400/- as assessed by the Tribunal. Likewise, if 1/5 is deducted from Rs.93,600/-, the amount which would come would be Rs.74,880/- instead of Rs.83,120/- as assessed by the Tribunal. That Rs.74,880/- when multiplied by applying the multiplier of 15, the amount which would come to is Rs.11,23,200/- which would be the loss of dependency so far as the Claimants are concerned instead of Rs.12,52,800/- as assessed by the Tribunal. It is ordered accordingly, that the Claimants shall be entitled for loss of dependency of Rs.11,23,200/- instead of Rs.12,52,800/- assessed by the Tribunal. The impugned award would stand modified to the aforesaid extent. Rest of the compensation awarded by the Tribunal shall remain intact.

5. The total compensation after adding the compensation under the conventional head would come to Rs.12,98,200/- instead of Rs.14,27,800/-. The impugned award shall stand modified to the extent that the total amount of compensation payable to the Claimants would be read as Rs.12,98,000/- instead of RS.14,27,800/-.
6. Considering the fact that it is only a clerical error, which is detected by this Court in the award while quantifying the future prospects, this Court does not find it necessary for issuing notice to the Claimants. The appeal of the Insurance Company thus stands partly allowed, so far as quantum is concerned.

7. A perusal of the record would show that witness from the R.T.O. Raipur AW/2-Ramchandra Kunjam himself has stated that in a particular case where the vehicle do not have regular National or Inter-State permit, they can obtain temporary permit from the check-post situated at the border, who are authorized to issue temporary permit for crossing the border. In the instant case the said AW/2 has also deposed that he was not in a position to ascertain whether the offending vehicle at the relevant point of time did have temporary permit in this regard from the check-post at the border.
8. In the given facts and circumstances, this Court is of the opinion that it has not been conclusively proved by the Insurance Company, whether the offending vehicle did not have a temporary permit for crossing the border of the State of Chhattisgarh.
9. Further, the contention of the Insurance Company is also not sustainable for the reason that it is settled position of law that merely because the vehicle does not have a valid permit by itself would not absolve the Insurance Company of its liability, as the same at best would only be breach of the provisions of the Motor Vehicles Act for which the Owner and Driver could be prosecuted under the said Act.
10. Under the given circumstances, this Court is of the opinion that no strong case has been made by the appellant worth admitting the appeal and the appeal thus stands disposed off with the aforementioned modification in the award so far as quantum is concerned.

Sd/
(P. Sam Koshy)
Judge