NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 20-6-2018

Order passed on 5-7-2018

MAC No. 41 of 2012

1. Maman Chand Agrawal S/o Shri Annad Rajwade, Driver R/o Ganeshpur, Thana Jainagar, Tah- Surajpur Dist. Sarguja C.G.
2. Shri Daljeet Rajwadwe S/o Shri Annad Rajwade, Driver R/o Ganeshpur, Thana Jainagar, Tah- Surajpur Dist. Sarguja C.G.

---- Appellants.

Versus

1. Sheetal W/o Late Rajnath, R/o Village-Ganeshpur, Thana Jaipur, Tah - Surajpur, Dist. Sarguja C.G.
2. Fulbasia W/o Late Rajnath, R/o Village-Ganeshpur, Thana Jaipur, Tah - Surajpur, Dist. Sarguja C.G.
3. Oriental Insurance Compnay Limited, Through Its Branch Manager, Near Ambedkar Chowk, Mannedragarh Road Ambikapur Sarguja C.G.
4. Karodia, S/o Sheetal, R/o Village-Ganeshpur, Thana Jaipur, Tah - Surajpur, Dist. Sarguja C.G.
5. Sonkel W/o Sheetal, R/o Village-Ganeshpur, Thana Jaipur, Tah - Surajpur, Dist. Sarguja C.G.

---- Respondents

For appellants	:	Mr. Vinod Deshmukh, Advocate.
For respondents	:	Mr. Pallav Mishra, Advocate

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV Order

1. This appeal is preferred under Section 173 of the Motor Vehicle Act, 1988 (For short, “the Act, 1988”) against the award dated 22-10-2011 passed by the First Additional Motor Accident Claims Tribunal (for short, “the Tribunal”) Surajpur, Civil District Sarguja (CG) in Claim Case No. 53 of 2011 wherein the said Tribunal awarded a compensation of Rs.3,00,000/- against the present appellants and exonerated the Oriental Insurance Company Ltd. (respondent No.3)

2. The claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988 alleging that the deceased Santlal was going from Ganeshpur to Sonwahi on 12-4-2010 at 7.30 pm in Jeep bearing registration No. CG 15 ZD 0450 and due to rash and negligent driving of the driver of the said Jeep the said vehicle met with an accident as a result of which he succumbed on the spot. From the evidence of Sonkel (AW/1), who is mother of the deceased and documents (Ex. A/1 to A/9), it is established that the deceased Santlal died due to accident of the said vehicle which was driven by appellant Daljeet and after incident deceased died on the spot. As the application was filed under Section 163-A of the Act, 1988, the claimants were not required to prove negligence on the part of the driver. The evidence adduced by the claimants was not rebutted by other party and it is established that Santlal died out of use of motor vehicle.
3. Appellant Daljeet filed a driving licence before the Tribunal and on the basis of driving licence, it is established that he was having a valid driving licence to drive the motor vehicle from 27-3-2006 to 26-3-2012. On the date of incident i.e., on 24-4-2010 driver Daljeet was having a valid driving licence to drive the said vehicle. When driver was having a valid driving licence, it is not a case of breach of insurance contract.
4. The Tribunal exonerated the Insurance Company on the ground that the vehicle was used to transport persons to the place of one marriage ceremony, but no evidence was adduced by the Insurance Company regarding transportation of persons for any marriage ceremony. The Insurance Company is under obligation to prove that any condition of

insurance contract was flouted, but in the instant case it was not established that any fare was taken by the driver from any person regarding transportation. As the vehicle was not used on hire, there is nothing on record to show breach of insurance contract. Again as per insurance contract, sitting capacity of the vehicle was upto five persons. No evidence is adduced on behalf of the Insurance Company that more than five persons were sitting in the said vehicle. When Insurance Company led no evidence, breach on the part of the owner was not at all established and, therefore, the finding of the Tribunal regarding breach of policy is without substance and the same is not sustainable. The vehicle was insured for a period from 16-10-2009 to 15 -10-2010 and on the date of incident i.e. on 24-4-2010 insurance was effective and the insurance company is under obligation to satisfy the claim made by the claimants. By reversing the finding, it is concluded that the insurance company is liable to pay the compensation to the person dependent on the deceased Santlal.

5. Next question for consideration is as to what may be the just and fair compensation and who were entitled for compensation.

6. In the present case, the claimant Sheetal, Sonkel, Karodia and Fulbasia, who are father, mother, brother and grand-mother of the deceased Santlal have claimed compensation, but in view of this court, wife, children, mother and father are the dependants and others will be treated as dependants only when it is proved by cogent evidence. As major brother of the deceased namely Karodia and grand-mother of the

deceased Fulbasia have not entered into witness box before the Tribunal to establish that they were dependants on the deceased, they cannot be treated as dependants on the deceased. In view of the above, only Sheetal and Sonkel, who are father and mother of the deceased Santlal are entitled for compensation.

7. As it is not proved by the documentary evidence the exact monthly income of the deceased, his notional income is assumed to be Rs.3000/- per month which comes to Rs.36,000/- per annum. As the deceased was bachelor at the time of incident, 50% shall be deducted for his individual expenses and remaining shall be the dependency of the claimants, dependency comes out to Rs.18,000/- per annum and looking to the age of the father and mother of the deceased, which is 40 – 45 years, if multiplier of 15 is applied that comes to Rs.2,70,000/-; and Rs.70,000/- is awarded on account of funeral expenses, loss of consortium, loss of estate and other conventional heads. In all the Insurance Company is liable to pay Rs.3,40,000/- to both the claimants i.e., father and mother of the deceased.
8. In view of the above, the award passed by the Tribunal is set aside. Respondent No.5 Oriental Insurance Company shall pay Rs.3,40,000/- to father and mother of the deceased Santlal within a period of 30 days, failing which interest @ 9% per annum from today shall also be payable till its realization of the amount of compensation. It is directed that the amount so deposited by the insurance company shall be disbursed to both the claimants equally. 30% of the said amount shall be given to

each through transfer of fund from the account of the Tribunal and rest of the amount shall be deposited for five years in a nationalised bank.

9. Accordingly, the appeal is allowed.

Sd/-

(**Ram Prasanna Sharma**)
JUDGE

Raju