NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 21-6-2018

Order passed on 5-7-2018

MAC No. 512 of 2012

- The New India Assurance Co. Ltd. Branch Office Madina Building, Jail Road Kutchery Chowk, Raipur, District Raipur (CG) through Authorised authority, Divisional Manger, Divisional Office, 2nd Floor, Rama Trade Centre, Above Axix bank, Opp. Rajiv Plaxa, Bus Stand Road, Bilaspur, Tahsil & District Bilaspur (CG).

---- Appellant.

Versus

1. Smt. Savita Bala w/o. Lae Sarvanand, aged 30 years.
2. Minor Somen Bala d/o. Lae Sarvanand , aged about 11 years, through legal guardian r espodent No.1 Smt. Savita Bala (Mother)
3. Mahanand Bala s/o. Late Rasik Bala, aged 58 years.

   All are r/o. Village PV 27 Pkhanjur, District South Bastar, Kanker (CG).
4. Devashish Sarakar S/o Dr. N.C. Sarkar, R/o Gondahoor, P.S. Pakhanjur, Distt. Kanker (CG), Owner of vehicle No. CG 19C-9242.
5. Smt. Monika Balal W/o Lt. Sarvanand Bala, R/o Mana Camp, 1 Raipur Distt. Raipur C.G.

---- Respondents

For appellant	:	Mr. Dashrath Gupta, Advocate.
For respondents	:	Mr. Abhishek Singh, 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 19-1-2012 passed by the Additional Motor Accident Claims Tribunal (for short, “the Tribunal”) Kanker (CG) in Claim Case No. 81 of 2011 wherein the said Tribunal awarded a compensation of Rs.4,27,000/- against the present appellant.

2. The claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988 alleging that on 1-6-2008 while deceased Sarvanand Bala was

returning from Rajnandgaon to Pakhanjur by driving the Alto Car bearing registration No. CG 19C-0242, on the way near village Mahla Manpur, tire of the front wheel of the said car got burst as a result of which the said car turned turtle and Sarvanand Bala sustained grievous injuries and died on 2-6-2008 during the course of treatment.

3. It is contended on behalf of the appellant that as per the pleading, monthly income of the deceased was Rs.4,000/- per month which comes to Rs. 48,000/- per annum. In view of the matter, claim petition under Section 163-A of the Motor Vehicle Act, 1988 was not maintainable. It is further contended that the owner of the car himself was driving the car and no other vehicle is involved in the said accident, therefore, the claim petition under Section 163-A of the Act, 1988 was also not maintainable. Further case of the appellant is that deceased was not third party and risk was not covered under insurance policy, therefore, appellant was not liable to pay compensation. As the deceased was unpaid employee of the owner, risk was not covered under the insurance policy.

4. The claim petition was filed under Section 163-A of the Act, 1988 in which negligence on the part of the driver and owner is not required to be proved. The only point for consideration is whether the deceased died on account of use of the said motor vehicle.

5. From the oral evidence adduced by the prosecution supported by the first information report and other relevant documents (Ex. P/1 to P/10), it is established that the deceased Sarvanand Bala was driving the vehicle at

the time of incident and his death was caused out of use of motor-vehicle.

6. The Tribunal assessed yearly income of the deceased to be Rs.36,000/- and any one earning upto Rs.40,000/- per annum is within the purview of Section 163-A of the Act, 1988. Therefore, the finding of the tribunal is not contrary to the provisions of the Act, 1988. Again from the police record and other documents, it is established that owner was not driving the vehicle, but Sarvanand Bala was driving the vehicle as driver. From the evidence, it is established that premium of Rs.25/- is paid to the Insurance Company for driver, therefore, the policy is covering the risk of the driver and the arguments on this count is not sustainable. Again the Insurance Company led evidence of Ashok Deshmnukh who is Development Officer of the Company but he did not state that the driver was unpaid driver. The Insurance Company is under obligation to establish the breach of policy condition, but the company is not able to discharge the burden. Apart from calculation regarding dependency, the other part is based on medical bills and relevant documents and the award as a whole is just and not liable to be interfered while invoking jurisdiction of the appeal. The compensation awarded by the Tribunal is just and proper and the same is hereby affirmed.

7. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(**Ram Prasanna Sharma**)
JUDGE

Raju