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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1205 of 2011

HDFC ERGO General Insurance Company Limited, 6th Floor, Leela Business Park, Andheri Kurla Road, Andheri (east), Mumbai (MS) 400059 (Insurer)

---- Appellant

Versus

1. Smt. Amita, widow of late Ganesh Das Vaishnav, aged about 43 years
2. Ku. Dipa D/o late Ganesh Das Vaishnav, aged about 15 years
3. Gaurav S/o late Ganesh Das Vaishnav, aged about 12 years

   Respondent no. 2 & 3 minor represented through natural guardian mother Smt. Anita widow of late Ganesh Das Vaishnav,

   All are resident of village Berla, Tahsil & Thana Berla, District Durg, Chhattisgarh (claimants)

4. Tameshwar W/o Chaitram Yadav, aged about 32 years, resident of village Mulmula, Tahsil Bemetara, District Durg, Chhattisgarh (driver)
5. Raghunandan Singh S/o Manrakhan Singh, aged about 60 years, R/o Kailash Nagar, Birgaon, Raipur, District Raipur, Chhattisgarh (Owner)

---- Respondents

For Appellant : Shri S. S. Rajput, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

15/01/2018

Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 27.07.2011 passed by the Additional Motor Accident Claims Tribunal, Bemetara, District Durg (CG) in Claim Case No. 68 of 2011. Vide the impugned award, the Tribunal, in a death case under Section 166 of MV Act, has awarded a compensation of Rs.15,33,072/- with interest @ 6% per annum from the date of application.

2. There are two grounds raised by the Insurance Company: First is in respect of the doubt on the involvement of the vehicle in the accident. According to the counsel for the appellant, the FIR initially was lodged against an unknown vehicle and that the number of the vehicle has been subsequently added in criminal case and as such, there is an element of doubt as to whether it was the same vehicle involved in the accident or not. He submits that the eye witness examined before the Tribunal also seems to be doubtful as there are contradictory statements made by him in his examination-in-chief as also in his cross-examination.

3. This contention of the counsel for the Insurance Company does not appear to have sufficient force for the simple reason that there is a clear finding of the Tribunal that a perusal of the record of criminal case showed the eye witness to be named in the criminal case as well. Thus, it cannot be said that the statement of the said eye witness is in any manner doubtful.

4. The second ground which has been raised by the Insurance Company is the fact that the wife of the deceased has subsequently been given compassionate appointment and as such, she is not put to any loss of dependency, therefore, the award deserves to be set aside.

5. This ground of the Insurance Company also is no longer a good ground for challenging the award as it has been settled by the Supreme Court by a couple of decisions wherein it has been categorically held that granting of compassionate appointment or getting pension etc. would not preclude the legal representatives of the deceased to claim compensation towards the loss of dependency.

6. Thus, this Court does not find both the grounds raised by the Insurance Company to be strong enough calling for an interference with the impugned award. The appeal thus deserves to be and is accordingly dismissed.

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

Bhola