NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 111 of 2018

Divisional Manager, Cholamandlam Ms General Insurance Company Ltd. Second Floor Simiran Tawar, Opposite Life Insurance Corporation Pandri, P.S. Pandri, District Raipur, Chhattisgarh (Insurer)

---- Appellant

Versus

1. Shanti Bai W/o Late Abhay Nishad Aged About 44 Years
2. Vidya Shankar S/o Late Abhay Nishad Aged About 24 Years
3. Nutan S/o Late Abhay Nishad Aged About 22 Years
4. Bhawani D/o Late Abhay Nishad Aged About 20 Years

   Respondent No. 1 to 4 are R/o Village Jhola P.S. Anda Tahsil And District Durg, Chhattisgarh (Claimant)
5. Bhisham Lal S/o Parasram Shah Aged About 27 Years R/o Village Joratrai P.S. Lalbag Rajnandgoan District Rajnandgaon, Chhattisgarh (Driver)
6. Rajkumar Manjr S/o Shri Tikamal Manjar Aged About 48 Years R/o Mahaveer Nagar Telibandha Raipur, Permanent Address Near House Of Ajay Kumar Bafna House No. 19/279 MSMD Club Mahasamund, District Mahasamund, Chhattisgarh (Owner)

----Respondents

For Appellant	:	Mr. Ghanshyam Patel, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

18/01/2018

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 16.10.2017, passed by the 1st Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh, in Claim Case No. 245/2015.

2. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.6,91,000/- with interest @ 9% per annum from the date of application.

3. The Insurance Company has assailed the impugned award on two grounds; firstly, the contention of the Insurance Company is that at

the time of accident the policy was not duly insured and therefore the liability could not have been fastened upon the Insurance Company.

4. According to the counsel for the appellant, it is a case where the accident occurred on 30.04.2015, at around 4:00 PM and the policy has come into effect from 0:00 Hrs of 30.04.2015 and was valid till 29.04.2016, thus at around 4:00 PM, the policy was not in force and therefore the liability could not have been fastened upon the Insurance Company.

5. So far as the quantum of compensation is concerned, the counsel for the appellant submits that the age of the deceased has been wrongly assessed by the Tribunal at 49, whereas the age of the deceased in fact is 58 years and the amount of compensation thus would get sufficiently reduced.

6. It was further contended that the compensation under the conventional head is also on the higher side, when compared to the judgment of the Hon'ble Supreme Court in the case ***"National Insurance Company Limited vs. Pranay Setthy and Others" decided on 31.10.2017, in Civil Appeal No. 25590/2014***.

7. On perusal of the record it reflects that the Insurance Company has not led any evidence before the Tribunal to substantiate either of the two grounds raised by the Claimants.

8. So far as the policy not being valid at the time of accident is concerned, this Court is of the opinion that since the time reflected in the insurance policy produced before this Court along with the appeal, it reflects that the policy has come into force w.e.f. 0:00 Hrs

of 30.04.2015. This by itself means the timing starts from the midnight of 29.04.2015 onwards.

9. Further, on a query being put to the counsel for the appellant, he submits that the previous policy was valid till the 29.04.2015. Further, from the perusal of record, it also reveals that the Owner himself has made a statement that he had received a cover note on the 29.04.2015, which shows that he had already paid the premium on 29.04.2015. Under the said circumstances, the ground of there being no valid policy is not sustainable.

10. So far as the quantum of compensation is concerned, a perusal of the paragraph 25 of the award would reveal that the Tribunal has relied upon the age of the deceased as per his Adhaar Card wherein his age would come to 49 years on the date of accident. Though, in this paragraph there appears to be a typographical error in the date of birth as entered in the Adhaar Card, because the Court below has typed the date of birth as per the Adhaar Card as 01.01.2016 i.e. a period which is subsequent to the accident. In view of the same, the finding of the Tribunal of relying upon the age as per the Adhaar Card does not seem to be either erroneous or contrary to evidence.

11. So far as the compensation under the conventional head also is concerned, considering the total number of Claimants as also the fact that the award was passed in October, 2017 i.e. much before the judgment of Hon'ble Supreme Court in the case of 'Pranay Setthy' (supra), this Court is of the opinion that the award does not warrant any interference, the same therefore stands rejected.

12. The counsel has also raised an objection so far as the quantum of compensation awarded under the future prospects is concerned.

According to the counsel, the Claimants would not have been entitled for the compensation under the future prospects as he was not a permanent employee, nor was he having a fixed income. This ground of the Insurance Company also is not sustainable for the reasons that the Hon'ble Supreme Court in the case of 'Pranay Setthy' has categorically laid to rest this issue and fixed the percentage of income to be calculated, even in case where the deceased may not have been in permanent employment or a fixed income or was self employed. Thus, this ground also is not sustainable.

13. Thus, in the given facts and circumstances of the case, this Court does not find any strong case made out by the Insurance Company for assailing the impugned award.

14. The appeal thus stands rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved