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HIGH COURT OF CHHATTISGARH, BILASPUR**SB: Hon'ble Shri Ram Prasanna Sharma, J****MAC No. 1004 of 2016**

- The Oriental Insurance Company Limited Through Branch Manager, Parmanand Bhawan, Near Rajendra Chowk Park, G.E. Road, Durg, Tahsil And District- Durg, Chhattisgarh,.....Non-Applicant No. 3, Chhattisgarh

---- Appellant.**Versus**

1. Smt. Savita Bai Kurre Wd/o Late Ravidas Kurre, Aged About 30 Years R/o- Village Bhansula, Police Station And Tahsil- Chowki, District- Rajnandgaon, Chhattisgarh., Chhattisgarh
2. Ku. Rama Kurre, D/o Late Ravidas Kurre, Aged About 11 Years Minor, Through Natural Guardian Mother Smt. Savita Bai Kurre, Wd/o Late Ravidas Kurre, Aged About 30 Years, R/o- Village Bhansula, Police Station And Tahsil- Chowki, District- Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh
3. Ku. Chanchal Kurre, D/o Late Ravidas Kurre, Aged About 8 Years Minor, Through Natural Guardian Mother Smt. Savita Bai Kurre, Wd/o Late Ravidas Kurre, Aged About 30 Years, R/o- Village Bhansula, Police Station And Tahsil- Chowki, District- Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh
4. Ku. Poonam Kurre, D/o Late Ravidas Kurre, Aged About 6 Years Minor, Through Natural Guardian Mother Smt. Savita Bai Kurre, Wd/o Late Ravidas Kurre, Aged About 30 Years, R/o- Village Bhansula, Police Station And Tahsil- Chowki, District- Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh
5. Ku. Khusbu Kurre, D/o Late Ravidas Kurre, Aged About 6 Years Minor, Through Natural Guardian Mother Smt. Savita Bai Kurre, Wd/o Late Ravidas Kurre, Aged About 30 Years, R/o- Village Bhansula, Police Station And Tahsil- Chowki, District- Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh
6. Smt. Bartnin Bai Kurre, Wd/o Late Premdas Kurre, Aged About 66 Years R/o- Village Bhansula, Police Station And Tahsil- Chowki, District- Rajnandgaon, Chhattisgarh,.....Claimants., District : Rajnandgaon, Chhattisgarh
7. Baldau Yadav, S/o Dharati Yadav, Aged About 40 Years R/o- Sirsa Bhathapara, Police Station- Jewra Sirsa, Tahsil And District- Durg, Chhattisgarh,.....Non-Applicant No. 1, District : Durg, Chhattisgarh

8. Ramesh Kumar Jain, S/o Dhebarchand Jain, Aged About 50 Years
R/o- Mig, C- 475, Padamnabhpur, Durg, Tahsil And District- Durg,
Chhattisgarh,.....Non-Applicant No. 2., District : Durg, Chhattisgarh

---- Respondents

For Appellants : Shri Pankaj Agrawal, Advocate.
For Respondents : Shri P.R. Patankar and Mr. Utsav
Maheswar, Advocates.

Order on Board

01-03-2018

1. Present is an appeal by the Oriental Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 3-5-2006 passed by 4th Additional Motor Accident Claims Tribunal, Durg (CG) in Claim Case No. 82 of 2015. Vide impugned award the Tribunal on the death of one Ravidas Kurre awarded a compensation of Rs.10,86,300/- with interest @ 6% per annum from the date of filing of the application.
2. Learned counsel appearing for the Insurance Company has questioned firstly the liability which has been imposed upon the Company on the ground that no fitness certificate was produced before the Tribunal regarding offending vehicle bearing registration No. RJ-11-G-2919. It is further contended that award of future prospectus is calculated 50% which ought to have been calculated 40% since the job of the deceased was not permanent in nature. He further submits that there is contributory negligence on the part of the deceased who was driving the motor-vehicle bearing registration No. CG-08- - 2254 at the time

of incident on 2-06-2015 at about 7.00 pm. He further submits that amount of conventional head of Rs.1,75,000/- be reduced to Rs.70,000/- as per law laid down in the matter of **National Insurance Company vs. Pranay Sethi and others**, decided on 31-10-2017 reported in MANU/SC/1356/2017.

3. So far as ground of contributory negligence is concerned, Insurance Company was under obligation to prove the same by cogent evidence but the Insurance Company has not led any evidence before the Tribunal to show contributory negligence of the deceased at the time of incident. In absence of evidence, the Tribunal was not in a position to come to a conclusion regarding contributory negligence. Again the plea of vehicle not having the fitness certificate is not one of the grounds which has been envisaged under Section 149 of the Motor Vehicles Act, which the Insurance Company could take and the same would not absolve the Insurance Company of its liability.
4. In the matter of Pranay Sethi (supra), it is held that future prospects for persons aged below 40 years should be 40% if deceased is with private employment and conventional head amount may be awarded to Rs.70,000/-, but the Tribunal awarded an amount of conventional head relying upon the decision of Hon'ble the Apex Court in the matter of **Vimal Kanwal and others vs. Kishore and another**, reported on **2013 (2) SCCD 993**. Again the Tribunal calculated 50% future prospects relying upon the decision of Honorable the Apex Court in the matter of **Sarla Verma and others vs. Delhi Transport**

Corporation and another, reported in (2009) 6 SCC 121.

5. Taking into consideration all the facts, the finding arrived at by the Tribunal is based on legal pronouncement of Hon'ble Apex Court and it will not be fit for this Court to reduce the award when no strong case is made out calling for any interference in the award passed by the Tribunal, therefore, the same is not liable to be interfered.
6. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-

(R.P. Sharma)
Judge

Raju