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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 683 of 2017

The Oriental Insurance Company Limited through Branch Manager, Branch Office, Sadar Bazar Road, Jagdalpur, District Bastar, Chhattisgarh

---- Appellant

Versus

1. Paltan Ram Kunjam S/o Late Maniraj Kunjam, aged about 54 years, R/o 4 Number, Kirandul, Tahsil Kuwakonda, District South Bastar, Dantewada, Chhattisgarh
2. Budni Bai W/o Paltan Ram, aged about 45 years, R/o 4 Number, Kirandul, Tahsil Kuwakonda, District South Bastar Dantewada, Chhattisgarh ......Claimants
3. Smt. Deepika Sinha W/o N.B.Sinha, age not known, R/o New Market Bacheli, Tahsil Kuwakonda, District Dantewada, Chhattisgarh ....Owner

---- Respondents

Misc. Appeal (C) No. 637 of 2017

1. Paltan Ram Kunjam S/o Late Maniraj Kunjam, aged about 54 years, R/o 4 Number, Kirandul, Tahsil Kuwakonda, District South Bastar, Dantewada, Chhattisgarh
2. Budani Bai W/o Paltan Ram, aged about 45 years, R/o 4 Number, Kirandul, Tahsil Kuwakonda, District South Bastar, Dantewada, Chhattisgarh

---- Appellants

Versus

1. Smt. Deepika Sinha W/o N.B.Sinha, age not known, R/o New Market Bacheli, Tahsil Kuwakonda, District Dakshin Bastar, Dantewada, Chhattisgarh
2. Branch Manager, the Oriental Insurance Company Limited, Sadar Bazar Road, Jagdalpur, District Bastar, Chhattisgarh

---- Respondents

For Insurance Company	:	Shri Raj Awasthi, Advocate
For Claimants	:	Shri Vikash A. Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

08/02/2018

These are two appeals assailing the award dated 23.01.2017 passed by the 1st Additional Motor Accident Claims Tribunal, South Bastar Dantewada (CG) in Claim Case No.408 of 2014. Vide the impugned award, in a death case under Section 163A of the Motor Vehicles Act, the Tribunal has awarded compensation of Rs.1,84,500/- with interest @ 6% per annum from the date of application.

2. MAC No. 683 of 2017 is an appeal by the Insurance Company challenging/questioning the liability part which has been fastened upon it and MAC No. 637 of 2017 is an appeal by the claimants assailing the quantum of compensation awarded.

3. Contention of the counsel for the Insurance Company is that the liability which has been fastened upon the Insurance Company is erroneous for the reason that the vehicle was being used for a purpose other than that it was registered and insured for. According to the counsel for the Insurance Company, the vehicle was a private vehicle but the same was being used for a marriage purpose on the date of accident which shows that it was being used for commercial activity, therefore, the liability has been wrongly fastened upon the Insurance Company.

4. This contention of the counsel for Insurance Company is not sustainable as the Tribunal in paragraph-15 has rightly reached to the conclusion that though the vehicle was being used for marriage purpose but the marriage was in the family of the driver of the said vehicle itself and as such it is established that the vehicle was not used for any commercial purpose. Moreover, the Insurance Company has not led any evidence to substantiate its contention. In the absence of such cogent evidence on the part of the Insurance Company and on the contrary, there being evidence on the part of the claimants to show that the vehicle was being used for private purpose, this Court does not find the appeal of the Insurance Company to be strong enough calling for an interference. Thus, the appeal of the Insurance Company deserves to be and is accordingly rejected.

5. So far as the appeal of the claimants for enhancement is concerned, this Court does not find the assessment of monthly income of Rs.3,000/- by the Tribunal to be either erroneous or on the lower side. One cannot forget that it is a claim case under Section 163A of the Motor Vehicles Act. However, the claimants in the instant case would be entitled for the income under future prospects for quantifying the compensation. Likewise, the multiplier applied is 10 whereas it should have been 18 considering the age of the deceased at the time of accident.

6. In the given facts and circumstances of the case, assessing Rs.3,000/- as the monthly income, the yearly income would be Rs.36,000/- of which if 40% is added towards future prospects, the figure comes to Rs.50,400/-. If 50% of the said amount is deducted towards personal expenses since the deceased was a bachelor, the amount comes to Rs. 25,200/-. If the said amount is multiplied applying the multiplier of 18 as the deceased was aged around 22 years, the amount towards loss of dependency would be Rs.4,53,600/-. In addition, the claimants would also be entitled for a lump sum compensation of Rs.40,000/- towards conventional heads to make the total compensation payable to the claimants at Rs.4,93,600/- instead of Rs.1,84,500/-as assessed by the Tribunal.

The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

7. Accordingly, MAC No. 683/2017 filed by the Insurance Company stands rejected and MAC No. 637/2017 filed by the claimants stands allowed.

Sd/-

(**P. Sam Koshy)**
JUDGE

Bhola