NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 334 of 2018

The New India Insurance (Correct Name Assurance) Company Limited Through Branch Manager, 2nd Floor, R.D.A. Building, Bajrang Market, G.E. Road, Raipur, Chhattisgarh

---- Appellant

Versus

1. Smt. Lata Dhurve Wd/o Late Vijay Kumar Aged About 38 Years
2. Vaibhav Dhurve S/o Late Vijay Kumar Dhurve Aged About 5 Years Minor Through Natural Guardian Mother Smt. Lata Dhurve,

   Both are R/o Tatibandh, Raipur, Police Station Amanaka, District Raipur, Chhattisgarh (Claimants)
3. Mirza Gaffar Beag S/o Late Mirza Tawarakh Beag R/o Ward No.15, Masjid Line, Chhura, Police Station Chhura, District Gariyaband, Chhattisgarh (Driver)
4. Vikash Agrawal S/o Shri Ramavtara Agrawal R/o Jaggi Traders Station Road, Raipur, Tahsil And District Raipur, Chhattisgarh (Owner)

---- Respondents

For Appellant	:	Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26/02/2018

1. Heard on I.A. No.1, which is an application for condonation of delay. For the reasons assigned in the application and finding them to be satisfactory, I.A. No.1 is allowed and delay of 17 days in filing the appeal stands condoned.

2. The present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 16.10.2017, passed by the 1st Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh, in Claim Case No. 162/2017.

3. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.28,51,840/- with interest @ 6% per annum

from the date of application. The liability has been fastened upon the present appellant-Insurance Company.

4. The contention of the counsel for the appellant is that the award passed by the Tribunal is erroneous on four grounds, firstly there was no age proof of the deceased produced by the Claimants before the Tribunal and therefore the age of 45 years assessed by the Tribunal is erroneous. He further submits that the compensation awarded under the conventional head is also on the higher side as compared to the judgment of Hon'ble Supreme Court in the case of ***"National Insurance Company Limited vs. Pranay Setthy and Others" decided on 31.10.2017, in Civil Appeal No. 25590/2014***. Likewise, the counsel for the appellant further submits that the Tribunal has failed to properly appreciate the element of contributory negligence as it is a case of head on collision. Lastly, it was contended that the nature of employment of the deceased was not permanent in nature and it was contractual and therefore his entire salary could not have been taken into account for quantifying the compensation.

5. Perusal of the record would show that the Insurance Company has not led any evidence in support of their contentions, neither is any proof available on record to show the element of contributory negligence.

6. So far as the compensation under conventional head is concerned, considering the fact that the amount of compensation awarded by the Tribunal under conventional head is only Rs.1,00,000/-, this Court does not think it to be a proper case for interfering with the compensation awarded under this head. So also as regard the age

factor is concerned, though the Claimants had said that the deceased was aged 40 years, but the fact that the Doctor in the postmortem has assessed the age at 45 and the Tribunal had quantified the compensation as per the Doctor's opinion so far as the age is concerned, this Court does not find any strong ground made out by the Insurance Company on this ground also.

7. So far as the nature of employment is concerned, the perusal of record would show that a witness namely Kuldeep Gaharwal AW/3 was examined on behalf of the Claimants to prove the employment part.

8. In the given set of facts, this Court does not find any merits in the appeal by the Insurance Company and therefore the same deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved