

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 289 of 2018**

Manager, Bajaj Allianz General Insurance Company Limited, Plot Number, 2/7, Second Floor, Near Gandhi Chowk, G.E. Road, Akashganga, Supela- Bhilai- District- Durg, Chhattisgarh

---- Appellant**Versus**

1. Smt. Sadhna Sharma W/o Late Suraj Prakash Sharma Aged About 35 Years
2. Ku. Kanak Sharma D/o Late Suraj Prakash Sharma Aged About 19 Years
3. Ku. Nikita Sharma D/o Late Suraj Prakash Sharma Aged About 14 Years
4. Samrath Sharma S/o Late Suraj Prakash Sharma Aged About 13 Years

Respondent No. 3 & 4 are Minors Represented Through Their Natural Guardian Mother Smt. Sadhna Sharma.

5. Smt. Pawanrekha Sharma W/o Rambali Sharma Aged About 55 Years
6. Rambali Sharma S/o Late Shri Aamashray Sharma Aged About 60 Years

Respondent No. 1 to 6 are R/o Steel Nagar, Camp- 1, P. S. Chowni, Bhilai, Tehsil And District- Durg, Chhattisgarh.

7. Chotelal S/o Raghunath Singh Aged About 36 Years R/o Shastri Chowk- Camp-1, P.S. Chowni, Bhilai, Tehsil And District- Durg, Chhattisgarh. (Driver)
8. Dudhesh Prasad Pandey S/o Kishore Prasad Pandey, R/o Qt. No.16- B Road No. 37, Sector 4, Bhilai P. S. Bhilai Bhatti, Tehsil And District- Durg, Chhattisgarh. (Owner)

---- Respondents

For Appellant : Mr. Utsav Mahiswar, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****19/02/2018**

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 05 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 30.10.2017, passed by the 1st Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh, in Claim Case No. 131/2014.
3. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.11,52,500/- with interest @ 6% per annum from the date of application.
4. The liability of payment of compensation has been fastened upon the present appellant. The challenge in the present appeal by the Insurance Company is doubting the involvement of the insured vehicle i.e. Car bearing registration No. CG/07/M/7572 owned by the Dudhish Prasad Pandey in the accident.
5. The contention of the counsel for the Insurance Company is that the entire claim application of the Claimants is a false case made out as is evident from the fact that no immediate F.I.R. was lodged against the accident and that it was a case, where the deceased, who was driving a Hero Honda motorcycle bearing registration No. CG/12/A/3765 and had himself collided with the divider of the road causing grievous injuries to which he later succumbed. He submits that later on in order to claim compensation under the provisions of the Motor Vehicles Act, a false F.I.R. has been lodged on 15.02.2014 and thereafter subsequently the claim application under the Motor Vehicles Act was also filed before the Motor Accident Claims Tribunal, Durg.

6. The counsel for the appellant submits that the Claimants in the instant case have not been able to adduce evidence of any eyewitness to substantiate their contentions. The Tribunal also has not properly appreciated the evidence led by the Insurance Company i.e. the statement of one Sanjeev Ojha, a constable of the police department, who has deposed before the Tribunal that the deceased succumbed to the injury on account of himself dashing the divider and falling on the road.
7. It was also the contention of the counsel for the appellant that even the witnesses, who have been cited in the criminal cases as witnesses to the accident were not examined before the Tribunal, which could have further strengthen the case of the Claimants.
8. A perusal of the record would show that except for the oral statement of the constable Sanjeev Ojha, the Insurance Company has not led any evidence to substantiate their contentions, which they had raised in their written statement. Further the record of the criminal case was produced before the Tribunal which clearly reflects that there were statements of two witnesses recorded under Section 161 who is said to have deposed of having witnessed the accident and the accident having occurred from the Car bearing registration No. CG/07/M/7572. Moreover, the criminal case was still pending before the appropriate Criminal Court.
9. Only because an F.I.R. was lodged after a delay of about 75 days, particularly in a case of death where the bread earner in the family had died, it cannot be said to be so fatal a factor so as to deny and the claim which they are otherwise entitled under the provisions of the Motor Vehicles Act.

10. Given the aforesaid factual matrix of the case, since an inference has been drawn while deciding the case, the inference has to be one, which should always be in favour of the Claimants. Accordingly, this Court has no hesitation in reaching to the conclusion that the finding arrived at by the Tribunal to be just, proper and legal, and the same deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved