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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 68 of 2014

1. The National Insurance Co. Ltd. Through- Divisional Manager, Akash Ganga Complex, Supela Bhilai, Tah. And Distt. Durg C.G.,

---- Appellant

Versus

1. Smt. Manju Sahu W/o Late Loknath Sahu Aged About 45 Years R/o Azad Chowk, Bhilai-3, P.S. Purani Bhilai, Tah. Patan, Distt. Durg C.G.

2. Ku. Jyoti Sahu D/o Late Loknath Sahu Aged About 23 Years R/o Azad Chowk, Bhilai-3, P.S. Purani Bhilai, Tah. Patan, Distt. Durg C.G.

3. Jitendra Kumar Sahu S/o Late Loknath Sahu Aged About 21 Years R/o Azad Chowk, Bhilai-3, P.S. Purani Bhilai, Tah. Patan, Distt. Durg C.G.

4. Ku. Usha Sahu D/o Late Loknath Sahu Aged About 19 Years R/o Azad Chowk, Bhilai-3, P.S. Purani Bhilai, Tah. Patan, Distt. Durg C.G.

5. Rajendra Kumar S/o Late Loknath Sahu Aged About 18 Years R/o Azad Chowk, Bhilai-3, P.S. Purani Bhilai, Tah. Patan, Distt. Durg C.G.

6. Smt. Dropati Bai W/o Late D.P. Sahu Aged About 63 Years R/o Azad Chowk, Bhilai-3, P.S. Purani Bhilai, Tah. Patan, Distt. Durg C.G.

7. Lijjo Thomas S/o K.G. Thomas Aged About 27 Years R/o Street No. 2, Ashish Nagar West Bhilai, P.S. Newai, Tah. And Distt. Durg C.G.

8. Asha Muthuthodiyal Nair S/o R/o Yodhya Vihar, Smriti Nagar, Bhilai, Tah. And Distt. Durg C.G.

---- Respondents

For Appellants :Shri Raj Awasthi, Advocate
For Respondent No.8 :Shri D. N. Prajapati, Advocate

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

07.12.2018

1. This appeal has been filed by the appellant/Insurance Company challenging the award dated 23.08.2013 passed by 3rd Additional Motor Accident Claims Tribunal, Durg in Claim Case No. 40/2012.

2. As against the compensation of Rs. 40,37,000/- claimed by the unfortunate widow and children of deceased Loknath Sahu by filing Claim Petition under Section 166 of Motor Vehicles Act, 1988 (for short 'MV Act') for death of deceased in the motor accident on 23.01.2012, the Tribunal awarded a total sum of Rs. 11,05,000/- as compensation along with interest @ 7.5 percent per annum from the date of filing of claim petition till its actual payment, fastening the liability upon the appellant/Insurance Company to pay compensation to the claimants.

3. Being aggrieved and dissatisfied with the aforesaid award, the appellant/Insurance Company filed this appeal under Section 173 of the Motor Vehicles Act challenging the award on the grounds that the income of the deceased is considered by learned Tribunal is on higher-side and the rate of interest is also appears to be on higher-side.

4. Brief facts of the case, as per claim petition, is that on 23.01.2013, respondent No. 1 – while driving the offending vehicle bearing registration No. CG07-M/7216 rashly and negligently, dashed deceased Loknath Sahu, as a result thereof he sustained grievous injuries and died on the spot.

5. Learned counsel for the appellant//Insurance Company submits that in this case no specific document is proved by the claimants

regarding earning of the deceased from business and without any proper evidence adduced before the Tribunal on the basis of the income tax return statement, the income of the deceased is considered as Rs. 10,000/-per month which is on higher-side and it cannot be more than Rs. 3,000/- per month in view of minimum wages prevalent in the year 2012. He further submits that there is no any entry in the passbook produced by the claimants regarding the income of the deceased. He also submits that while calculating the compensation, the learned Tribunal, awarded interest @ 7.5% per annum on the amount of compensation, which appears to be on higher side and thus, it should be reduced to the extent of 6% per annum.

6. No one appeared on behalf of the claimants.

7. Learned counsel for the respondent Nos. 6 & 8/driver & owner of the offending vehicle supported the contention made by the learned counsel for the appellant/Insurance Company.

8. Heard and perused the material available on record and the award impugned.

9. Looking to the income tax return submitted by the deceased prior to his death before the Income Tax Department and acknowledgment also exhibited as Ex. P/18 and Ex. P/19 and that statement is for income assessment for the year 2010 to 2011 and that documents were proved by applicant witness No. 1- Jitendra Sahu son of the deceased- Loknath Sahu and further considering the statement of AW 1- Jitendra Sahu, in which he has stated that the deceased was the whole seller and running a beetle shop and that contention is supported by the Ex. P/18 & P/19, there is no reason to disbelieve the

documents filed by the claimant. So far as the argument advanced on behalf of the counsel for the appellant/Insurance Company that no any bank account passbook was produced by the claimants is concerned, looking to the income tax return vide Ex.P/18 & P/19, the income of the deceased as considered by the Tribunal for the purpose of computation of compensation appears to be just & proper, which does not call for any interference and the interest awarded on the amount of compensation was also just and proper. Further, looking to the statement of the son of the deceased that his father (since deceased) was a whole seller and running beetle shop which was not rebutted by the other side, before the Tribunal. Therefore, income of the deceased is rightly considered by the learned Tribunal.

10. Consequently, the appeal filed by the Insurance Company, being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

(Gautam Chourdiya)

Judge

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