NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 653 of 2018

- Manager, Liberty Videocon General Insurance Company Pvt. Ltd. (Actual Name Of The Co. Is Liberty Videocon General Insurance Company Limited) Address- 1a And 1b, Second Floor, Shyam Plaza Raipur, Chhattisgarh (Insurer Of Motor Cycle No. Cg-04-Lc-5585), District : Raipur, Chhattisgarh

---- Appellant

Versus

1. Smt. Rahi Verma W/o Shri Suresh Kumar Verma Aged About 42 Years R/o Village Sankra (Nicco) Thana Dharsiva, Tahsil And District Raipur, Chhattisgarh (Claimant), District : Raipur, Chhattisgarh
2. Jagendra Kumar Yadav S/o Sonu Yadav Aged About 22 Years R/o Nimora, Post Office Sondara, Thana Dharsiva Tahsil And District Raipur, Chhattisgarh (Rider Of Motor Cycle No. Cg-04-Lc-5585), District : Raipur, Chhattisgarh
3. Suresh Kumar Verma S/o Late Ramadhar Verma Aged About 48 Years R/o Village Sankra (Nicco) Thana Dharsiva, Tahsil And District Raipur, Chhattisgarh (Owner Of Motor Cycle No. Cg-04-Lc-5585), District : Raipur, Chhattisgarh

---- Respondents

For appellant	:	Mr. Shokie Yadav Advocate.
For respondents	:	Mr. M.K. Bhaduri, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

30-7-2018

1. The appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, “the Act, 1988”) against the award dated 15-2-2018 passed by the 9th Additional Motor Accident Claims Tribunal, Raipur (CG) in Claim Case No. 357 of 2016 wherein the said Tribunal awarded

compensation of Rs.6,49,000/- to the claimant/respondent No.1 on account of death of her son Vijay Verma in a motor accident on 3-1-2016.

2. As per the claim petition, deceased was sitting in the motor cycle bearing registration No. CG 04-LC 5585 driven by respondent No.2 Jogendra Kumar and due to negligent driving the deceased sustained fatal injuries. The application was filed by the mother of the deceased Vijay Verma under Section 163-A of the Act, 1988. As the application is filed under Section 163-A of the Act, 1988, negligence of the driver is not required to be proved. From the evidence adduced by the claimant supported with first information report (Ex.P/1), post-mortem report (Ex.P/5) and seizure of the offending vehicle, it is established that the deceased died due to motor accident.

3. In this appeal filed by the Insurance Company, first issue is raised that the deceased was son of the owner of the said vehicle, therefore, Insurance company is not liable to pay compensation.

4. Now the point for consideration of this court is whether the Insurance Company can be absolved on this ground. Policy (Ex.D1) is issued by the Insurance Company in which premium is paid for owner and driver also. The policy is comprehensive policy and the deceased was occupant of the vehicle which was insured by the comprehensive policy.

5. In the matter of **Bhagyalakshmi and others vs. United Insurance Company Limited and another, reported in 2009 (7) SCC 148,** it is held that comprehensive policy covers the risk of gratuitous passengers to the extent of liability incurred. If owner or driver is driving the vehicle covered by comprehensive policy in which wife and children of the owner are sitting, then occupant in a vehicle is covered by the comprehensive policy, therefore, the Insurance Company is liable to pay the compensation. In view of the above claimant is entitled for compensation against the Insurance Company for occupant who was sitting in the motor vehicle.
6. It is submitted on behalf of the appellant/ Insurance Company that the Claims Tribunal assessed the income of the deceased to be Rs.4,000/- per month and Rs.48,000/- per annum which is not permissible as per Schedule of the Act, 1988.
7. In view of this Court, notional income is mentioned in second Schedule in the year 1994. In the present case, date of incident is 3-1-2016 i.e., about 22 years after insertion of the said Schedule. Looking to the price index, it cannot be said that the income assessed by the Tribunal is on higher side and liable to be interfered with. Again, the Tribunal added only 10% for future prospects. The age of the deceased was 21 years on the date of incident. In the matter of **Sarla Verma vs. Delhi Transport Corporation and another (2009) 6 SCC 121,**, Hon'ble the

Supreme Court has held that if the age of the deceased is less than 40 years, then 50% shall be added for future prospects.

8. In the present case, the Tribunal added only 10% and the same is not liable to be disturbed by this court while invoking jurisdiction of the appeal. Again, interest is awarded @ 9% which is also not on higher side and the same is just interest followed with principles in the motor accident cases.

9. In support of the arguments, learned counsel for the appellant relied on the decision of Hon'ble the Apex Court in the matter of **Ningamma and another vs. United India Insurance Co. Ltd., reported in (2009) 13 SCC 710**, wherein it is that a person cannot be both the claimant and recipient with respect to claim.

10. In the present case, Insurance policy is a comprehensive one and as per law laid down in Bhagyalakshmi (supra), the occupant can recover compensation from the Insurance Company and, therefore, when insurance is covering the risk of owner, it cannot be said that the Insurance Company is not under obligation to pay compensation.

11. Considering all the facts and material available on record, this court is of the opinion that the case law cited by learned counsel for the appellant is distinguishable from the facts of the present case.

12. In a motor accident claim case, what is important is that the compensation to be awarded by the Courts/Tribunals should be just

and proper compensation in the facts and circumstances of the case. It should neither be a meagre amount of compensation nor a Bonanza. Thus, there is no substance in the arguments advanced on behalf of the appellant.

13. In view of the above, the appeal *sans* merit is liable to be and is hereby dismissed at the motion stage itself.

Sd/-

(**Ram Prasanna Sharma**)
JUDGE

Raju