

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1221 of 2012**

Shri Ram General Insurance Company Ltd. Main Branch, Head Office E/B
Rico Industrial Area, Sitapur, Jaipur Rajasthan.

---- Appellant**Versus**

1. Smt. Rajkumari Wd/o Late Santosh Kumar Sahu Aged About 31 Years
2. Satyanarayan S/o Late Santosh Kumar Sahu Aged About 13 Years
3. Varsha D/o Late Santosh Kumar Sahu Aged About 6 Years
4. Arti D/o Late Santosh Kumar Sahu Aged About 3 Years
5. Sharda D/o Late Santosh Kumar Sahu, aged about 1 month
6. Khemchand S/o Abhayram Sahu Aged About 72 Years

Respondents No. 2 to 5 are Minor, Through - Natural Guardian- Mother-
Rajkumari,

All R/o Kotadabri, Tah. Champa, Distt. Janjgir-Champa C.G., District : Janjgir-
Champa, Chhattisgarh.

7. Urmila Bai Wd/o Late Gajanand Dewangan Aged About 28 Years
8. Manish Kumar S/o Late Gajanand Dewangan Aged About 9 Years
9. Ku. Mitali D/o Late Gajanand Dewangan Aged About 11 Years
10. Ku. Mahi D/o Late Gajanand Dewangan Aged About 2 Years

No. 8 to 10 are Minor, Through - Mother- Urmila Bai, R/o Bazar Para, Ward No.
14, Janjgir, Tah. Janjgir, Distt. Janjgir-Champa C.G.

---- Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate.
For Respondents 1 to 6	:	Shri Basant Dewangan, Advocate.
For respondents 7 to 10	:	Shri Abhishek Saraf, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****27.02.2018.**

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurance company against the award dated 08.10.2012 passed by the Chief Motor Accident Claims Tribunal, Janjgir Champa (in short, the Tribunal) in Claim Case No.20/2011. Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.11,26,952/- along with interest @ 7 percent per annum from the date of application.

2. The appellant challenges the award on the ground that the Tribunal has not properly appreciated the aspect of contributory negligence. According to appellant, there is evidence which was brought on record to show that the deceased was found to be under the influence of Alcohol. It was further contended that there was no sufficient proof of the income of the deceased while quantifying the compensation and the award therefore on this ground also deserve modification. The appellant also assails the award on the ground that the driver of the offending vehicle did not have a valid license on the date of accident.
3. However, a perusal of record shows that the insurance company has not led any evidence before the Tribunal. In the absence of any evidence on behalf of the insurance company, it cannot be said that any of the contentions raised in their written submission have been substantiated. Further, what also reflects is that the Tribunal itself has dealt with the aspect of contributory negligence inasmuch as it has given a finding that only because smell of alcohol was detected from the body of deceased during postmortem by itself cannot be presumed to be a case where the deceased was under the influence of Alcohol much beyond the prescribed limit as has been provided under Section 185 of the Motor Vehicles Act. The said ground of challenge by the appellant thus stands answered in the negative.
4. So far as quantum part is concerned, this court has no hesitation in reaching to the conclusion that the assessment of income of the deceased is purely in accordance with the evidence of witnesses

examined by the claimants and also based on the salary slip which was produced during the course of hearing.

5. Under such circumstances, this court does not find any strong case made out by the appellant for interference with the impugned award.

The appeal deserves to be and is accordingly rejected.

6. Any amount deposited by the appellant-insurance shall be disbursed to the claimants.

Sd/-
(P.Sam Koshy)
Judge

inder