NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1052 of 2011

IFFCO Tokio General Insurance Co. Ltd. 3rd Floor, Shop No.345-347, Ganga Shopping Mall, GE Road, Raipur, Tehsil and Distt. Raipur (CG).

---- Appellant

Versus

1. Smt. Vinita Joshi, W/o late Shri Ravishankar Joshi, aged about 23 years.
2. Ku. Megha Devi D/o Late Ravishankar Joshi, aged about 1 years, Minor Through Mother Resp. No.1- Smt. Vinita Joshi,
3. Mohit Joshi S/o Khorbahra, aged about 54 years,
4. Smt. Charan Bai W/o Mohit Ram, aged about 50 years,
   All are R/o Village Dhorabhata Police Station Hirri, District Bilaspur (CG).
5. Tarechand Aahire S/o Torandas Aahire, R/o Village Dhorabhata Police Station Hirri, District Bilaspur (CG).

---- Respondents

For Appellant	:	Shri Amrito Das and Shri P. Khichariya, Advocates.
For Claimants	:	Shri Avinash Chand Sahu, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

08.01.2018

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurer against the award dated 11.05.2011 passed by the 5th Additional Motor Accident Claims Tribunal, Bilaspur (in short, the Tribunal) in Claim Case No.124 of 2010. Vide the said impugned award, the Tribunal in a claim application under Section 163-A of MV Act has awarded a compensation of Rs.1,00,000/-in favour of respondents No.1 to 4 with interest @ 7.5 percent per annum from the date of application.

2. The respondents No.1 to 4-claimants before the Tribunal have also

challenged the award by filing cross appeal/objection under Order 41 Rule 22 CPC seeking enhancement of compensation.

3. Learned counsel for the appellant submits that it is a case where the deceased himself was driving the motorcycle and that he was not the actual owner of the motorcycle. Since the claim application was filed under Section 163-A of the MV Act and that the driver was not covered under the policy, the insurance company should not have been fastened for payment of compensation. Further contention is that, it is a case where the policy issued was an act only policy covering the risk of only third party and the deceased in the instant case would not fall within the definition of a third party to be indemnified by the insurance company as the deceased himself was driving the motorcycle at the time of accident.

4. A perusal of record would show that there is a pleading by the claimants and also there is evidence led on the fact that on the date of accident the deceased was an employee of respondent No.5 and was deputed by the respondent No.5 for some official work and the respondent No.5 was the owner of the motorcycle involved in the accident bearing registration No.CG-10-EG-0159. This evidence has not been controverted in any manner by the insurance company either from the evidence of the claimants or from the evidence of the respondent No.5. Thus, for all practical purposes, the status of the deceased on the date of accident was that of an employee of the respondent No.5 or that of a driver of the respondent No.5 and as such the insurance company would be responsible to indemnify the

driver/employee of the respondent No.5.

5. The contention of the appellant-insurance company that the deceased in the instant case would step into the shoes of the owner cannot be accepted for the simple reasons that there is evidence by the claimants as also by the respondent No.5-owner of the motorcycle that the deceased was an employee of respondent No.5 and he was entrusted the motorcycle for discharging some work of the employer-respondent No.5.

6. Thus, the findings of the Tribunal so far as compensation of Rs.1,00,000/- as also the grounds raised by the insurance company seeking exoneration from its liability is not acceptable and the appeal thus deserves to be and is accordingly rejected and the insurance company shall have to pay the entire amount of compensation awarded.

7. So far as cross appeal/objection of the claimants is concerned, in view of the fact that there is an evidence to show that the claimants as well as respondent No.5 have accepted the employment aspect of the deceased with the respondent No.5, the status of the deceased changes and he becomes an employee or driver of the motorcycle and the accident occurred in the course of employment, the claimants would not be entitled for a fixed amount of Rs.1,00,000/- only, rather the amount awarded deserves to be and is accordingly enhanced.

8. The claimants have stated that the deceased at the time of accident was earning Rs.3200/- per month. Keeping in view the decision of larger Bench of Supreme Court in case of National Insurance Co. Ltd.

Vs. Pranay Sethi, decided on 31.10.2017 in SLP(C)No.25590 of 2014, the claimants shall also be entitled for 40 percent of the income towards future prospects.

9. Accordingly, accepting the monthly income of the deceased at Rs.3200/- if 40 percent of it is added towards future prospects, the amount would reach to Rs.4480/- i.e. Rs.53,760/- yearly, of which if 1/3rd is deducted towards personal expenses considering the total number of claimants, the income would come to Rs.35,840/-, which if multiplied applying the multiplier of 17, the compensation would reach to Rs.6,09,280/-. Thus, it is ordered that the claimants shall be entitled for Rs.6,09,280/- for loss of dependency.

10. Further, this court is of the opinion that the claimants shall also be entitled for compensation of Rs.70,000/- under the conventional heads keeping in view the ratio laid down in Pranay Sethi's case. Thus, the total compensation payable to the claimants would become Rs.6,79,280/-. It is ordered accordingly that the claimants shall be entitled for a total compensation of Rs.6,79,280/- instead of Rs.1,00,000/- as awarded by the Tribunal which shall be paid by the insurance company.

11. The enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.

12. As a consequence, the appeal of the insurance company stands rejected and the cross appeal/objection of the claimants stands allowed.

Sd/-
(P.Sam Koshy)
Judge

inder