

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 12 of 2017**

Regional Manager, Cholamandlum Ms General Insurance Company Limited Office At 1st Floor, Rajiv Plaza, Bilaspur, Distt. Bilaspur, Chhattisgarh, At Present- In Front Of L.I.C. Building, 2nd Floor, Simran Tower, Raipur, Police Station Pandri, Civil And Revenue District Raipur, Chhattisgarh

---- Appellant**Versus**

1. Smt. Lalita W/o Ashok Kumar, Aged About 28 Years
2. Minor Rajendra Kumar S/o Ashok Kumar, Aged About 12 Years
3. Minor Rupesh Kumar S/o Ashok Kumar, Aged About 9 Years
4. Minor Ku. Rani D/o Ashok Kumar, Aged About 6 Years
5. Minor Vikky S/o Ashok Kumar, Aged About 4 Years

Respondent No. 2 to 5 are Minors Representing Through Mother Respondent No.1 Smt. Lalita W/o Ashok Kumar,

All are R/o Village Basdiha, Paki, Tahsil And District Palamu Jharkhand (Claimants)

6. Nandlal S/o Vasudev Verma, Aged About 28 Years Profession- Vehicle Driver, R/o Dongamauha, Police Station And Tahsil Tamnar, District Raigarh, Chhattisgarh (Driver)
7. Rakesh Kumar S/o Hetram Sharma, Aged About 35 Years Profession- Vehicle Driver, R/o Agrasen Marg, Near State Bank Of India Kharsiya, Distt. Raigarh, Chhattisgarh (Owner)

---- Respondents

For Appellant	:	Mr. Rohitashva Singh, Advocate
For Respondent No.7	:	Mr. Ashish Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****05/02/2018**

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 24.10.2016, passed by the 1st Additional Motor Accident Claims Tribunal, Raigarh, Chhattisgarh, in Claim Case No. 334/2012, whereby the Tribunal in a death case has awarded a compensation of Rs.14,95,000/- with interest @ 6% per annum from the date of application.

2. While passing the award, the liability of payment of compensation has been fastened upon the appellant-Insurance Company being the insurer of the Hyva Truck bearing registration No. CG/04/5776, owned by the respondent No.7 Rakesh Kumar and driven at the relevant point of time by the respondent No.6 Nandlal.
3. As per the appellant, the impugned award is bad in law to the extent of non-appreciation of there being contributory negligence on the part of the deceased in the accident to have occurred. The second ground raised is the quantum of compensation awarded. According to him, the income assessed by the Tribunal is unreasonably high as there was no evidence to substantiate the evidence part from the Owner.
4. So far as the contributory negligence is concerned, the only ground of challenge is that the documents available on the record more particularly the criminal case record, which shows that the deceased was standing on the footrest of the offending vehicle when the accident occurred, which shows that there was an element of negligence on his part.
5. However perusal of the record shows that there was no evidence whatsoever led by the appellant-Insurance Company to prove its contention by examining any cogent witness. In the absence of any evidence led by the Insurance Company, the finding of the contributory negligence cannot be assumed or inferred only on the basis of the documents available.
6. So far as the quantum of compensation is concerned, the deceased was a Driver of a Hyva Truck. The date of accident is 02.06.2011. Undisputedly, at the relevant point of time a truck Driver was drawing

a wages of more than Rs.350/- a day, which would easily bring the income of the deceased to be more than Rs.10,000/-.

7. Under the circumstances, if the Tribunal has assessed the income of the deceased at Rs.10,000/-, the same cannot be said to be either excessive or exorbitant.
8. Given the said facts and circumstances of the case, this Court does not find any strong case made out by the Insurance Company calling for an interference with the impugned award.
9. The appeal thus fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved