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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 24 of 2014

- Oriental Insurance Company Ltd. Through Divisional Manager, Rajendra Park Square, G.E. Road, Durg, District Durg (C.G.)

---- Appellant

Versus

1. Smt. Kanchan Joshi W/o Late Arvind Kumar Joshi, aged about 63 years
2. Amit Joshi S/o Late Arvind Kumar Joshi, aged about 36 years
3. Anurag Joshi S/o Late Arvind Kumar Joshi, aged about 26 years
All R/o Block 7/A, Sadak 43, Sector 10, Bhilai, Tahsil and District Durg (C.G.)

(Claimants)

4. Avinash Charan S/o Kamal Kumar Charan, aged about 21 years

(Driver)

5. Kamal Kumar Charan, S/o M. Charan, aged about 51 years

(Owner)

Both R/o L Pocket Block 13/A, Maroda Sector, Bhilai, Tahsil and District Durg (C.G.)

---- Respondents

For Appellant	:	Shri Arvind Shrivastava, Advocate
For Respondents 1 to 3	:	Shri Shikhar Bakhtiyar, Advocate
For Respondents 4 & 5	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

12.11.2018

1. Being aggrieved by the award dated 07.10.2013 passed in Motor Accident Claim Case No. 07 of 2013 by the Sixth Additional Motor Accident Claims Tribunal, Durg, District Durg (C.G.), the Appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988.

2. The facts of the case in brief are that on 17.12.2012, while deceased- Arvind Kumar Joshi, 69 years of age, after his work was coming to home in his scooter bearing registration No. CG-07 ZA-6015 he met with an accident near Geet Talkies. It is alleged that when deceased was crossing the road towards Geet Talkies, Civic

Center, Respondent No.4/rider of vehicle motorcycle bearing registration No. CG-07 LC-7393 riding the said vehicle in a rash and negligent manner dashed the scooter of the deceased and the deceased fell down on the road from the scooter. As a result, the deceased sustained grievous injuries on head and his leg was also fractured. The deceased was hospitalized in Sector-9 Hospital, Bhilai and later on, he died.

3. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.10,83,040/- in favour of the Claimants-Respondents 1 to 3 with simple interest @ 7.5% per annum from the date of application till its realization. The Tribunal has also directed that Respondents No. 4, 5 and the Appellant/Insurance Company are jointly and severally liable for payment of compensation to the Claimants/Respondents 1 to 3.

4. Learned counsel for the Appellant/Insurance Company submits that monthly income of the deceased has wrongly been considered by the Tribunal and amount of loss of consortium, love and affection awarded by the Tribunal were on the higher side. He also submits that the Tribunal did not take into consideration the plea of contributory negligence on the part of deceased raised by the Appellant/Insurance Company.

5. On the other hand, learned counsel for Respondents 1 to 3/Claimants supporting the impugned award submits that the amount of compensation awarded by the Tribunal is just and proper and needs no interference by this Court.

6. I have heard the learned counsel appearing for the parties and perused the impugned award including the records of the Claims Tribunal.

7. So far as monthly income of the deceased is concerned, in this regard Claimants' examined one V.S. Kalpana as AW-3, Principal of Sri Sankara Vidyalaya, he (AW-3) stated that deceased- Arvind Kumar Joshi was posted in their School from 01.07.2003 till the date of accident i.e. 17.12.2012 as Head of the Department of Physics and he was getting salary at Rs.18,951/- per month and in

this regard, she issued the Experience Certificate (Ex.-P/27). Though in cross-examination, this witness has been given suggestion that the said certificated (Ex.-P/27) has been issued at the instance of wife of the deceased, however, she has categorically denied the same. Therefore, it was proved that the deceased was getting above salary per month and the Tribunal has rightly considered the monthly income of the deceased.

8. It was also argued that the award of Rs.1,00,000/- for loss of consortium and Rs.1,00,000/- for love and affection of two children each was on the higher side. In view of the decision in matter of **Rajesh and Others Vs. Rajbir Singh and Others, (2013) 9 SCC 54**, wherein the Hon'ble Apex Court awarded Rs.1,00,000/- for loss of consortium and Rs. 1,00,000/- for loss of care and guidance for minor children, I am of the opinion that the Tribunal has rightly awarded amount on the above heads and it cannot be said to be on higher side.

9. As regard the ground of contributory negligence on the part of the deceased, it was the responsibility of the Appellant/Insurance Company to examine Respondent No. 4, who was the driver of the offending vehicle at the time of accident and was also an eye-witness to the accident, before the Tribunal for proving contributory negligence on the part of the deceased, but, in this case, it was not done by the Appellant. No other material was placed by the Appellant/Insurance Company to prove contributory negligence on the part of the deceased. In this view of the matter, argument advanced by the learned counsel for the Appellant/Insurance Company regarding contributory negligence also fails.

10. In the result, the appeal being without any substance is liable to be dismissed and is accordingly dismissed.

11. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge