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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1515 of 2016

- Shriram General Insurance Company Limited E-8, RIICO Industrial Area, Sitapur, Jaipur Rajasthan Through Branch Office 4th Floor, Maruti Heights, Mohba Bazar, Near R.K. Mal, Tahsil And District- Raipur, Chhattisgarh Pin 492001 ....Insurer,

---- Appellant

Versus

1. Ram Kumar S/o Banafar Patle, Aged About 35 Years R/o Village Somnapur Old, P.O. Saihamalgi, Thana Kunda, Tahsil Pandariya, District Kabirdham, Chhattisgarh ....Claimant,

2. Dheeraj Ram Bhatia S/o Mantriram Bhatia, Occupation Driver, R/o Village Menha Thana Nandghat, Tahsil Navagarh, District Bemetara, Chhattisgarh ....Driver,

3. Vijaykant S/o Narayan Prasad Verma, Occupation Vehicle Owner, R/o Village Katai, Tahsil Navagarh, District Bemetara, Chhattisgarh ....Owner,

---- Respondents

For Appellant	:	Shri SS Rajput, Advocate.
For Respondents	:	None.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

11/12/2018

Heard on application dated 16.10.2016 for condonation of delay in filing the appeal.

02. For the reasons mentioned in the application, which is duly supported by affidavit, delay of 19 days in filing the appeal is condoned.

03. Heard on admission.

04. This appeal is by the insurance company against the award

dated 30.6.2016 passed by Additional Motor Accident Claims Tribunal, Bemetara in Claim Case No.29/2015 awarding total compensation of Rs.37,700/- with interest @ 6% per annum from the date of application till realization, fastening liability on non-applicant No.3.

05. As per claim petition, on 11.1.2014 Ramkumar (claimant) along with his friend Pappu @ Rajkumar was going on motorcycle Hero Honda (Splendor) bearing No. CG 09 D 8705 as a pillion rider from Bemetara to Navagarh. However, on the way, non-applicant No.1 Dhirajram by driving the vehicle Tata DI CG 07 CA 5801, owned by non-applicant No.2 Vijaykant and insured with non-applicant No.3 Shriram General Insurance Co. Ltd, in a rash and negligent manner dashed the said motorcycle. As a result thereof, Ramkumar suffered grievous injuries including fracture whereas rider of the motorcycle Pappu @ Rajkumar died.

06. On claim petition being filed by the injured claimant under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

07. Learned counsel for the appellant/insurance company submits that the learned Tribunal has committed an error by awarding compensation to the claimant on higher side without there being proper evidence. He further submits that the Tribunal was not justified in fastening liability on the insurance company as there was breach of policy conditions.

08. Heard learned counsel for the appellant and perused the material available on record.

09. From perusal of the impugned award it is found that the claimant had suffered bony injuries in his left leg and right hand, he remained hospitalized for about 11 days, he has filed and proved the medical bills whereas the said contention of the claimant has not been rebutted by the insurance company by adducing any evidence. The Tribunal considering the nature of injuries suffered by the claimant recorded a finding that due to these injuries the claimant could not have been in a position to work for about 3 months and thus, awarded Rs.13,500/-

towards loss of income for the said period @ Rs.150/- per day. The Tribunal has awarded Rs.10,000/- towards medical expenses, Rs.1,200/- for attendant, Rs.3,000/- for nutritional diet and Rs.10,000/- for pain and suffering. Looking to the facts and circumstances of the case, the nature and quality of evidence adduced by the claimant and the reasoning assigned by the Tribunal for awarding total compensation of Rs.37,700/-, this Court is of the opinion that the said compensation cannot be said to be excessive or exorbitant, rather it appears to be just and proper.

10. As regards breach of policy conditions, no evidence has been adduced by the insurance company to substantiate its plea in this regard. The Tribunal in para-12 of its award has discussed the said issue and recorded a finding that the insurance company has failed to adduce any evidence to prove that on the date of accident the offending vehicle was being plied in contravention of the insurance policy and as such, fastened liability upon the insurance company. In this view of the matter, there is no illegality or perversity in the finding so recorded by the Tribunal.

11. In the result, the appeal filed by the insurance company being without any substance is liable to be dismissed at the admission stage itself and is hereby dismissed.

Sd/

(Gautam Chourdiya)

Judge

Khan