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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1527 of 2017

The United India Insurance Company Limited through Branch Manager, Branch Office, G E Road, Power House, Bhilai, Tehsil and District Durg, Chhattisgarh........ Insurer Company of Vehicle Trailer No CG 07/ C- 0452.

---- Appellant

Versus

1. Smt. Vimla Nag W/o Late Vijay Nag, aged about 45 years, R/o Zone -3 BSP Area, Street No. 1, Ward 34, Durg, Tehsil and District Durg, Chhattisgarh
2. Kanchan Nag D/o Late Vijay Nag, aged about 23 years, R/o Zone -3 BSP Area, Street No. 1, Ward 34, Durg, Tehsil and District Durg, Chhattisgarh
3. Poonam Nag D/o Late Vijay Nag, aged about 21 years, R/o Zone -3 BSP Area, Street No. 1, Ward 34, Durg, Tehsil and District Durg, Chhattisgarh
4. Vikram Nag S/o Late Vijay Nag, aged about 19 years, R/o Zone -3 BSP Area, Street No. 1, Ward 34, Durg, Tehsil and District Durg, Chhattisgarh
5. Smt. Sajni Nag W/o Mohan Nag, aged about 68 years, R/o Zone -3 BSP Area, Street No. 1, Ward 34, Durg, Tehsil and District Durg, Chhattisgarh
6. Tikaram Sahu S/o Shri Chovaram Sahu, aged about 33 years, R/o Puraina, Thana Bhilai-3, Durg, District Durg, Chhattisgarh (Driver of vehicle Trailer No. CG 07/ C 0452)
7. R. B. Singh S/o Shri Mudika Singh, aged about 58 years, R/o Netam Nagar East, Bhilai 3 Durg, Tehsil and District Durg, Chhattisgarh (Registered owner of vehicle Trailer No. CG 07/ C 0452)

---- Respondents

For Appellant : Shri Sudhir Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

23/02/2018

Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act. The challenge is to the award dated 29.07.2017 passed by the 8th Additional Motor Accident Claims Tribunal, Durg (CG) in

Claim Case No. 29/2015. Vide the impugned award, the Tribunal in a death case has awarded compensation of Rs.29,72,800/- with interest at the rate of 9% per annum from the date of application.

2. Challenge in the present appeal by the Insurance Company is on four grounds:

i) The Tribunal has failed to appreciate the aspect of the contributory negligence.

ii) The vehicle involved in the accident did not have a fitness certificate.

iii) The compensation awarded under the conventional heads is also on the higher side.

iv) The interest awarded @ 9% is also on the higher side.

3. A perusal of the record would show that the accident took place on 25.04.2012 at 9 p.m. The vehicle involved in the accident being a motorcycle driven by the deceased Vijay Nag dashed against a Trailer bearing registration No. CG 07/ C 0452 which was in a stationary condition. It is also not in dispute that the said Trailer was duly insured with the appellant Insurance Company and the accident occurred during the validity of the policy condition.

4. So far as the grounds raised by the Insurance Company are concerned, it is necessary to first consider the grounds of contributory negligence and the fitness certificate. Since both these grounds are raised by the Insurance Company, it is the duty of the Insurance Company to prove and establish these grounds by leading cogent and strong evidence before the Tribunal. The Insurance Company though has led evidence of two witnesses; one witness was of the Officer of Insurance Company namely Abdul Naim and the other witness was from the RTO, Durg. Both these witness were examined to prove the aspect of fitness certificate. However, this court is of the opinion that whether the vehicle was having a valid fitness certificate or not is not a ground which was available with the Insurance Company under the Provisions of Section 149 (2) of the MV Act for claiming exoneration of the liability of indemnifying the owner.

5. So far as the contributory negligence is concerned, except for the aforesaid two witnesses examined on behalf of the Insurance Company, there does not appear to have been any evidence led by the Insurance Company to substantiate the aspect of contributory negligence.

6. The contention of the counsel for the Insurance Company is that the Trailer was dashed from the rear side by the deceased who was travelling on a motorcycle clearly establishes that it was he who was negligent and was not careful while driving on the road. This contention would be difficult to accept for the simple reason that the time of accident was 9 p.m. and the vehicle was in a stationary condition parked on the road. It was to be established by the Insurance Company that the vehicle was parked on the extreme left side of the road and that there was sufficient time and space available for the deceased to avoid the accident. It was also to be established by the Insurance Company that since it was dark, the driver of the Trailer had taken necessary precautions while the vehicle was in a stationary condition with their parking lights and the indicators on. In the absence of these materials, if the Tribunal has not assessed the contributory negligence, it cannot be found fault with.

7. So far as the compensation under the conventional head is concerned, since the impugned award was passed much before the decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Ors. decided on 31st October, 2017**, it cannot be said that the Tribunal then was in any manner wrong while granting compensation as has been assessed by it.

8. As regards the interest part, this Court does not find the rate of interest awarded by the Tribunal to be excessively high or unreasonable in any manner.

9. Thus, this Court does not find any strong case made out by the Insurance Company calling for an interference with the impugned award. The appeal being devoid of merit, deserves to be and is accordingly dismissed.

Sd/-

(**P. Sam Koshy)**
JUDGE

Bhola