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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1679 of 2016

- Branch Manager, IFFCO TOKIO General Insurance Company Ltd., 202, Second Floor M.M. Plaza in front of Udhyog Bhawan, Raipur, C.G.

---- Appellant/Insurer

Versus

1. Joshef Kerketta S/o Shri Tilan Kerketta, Age-47 years
2. Kanchan Kerketta D/o Shri Joshef Kerketta, Age- 18 years
3. Tripti Kerketta D/o Shri Joshef Kerketta, Age- 12 years

   Respondent No. 3 is a minor she is through her father Joshef Kerketta

   Respondent No. 1 to 3 are R/o Village- Raghunathpur, P.S. & Tehsil Lundra, District- Sarguja (C.G.)
   (Claimants)

4. Chotan Kumar Gupta S/o Krishn Kumar Gupta, Age- 38 years, R/o Village- Raghunathpur, P.S. & Tehsil Lundra, District Sarguja (C.G.)
   (Driver-cum-Owner)

---- Respondents

For Appellant	:	Shri Ghanshyam Patel, Advocate
For Respondent No.1 to 3	:	Shri Mahendra K. Sahu, Advocate
For Respondent No.4	:	None

Hon’ble Shri Justice Gautam Chourdiya, J

Judgment on Board

26.10.2018

1. Being aggrieved with the award dated 01.09.2016 passed by the Motor Accident Claims Tribunal, Ambikapur, District Sarguja (C.G.) in Central Registration (Motor Accident Claim) No. 162 of 2015, the Appellant/Insurance Company has filed this appeal on the ground of breach of policy and also challenged the quantum of compensation.

2. The facts of the case are that on the date of accident i.e. 19.05.2015, deceased- Smt. Kalra Lakra was traveling as a passenger and returning to her home Raghunathpur from Saraipali, when they reached near Budadand turning Bagicha, Respondent No.4- Chotan Kumar Gupta, driver-cum-owner, of the offending vehicle Maruti-Alto bearing registration No. JH-01/BH-4825 driving the said vehicle in a rash and negligent manner met with an accident due to which the deceased sustained grievous injuries and during treatment, she died on 20.05.2015. At the time of accident, the deceased was 45 years of age. Respondent No. 4 is owner-cum-driver of the offending vehicle.

3. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.31,97,693/- in favour of the Claimants/Respondents 1 to 3 with interest @ 7% per annum from the date of application till its realization. If the amount of compensation is not deposited within a period of one month, the interest shall be @ 9% per annum. The Tribunal has also directed that the Insurance Company and Respondent No.4 are jointly and severally liable for payment of compensation to the Claimants.

4. Learned counsel for the Appellant/Insurance Company submits that the learned Tribunal considering the income of the deceased as per Ex.-P/10 and Ex.-P/12-C has wrongly calculated. GPF, GIS and other heads which were liable to be deducted from the income. He submits that breach of policy is proved by the Insurance Company, therefore, the Tribunal erred in giving finding on issue No. 2 that there is no breach of policy.

5. Learned counsel for Respondents 1 to 3, however, opposes the contention made by the learned counsel for the Appellant/Insurance Company and submits that the compensation awarded by the Tribunal is just and proper in the facts and circumstances of the present case. He supported the award passed by the Tribunal and submits that there is no need to deduct any amount from the income because the Tribunal has already deducted the income tax and considered other statutory deductions. He submits that there is no substance in the instant appeal, therefore, it may be dismissed.

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

7. Considering the evidence of both the parties, it is noticed that the allegation made by the Insurance Company regarding breach of policy on account of hiring of vehicle is baseless as there is no evidence adduced by the Insurance Company to substantiate the said plea.

8. Further, the quantum of compensation assessed by the Tribunal as per Ex.-P/10 and Ex.-P/12-C mentioned in para No. 16 of the impugned award considering the income of the deceased as Rs.30,990/- (Gross Pay) is also in accordance with law and there is no need to deduct the amount of GPF and GIS from the income of the deceased.

9. In the result, I am of the opinion that there is no substance in the instant appeal filed by the Appellant/Insurance Company for exonerating it from the liability to pay compensation, the same deserves to be dismissed and is accordingly dismissed. The Insurance Company is granted 45 days' time for depositing the amount along with interest before the concerning Claims Tribunal.

10. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

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