

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 611 of 2015**Judgment reserved on : 02.08.2018Judgment delivered on : 09.08.2018

The Oriental Insurance Company Limited, Branch Manager, Madina Building, Jail Road, Raipur, Chhattisgarh. (Insurer of Motorcycle bearing registration No. CG-04-DZ-0305).

---- Appellant**Versus**

1. Smt. Asha Goswami Wd/o Late Rakesh Goswami Aged About 25 Years.
2. Pushkar Goswami S/o Late Rakesh Goswami Aged About 5 Years.
3. Jageshwar Goswami S/o Mannu Goswami Aged About 45 Years.
4. Smt. Sakun Goswami W/o Jageshwar Goswami Aged About 43 Years.

Appellant No. 2 is minor, through natural guardian mother Smt. Asha Goswami.

All are R/o Lalpur, Raipur, Police Station Tikrapara, District- Raipur, Chhattisgarh.

5. Kanta Giri Goswami S/o Jageshwar Giri Goswami R/o Durga Para, Santoshi Nagar, Police Station Tikrapara, District- Raipur, Chhattisgarh. (Owner of Motorcycle bearing registration No. CG-04-DZ-0305).

---- Respondents

For Appellant	:	Mr. Pankaj Agrawal, Advocate.
For respondent No. 1 to 4	:	Mr. A.L. Singroul, Advocate.
For Respondent No. 5	:	None, though served.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV ORDER**

1. This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 against the award dated 25.02.2015 passed by learned First Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Claim Case No. 315/2014

wherein, the said tribunal awarded a sum of Rs. 6,32,000/- on account of death of one Rakesh Goswami in a motor accident dated 21.07.2011.

2. As per the claim case, the claim petition is filed under Section 163A of the Motor Vehicles Act, 1988. The claimants are wife, son and parent of the deceased-Rakesh Goswami and as per pleading, the deceased was going in his motorcycle bearing registration No. CG-04-DZ-0305 from Raipur to Abhanpur and when he reached near Chhattisgarh Dhaba at about 6.00 p.m., an unknown motorcycle dashed his motorcycle and thereby deceased received sever injuries and died on spot.
3. Learned counsel for the appellant/ insurance company submits as under:-
 - (i) The deceased is not third party therefore, no liability can be fastened on insurance company.
 - (ii) The vehicle of the deceased is dashed by other vehicle therefore, the award under no fault liability could not have been passed.
 - (iii) The tribunal has wrongly awarded compensation on different heads against structured formula under Section 163A of the Motor Vehicles Act, 1988.
4. As per insurance policy (DW-1) premium was paid for driver and owner and it was comprehensive policy. In the matter of **Bhagyalakshmi & others Vs. United Insurance Company Limited & another** reported in **(2009) 7 SCC 148**, the Hon'ble Apex Court has held that if the owner was driver and he was driving the vehicle covered by comprehensive policy, then the occupant of the vehicle is covered by the comprehensive policy. As, the deceased was occupant of the vehicle and premium was paid for him, therefore, the Insurance company is liable to pay the compensation.
5. In view of the above, the insurance company cannot be absolved from its

liability towards occupant of the vehicle. Again the application is filed under Section 163A of the Motor Vehicles Act, 1988, the claimants are not required to prove negligence on the part of the driver, therefore, the insurance company cannot be exonerated in the facts and material placed before the tribunal.

6. In the present case, the tribunal has awarded Rs. 4,32,000/- for dependency and Rs. 2,00,000/- on conventional head. The date of incident is 21.07.2011. The tribunal assessed daily income to the tune of Rs. 100/- per day but at that time, minimum wages prevailing was Rs. 200/- per day. The tribunal has not awarded any sum on future prospect. As per law laid down by Hon'ble the Supreme Court in the matter of **Sarla Verma Vs. Delhi Transport Corporation & another** reported in **(2009) 6 SCC 121**, future prospect is 50% for age below 40 years. In the present case, age of deceased is 28 years at the time of incident. If this aspect would have been considered by the tribunal, the awarded amount for dependency would have been double to what is assessed.
7. Looking to all this aspect, the total awarded sum Rs. 6,32,000/- is not liable to be interfered while invoking jurisdiction of the appeal.
8. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge