

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1024 of 2016**

Shriram General Insurance Co. Ltd. Through Branch Manager,
Office Plot No. 1, Fourth Floor, Maruti Heights, Behind R. K. Mall, G.
E. Road, Raipur, Chhattisgarh

---- Appellant**Versus**

1. Smt. Shyam Bai Wd/o Late Tameshwar Singh, Aged About 24 Years
 2. Minor Bhaskar Sidar, S/o Late Tameshwar Singh, Aged About 1 Years
 3. Minor Ku. Kavita Sidar, D/o Chaitram, Aged About 15 Years
- Respondents No. 2 & 3 are Minors, Represented Through Natural Guardian Respondent No. 1 Smt. Shyam Bai, Wd/o Late Tameshwar Singh,
4. Smt. Namayanmati, W/o Chaitram, Aged About 48 Years
 5. Chaitram Sidar S/o Bondhiram, Aged About 52 Years
- All are R/o Tower Mohalla, Pali, Thana Pali, District Korba, Chhattisgarh (Claimants)
6. Dhaniram S/o Tikaitram Agariya, Aged About 30 Years R/o Village Mungadih, Tahsil Pali, District Korba, Chhattisgarh (Driver)
 7. Zainul Ansari, S/o Ahemad Ansari, Aged About 32 Years R/o Village Ring Road No. 2, Tatibandh, Raipur, Chhattisgarh (Owner)

----Respondents

For Appellant	:	Mr. S.S. Rajput, Advocate
For Respondents No.1 to 5	:	Mr. P.K. Tulsyan, Advocate
For Respondents No.6 & 7	:	Mr. A.L. Singroul, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****01/02/2018**

1. Heard on I.A. No.1, which is an application for condonation of delay.

For the reasons assigned in the application and finding them to be satisfactory, I.A. No.1 is allowed and delay of 134 days in filing the appeal stands condoned.
2. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act. The challenge is to the award dated 20.11.2015, passed by the Additional Motor Accident Claims

Tribunal, Katghora, District Korba, Chhattisgarh, in Motor Accident Claim Case No. 62/2014.

3. It is a case of death of a Constable of the police department namely Tameshwar, aged around 30 years. He died on account of an accident that took place on 02.12.2013. The accident arose when the deceased Constable Tameshwar was moving on his motorcycle, was hit by the offending Truck bearing registration No. CG/10/C/7122. The legal representatives of the deceased filed the claim application under Section 166 of the Motor Vehicles Act. The Tribunal vide the impugned award has awarded a compensation of Rs.36,42,499/- with interest @ 7% per annum from the date of application and the liability of payment of compensation has been fastened jointly and severally upon the Owner, Driver and the Insurance Company of the truck.
4. The present is an appeal by the Insurance Company assailing the quantum of the compensation awarded. According to the counsel for the appellant, it is a case where the Tribunal ought to have been deducted 10% towards income tax from the annual income of the deceased while quantifying the compensation. It was also the contention of the counsel for the Insurance Company that the Tribunal also has awarded compensation under the conventional head on the higher side i.e. Rs.3,25,000/- has been awarded, whereas as per the recent judgment of the Hon'ble Supreme Court in the case of ***“National Insurance Company Limited vs. Pranay Setthy and Others”*** decided on 31.10.2017, in Civil Appeal No. **25590/2014** it could be only Rs.70,000/-.
5. Having heard the contentions put forth on either side and on perusal of record what clearly reflects from the proceedings is that the

present appeal was filed as early as on July, 2016. The appellant was not granted any stay of the execution of the award. In due course of time, the entire award has been honoured by the appellant and the entire amount also stands disbursed to the Claimants as is reflected from the order sheet of this Court dated 21.11.2016, which shows that the amount has been disbursed to the Claimants on 01.10.2016. In view of the fact that the entire amount already stands disbursed to the Claimants, this Court is of the opinion that the question of deduction on the head of income tax at this juncture is not sustainable.

6. So far as the quantum of compensation awarded under the conventional head also is concerned, what cannot be brushed aside is the fact that the award under challenge is one which was passed on November, 2015 and the judgment of the Hon'ble Supreme Court in the case of "Pranay Setthy" (supra) was passed on the 31st of October, 2017 i.e. almost about 2½ years from the date of impugned award. Under the said circumstances, this Court does not find the said ground raised by the Insurance Company also to be a strong ground calling for an interference with the impugned award.
7. If we look into the compensation awarded under the conventional head, the same seems to be inconsonance to the judgment of the Hon'ble Supreme Court which were holding the field at the relevant point of time in the case of "**Rajesh and others vs. Rajbir Singh and others**" reported in (2013) 9 SCC 54) which is a three Judges Bench judgment of the Hon'ble Supreme Court and which has further been followed in "**Vimal Kanwar & Others vs. Kishore Dan & Others**" reported in (2013) 7 SCC 476.

8. This ground of challenge by the Insurance Company also is not sustainable in view of the said pronouncements of the Hon'ble Supreme Court.
9. The appeal thus being devoid of merits deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved