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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 140 of 2019**

- Oriental Insurance Co. Ltd Through Manger, Branch Office Rajendra Park Chowk, G.E.Road Durg, Tahsil And District Durg Chhattisgarh.

---- Appellant**Versus**

1. Smt. Santoshi Kewat (Nishad) W/o Late Balkrishna @Balkrishna Kewat (Nishad) Aged About 27 Years
2. Ku. Neha Nishad D/o Late Balkrishna @ Balkrishna Kewat (Nishad) Aged About 9 Years
3. Ku. Gouri Nishad S/o Late Balkrishna Kewat (Nishad) Aged About 7 Years

Respondent Nos. 2 & 3 are Minor Through Natural Guardian Mother Smt. Santoshi Kewat R/o Through Sanjay Bandhu Dubey (Binjare) S/o Gajanand Bandhu ,near Mahadev Talab Infront Of Satya Auto Parts Gali, Changorebhata ,post Sunder ,nagar ,police Station D.D. Nagar Raipur ,tahsil And District Raipur Chhattisgarh.

4. Ghasiya S/o Late Murari Nishad Aged About 60 Years
5. Dukhni W/o Ghasiya Nishad Aged About 59 Years
6. Ravi S/o Ghasiya Nishad, aged about 21 years

Respondent Nos. 4 to 6 R/o Ramkund, Matiyapara Sound Service Vivekanand Ashram Raipur ,police Station Azad Chowk Raipur ,tahsil And District Raipur Chhattisgarh.

7. Kamlesh Singh Rajput S/o Late Vishnu Singh Rajput Aged About 38 Years R/o Sikola Bhata .Prem Nagar ,police Station Mohan Nagar Durg Tahsil And District Durg Chhattisgarh.
8. Manager, Sahkari Vipnan Samiti Maryadit Near F.C.I. Godown ,damdha ,naka ,durg ,tahsil And District Durg Chhattisgarh.

---- Respondents

For Appellant
For Respondents

Shri Raj Awasthi, Advocate.
None.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board****21/01/2019**

1. Considering the fact that the appellant has filed the instant appeal against the common award passed by the Tribunal in the claim cases filed by the dependents of the deceased, the default as pointed out by the Office stands overruled.
2. Heard on admission.
3. This is insurer's appeal against the award dated 02.11.2018 passed by the 8th Additional Motor Accidents Claims Tribunal, Durg, District Durg, Chhattisgarh in claim cases No.576/2016 & 164/2017.
4. As against the compensation of Rs.59,49,232/- claimed by the unfortunate widow and minor sons of deceased – Balkrishna @ Balkishan Kewat Nishad by filing claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for his death in the motor accident on 26.11.2015, the Tribunal awarded a total sum of Rs.22,03,420/- as compensation along with interest @ 8% per annum from the date of application till its actual payment.
5. The Tribunal, on a close scrutiny of the evidence led by the parties held that the accident had occurred due to rash and negligent driving of Truck bearing registration No.CG

07/CA/6805 by its driver Kamlesh Singh Rajput – respondent No.1 herein; Balkrishna @ Balkishan Kewat Nishad died on account of injuries sustained by him in the accident; the appellant/Insurance Company liable for payment of compensation as it could not establish violation of policy conditions; assessed and awarded the aforesaid sum as compensation.

6. Learned counsel for the appellant submits that the Tribunal has wrongly fastened liability upon the Insurance Company as the Driver of the offending vehicle was not having a valid and effective driving licence on the date of accident to drive the offending vehicle. The Tribunal was also not justified in assessing the income of the deceased on the higher side and further fallen in error by not considering the contributory negligence on the part of the deceased.
7. I have heard learned counsel appearing for the appellant and perused the record of the Tribunal including award impugned.
8. As regards the contributory negligence, the said issue was framed by the Tribunal as an issue no.3 and the Tribunal considering the pleadings of the respective parties, the evidence adduced by them in support thereof and the fact that no any evidence regarding contributory negligence has been adduced by the insurance company held that there

was no contributory negligence on the part of the deceased. Likewise, on the issue of breach of policy conditions, the insurance company has neither examined any witness nor filed any document to substantiate its plea that the driver was driving the offending vehicle at the relevant time without valid and effective driving licence. So far as, quantum of compensation is concerned, from perusal of the impugned award, the manner in which income of the deceased has been assessed, pleading of the claimant, oral and documentary evidence adduced by them in support thereof, this Court is of the opinion that the Tribunal has not committed any illegality in assessing the income of the deceased and thereafter computing the compensation.

9. On the basis of aforesaid discussion, this Court finds no substance in the appeal filed by the Insurance Company. It is accordingly dismissed.

Sd/-
Gautam Chourdiya
Judge