NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1037 of 2015

1. The Oriental Insurance Company Limited, Through its Division Manager, Divisional Office Opposite Rajeev Plaza, Near Bus Stand, Bilaspur, Tehsil & District- Bilaspur (C.G.).

   (Insurer of Offending Vehicle Bearing Regd. No. CG-10F 5480).

---- Appellant

Versus

1. Smt. Anuradha, W/o. Late Harcharan Dass, age-35 years.

2. Yogesh Kumar, S/o. Late Harcharan Dass, age 17 years.

3. Kumari Muskan, D/o. Late Harcharan Dass, age 6 years.

4. Umesh Kumar, S/o. Late Harcharan Dass, age 4 years, Respondent No. 2 to 4 are minors through their Mother Smt. Anuradha, W/o. Late Harcharan Dass, age 35 years,

   All R/o. Village Konchchra, P.S. Kota, Tehsil Kota, District- Bilaspur (C.G.).

5. Brijmohan Sharma, S.o. Gulab Chand Sharma R/o. Village Tikara Kala, P.S. Gaurela, District- Bilaspur (C.G.).

   (Driver of offending vehicle bearing Reg. No. CG-10F- 5480)

6. Munna Lal Patel, S/o. Ram Prasad Patel R/o. Village Jhagrakhand, Post- Pendraroad, Tehsil & District- Bilaspur (C.G.).

   (Owner of Offending Vehicle Bearing Regd. No. CG-10F/5480).

---- Respondents

For Appellant	:Shri Sudhir Agrawal, Advocate.
For Respondents/claimants	:Shri Aanand Kesharwani, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

02.04. 2019

This appeal is by the Insurance Company against the award 06.05.2015, passed by Member Motor Accident Claims Tribunal, Bilaspur (C.G.) in Claim Case No.330/2014, awarding total compensation of 9,12,514/- with interest @ 7.5% per annum from the date of application till realization, fastening liability on the non-applicant No. 3/Insurance Company.

02. As per claim petition, on 16.12.2013, Harcharan Dass Vaishnav (since deceased) alongwith other labours was going in a Mahindra Max Jeep bearing registration No. CG-10F/5480, near village- Lalpur, non-applicant No. 1- Brijmohan Sharma, the driver of the said vehicle due to rash & negligent driving lost his control and collided with a tree as a result thereof deceased sustained grievous injuries and during treatment he died. The vehicle is owned by non-applicant No. 2 and insured with Non-applicant No. 3.

03. On claim petition being filed by the claimants/ wife & children of the deceased under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellant/Insurance Company submits that the offending vehicle was insured as private car vehicle and at the time of accident in the said vehicle the passengers were being carried on hire & reward basis which is in violation of the policy conditions. He further submits that quantum is also on higher side because income considered as Rs. 5,605/-pm by the learned Tribunal is on higher side. No other issued raised by the Insurance Company.

05. Learned counsel for the respondents No. 1 to 4/claimants appeared in this case and filed IA No. 1, application for disbursing the amount deposited by the appellant. He also opposed the contention made by learned counsel for the appellant/Insurance Company and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no

interference by this Court.

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

07. As per evidence adduced by the claimant no any fact is mentioned in FIR (Ex. P/2) that any reward was taken by the owner of the vehicle and at the time of accident the offending vehicle was not being used on hire basis. As per evidence of Meenakshi Awasthi (NAW No.1) in para 2, she stated that in her report no any statement recorded by any of the witness regarding the fact that the vehicle was being used on hire basis. It is not disputed that as per insurance policy Ex. D/2, the offending vehicle is insured as private car package policy and the sitting capacity mentioned in the policy is 9+1. As per insurance policy vehicle is private car and no any evidence adduced by the Insurance Company regarding the vehicle being used for hire & reward. Therefore, no breach of policy is proved by the Insurance Company. As per evidence of Non-applicant witness No. 1- Meenakshi Awasthi in para 2 & 3 of her statement she stated that there is no evidence available regarding the vehicle being used for hire and reward. Therefore, learned Tribunal rightly fastened liability on the Insurance Company to pay compensation to the claimants as there is no breach of policy.

08. In the instant case quantum is also challenged by the appellant/Insurance Company only on the ground that the income of the deceased considered by the learned Tribunal is on higher side but as per the minimum wages of unskilled labour prevailing at the relevant time, the income considered by the Tribunal is just & proper, therefore

no scope for interference in the award in that regard also.

09. On the basis of aforesaid discussions this Court finds no illegality or infirmity in the impugned award requiring any interference by this Court. Accordingly, there is no substance in the arguments advanced on behalf of the appellant/Insurance Company. Thus, the miscellaneous appeal being devoid of merit is liable to be and is hereby dismissed at admission stage itself. Consequently, IA. No. 1, application for disbursing the amount deposited by the appellant is disposed of.

10. No order as to costs.

Sd/-

(Gautam Chourdiya)

Judge

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