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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 106 of 2014

- Branch Manager Sri Ram General Insurance Company Ltd. Branch Office- Maruti Height Fourth Floor, Tatibandh, Raipur, Distt. Raipur C.G.

---- Appellant

Versus

1. Smt. Bharti Sharma W/o Late Dusiyant Sharma Aged About 38 Years (claimant)

2. Shashank Sharma S/o Late Dusiyant Sharma Aged About 16 Years

3. Ku. Shradha Sharma D/o Late Dusiyant Sharma Aged About 12 Years

   Appellants No. 2 & 3 through Bharti Sharma Natural Guardian (Mother), All resident of Dhanlaxmi Nagar, Bhanpuri, Tahsil – Raipur, Zila Raipur (CG)

4. Ramji Manjhe S/o Shyam Manjhe Aged About 57 Years R/o Gram And Post- Raigarha, Distt. Raigarha Orissa. (Driver of Truck No. OR 18C 3156)

5. Manglu Gauda S/o Hari Gauda R/o Khetanji Bangla, Ghandi Nagar, Distt. Raigarha Orissa. (Owner of Truck No. OR 18 C 3156)

---- Respondents

For Appellant	:	Shri Deepak Gupta, Advocate.
For Respondent No.1 to 3	:	Shri Shivendu Pandya, Advocate.
For Respondent No.4 & 5	:	None though served.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

11/02/2019

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 30th October, 2013 passed by 7th Additional Motor Accident Claims Tribunal, Raipur (CG) in Claim Case No. 40/2012 awarding total compensation of Rs. 14,82,940/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No.3 jointly and severally alongwith non-applicants No. 1 & 2/driver & owner.

02. As per claim petition, on 11.1.2012 deceased Dushyant Sharma, 40 years, earning Rs.8,000/- per month as Office Supervisor in U.P. Structure Pvt. Ltd., was going on his motorcycle bearing No. CG 04 DD 7760. However, on the way, non-applicant No.1 by driving the truck bearing No. OR 18C 3156, owned by non-applicant No.2 and insured with non-applicant No.3, in a rash and negligent manner, dashed the motorcycle of Dushyant Sharma, as a result of which Dushyant Sharma suffered grievous injuries and succumbed to the same.

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 is breach of policy conditions on the part of non-applicant No.2/owner as the driver/non-applicant No.1 was not having a valid and effective driving licence on the date of accident and further, the offending vehicle was being plied without permit and fitness certificate. The breach of policy conditions has been duly proved by NAW-2 Naval Kishore Sharma, Sales Executive of the insurance company. On this ground, the insurance company is not liable to pay any compensation to the claimants. Alternatively, he argued that income of the deceased has been considered by the Tribunal on higher side without there being any specific evidence in this regard. The document of Ex.P/8 i.e. salary slip of the deceased cannot be taken into consideration because the institution issuing the said certificate is not the registered institution. Under the other heads also, the amount awarded by the Tribunal is on the higher side.

05. On the other hand, learned counsel for the

respondents/claimants supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly fastened liability on the insurance company and awarded compensation in favour of the claimants which needs no interference by this Court.

06. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

07. Heard learned counsel for the parties and perused the material available on record.

08. As regards breach of policy conditions, NAW-2 Nawal Kishore Sharma, Sales Executive of the insurance company, in paras-2 & 3 has stated that the investigator had given notice Ex.D/2 to non-applicant No.2/owner for producing the driving licence and fitness certificate of the offending vehicle, but the same have not been submitted by non-applicant No.2. However, in this case, the investigator of the insurance company has not been examined. As per Ex.P/5 i.e. seizure memo, all the relevant documents i.e. RC Book, driving licence, insurance policy and fitness certificate of the offending vehicle were seized by the investigating officer. In the said seizure memo, particulars of the RC Book, driving licence, fitness certificate and insurance policy have been specifically mentioned. As such, when particulars of the aforesaid documents were available, the insurance company could have ascertained the authenticity of the said documents by proper examination. However, the insurance company has failed to adduce any evidence which could show that the aforesaid documents were not valid and effective on the date of accident. In these circumstances, the Tribunal was justified in fastening liability upon it.

09. As regards quantum of compensation, the Tribunal considering the documents of Ex.P/8 i.e. salary slip, Ex.P/9 & P/10 i.e. salary register, evidence of AW-2 CS Rajji, Accountant in U.P. Structure Pvt. Ltd. where the deceased was working, NAW-1 Arunath Mandal, Superintendent of Employees State Insurance Corporation and further considering that the evidence of the aforesaid witnesses remained

unrebutted in cross-examination, assessed the monthly income of the deceased as Rs.8000/-, which cannot be faulted with. Further, considering the facts and circumstances of the case, the fact that the deceased died leaving behind his young wife and minor children, keeping in view the decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680*** and ***Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal No.9581/2018 arising out of SLP (Civil) No.3192/2018***, the amount awarded by the Tribunal towards total loss of dependency and other conventional heads cannot be said to be excessive or exorbitant, rather it appears to be just and proper.

10. In the result, the appeal filed by the insurance company being without any substance is hereby dismissed.

Sd/

(Gautam Chourdiya)

Judge

Khan