NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1063 of 2014

The Oriental Insurance Company Ltd. Thru- Its Branch Manager, Branch Office- Manendragarh Road, Near Ambedkar Chowk, Ambikapur, Distt. Sarguja C.G.

---- Appellant

Versus

1. Smt. Meena Gupta W/o Late Suresh Kumar Gupta Aged About 36 Years, Caste-Halwai.
2. Rahul Gupta S/o Late Suresh Kumar Gupta, Caste-Halwai, Aged About 14 Years Minor, Thru- Mother Smt. Meena Gupta.
3. Rohit Kumar Gupta S/o Suresh Kumar Gupta Aged About 9 Years Minor, Thru- Mother Smt. Meena Gupta.

   All are R/o. Satpata, Thana- Bishrampur, Distt. Surajpur C.G.
4. Deep Chand Agrawal S/o Narsingh Das Agrawal R/o Village And Post-Barion, Tah. Rajpur, Distt. Balrampur C.G.
5. Laxmi Prasad Singh S/o Balsai Gond Aged About 24 Years R/o Dwarika Nagar, Jangalpara, Post- Latori, Thana- Jainagar, Tah. And Distt. Surajpur C.G.

---- Respondents

For Appellant	:	Smt. Chitra Shrivastava, Advocate.
For Respondent Nos.1 to 3	:	None.
For Respondent Nos.4 & 5	:	Ms. G.K. Chawla, Advocate on behalf of Ms. Sharmila Singhai, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

19/06/2019

1. Appellant- Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the award dated 24.07.2014 passed by learned Motor Accident Claims Tribunal,

Surajpur, Distt. Surajpur, C.G, (for short 'the Tribunal") in Claim Case No.119/2013 whereby the Tribunal allowed claim application in part and awarded total sum of Rs.45,78,080/- as compensation in a death case alongwith interest @ 8% p.a. and fastened liability upon insurance company/appellant herein to pay amount of compensation to claimants.

2. Brief facts necessary for disposal of this appeal are that on 25.09.2013, Suresh Kumar Gupta (since deceased) was going to his work place on his Scooty i.e. Latory Nawapara colliery. On the way, near Latory Nawapara colliery, one Truck bearing registration No.CG15/AC/0753, (hereinafter shall be referred to as "the offending vehicle") driven by non-applicant no.3/respondent No.5-Laxmi Prasad Singh (driver of offending vehicle), dashed against his scooty as a result of which said Suresh Kumar Gupta sustained grievous injuries on various parts of his body and died on spot.

3. On account of death of Suresh Kumar Gutpa (deceased) in a road accident, claimants/respondents No.1 to 3 -herein, who are wife and children of deceased, filed a claim application under Section 166 of the Act of 1988 seeking total compensation of Rs.94,77,440/- under various heads on the ground that on the date of accident deceased was 40 years old, he was working as 'Welder' in SECL, Bhatgoan Colliery and earning Rs.37,984/- per month.

4. Non-applicant no.3-/Insurance Company/appellant-herein submitted reply to claim application and denied all adverse pleadings made therein. It was pleaded on behalf of insurance company that accident took place due to negligence on the part of deceased himself. It was further pleaded that amount of compensation awarded by the Tribunal is on higher side. On the date of accident, driver of offending vehicle was not possessing valid and effective driving license and even there was no valid permit and fitness of the offending vehicle and thus there was violation of conditions of insurance policy and therefore insurance company is not liable to indemnify insured.

5. Non-applicant nos. 2 & 3/respondent nos. 4 & 5, who are owner & driver of offending vehicle respectively, have submitted their reply to claim application and pleaded that income of deceased as pleaded by claimants in claim application is on higher. In fact, on the date of accident net income of deceased was Rs.30,000/-. They further pleaded deceased himself without blowing horn of scooty came on road and dashed against offending vehicle. On the date of accident offending vehicle was fully insured with non-applicant No.3-Insurance Company, therefore liability if any would be on insurance company.

6. On the basis of pleadings and evidence placed on records by respective parties, the Tribunal allowed claim application in part and awarded total sum of Rs.45,78,080/- as compensation to claimants.

7. Learned counsel for appellant/insurance company submits that the Tribunal committed error in not deducting amount of income tax from assessed income of deceased. He further submits that Claims Tribunal for the purpose of multiplier, ought to have considered age of deceased as mentioned in postmortem report i.e. 45 years, and not 39-40 years as mentioned in identity card of deceased issued by his employer.

8. Learned counsel for respondent nos.4 & 5 supported the impugned award and submitted that on the basis of evidence available on record the Tribunal has rightly assessed the amount of compensation.

9. I have heard learned counsel for the parties and perused the record.

10. So far as, first ground raised by learned counsel for the appellant/insurance company that the Tribunal committed error in not deducting amount of income tax from the income of deceased on the basis of

salary slip is concerned, perusal of salary slip, which has been marked as Ex.A-17, would show that employer has already deducted amount of income tax from monthly salary of deceased. Income tax is to be deducted either monthly or yearly. In the instant case, income tax has already been paid by the employee (deceased), therefore, first ground raised by learned counsel for the appellant/insurance company is not sustainable and is hereby repelled.

11. Coming to next ground raised by learned counsel for appellant-insurance company that the Tribunal committed error in assessing age of deceased in between 39-40 years for the purpose of applying multiplier instead of 45 years as mentioned in the post-mortem report (Ex.A-8).

12. Claimants have produced identify card bearing No.24905765 of deceased Suresh Kumar Gupta, which has been marked as Ex.A-19. In this identity card, date of birth of deceased has been mentioned as '11.10.1973' and he has been shown to be an employee of SECL, Bhatgaon. This identity Card (Ex.A-19) has been issued by SECL, which is a public-sector company and there is no reason before this Court to disbelieve this document. Age mentioned in post-mortem report is required to be taken into consideration for the purpose of calculating amount of compensation only when there is no other documentary evidence available on record with respect to age of deceased. Thus, this Court is of the opinion that the Tribunal has not committed any mistake in assessing age of deceased on the basis of this identity card, according to which on the date of accident deceased was below 40 years of age.

13. In view of above, second ground raised by learned counsel for the appellant-insurance company is also repelled.

14. In view of the aforesaid discussion, the appellant-insurance company failed to make out its case, calling interference of this Court in the impugned award.

15. Accordingly, appeal being devoid of merit which is liable to be and is hereby dismissed.

Sd /-

(Parth Prateem Sahu)

Judge

Jamal