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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 482 of 2014

1. Branch Manager, Bajaj Alianz General Insurance Company Ltd. Branch Office, Shivmohan Bhawan, Vidhan Sabha Road. PS Pandri, Civil and revenue Dist.- Raipur (C.G.).

---- Appellant

Versus

1. Jerom Bada S/o Late Paskal Bada aged about 60 years,
2. Smt. Bedadetya Bada W/o Jerom Bada, aged about 60 years.

   Both are R/o Patpariya (Dhobipara), PS Ambikapur Civil and Revenue Dist.- Sarguja C.G. (Claimants)

3. Manasranjan Pati D/o Pramod Kumar Pati Prpofesion- Branch Manager Branch Office Axix Bank, Jagdalpur PS Jagdalpur Civil and Revenue District.- Jagdalpur C.G. (Owner).

---- Respondents

For Appellant	:Shri Rohitashav Singh, Advocate on behalf of Shri N. K. Thakur, Advocate
For Respondent No. 1 & 2	:Shri Surfaraj Khan, Advocate
For Respondent No.3	:None

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

27.02. 2019

This appeal has been filed by the appellant/Insurance Company against the 13.3.2014 passed by Motor Accident Claims Tribunal, Sarguja, Ambikapur in Claim Case No. 11/2011.

(2) As against compensation of Rs. 43,68,680 claimed by unfortunate parents of deceased Pravin Kumar, aged about 28 years,

by filing application under Section 163-A of the Motor Vehicles Act, 1988 (for short 'MV Act') for the death of deceased in the motor accident on 26.09.2010, the Tribunal awarded a total sum of Rs. 11,99,500/- as compensation along with interest @ 6 percent per annum from the date of application till its actual payment, fastening liability of payment of compensation upon the appellant/Insurance Company as it could not establish the violation of policy conditions. Aggrieved by the aforesaid award the Insurance Company filed this instant appeal.

(3) Briefly stated facts of the case are that on 26.09.2010 deceased – Pravin Kumar, aged about 28 years working as Sub-Divisional Officer at Public Works Department Jagdalpur, was driving vehicle Maruti Swift bearing registration No. CG 04 /H.7928 on National Highway No. 43 at that point of time another vehicle was coming from opposite side and due to light of the another vehicle deceased lost control on his vehicle and dashed the same into the tree, as a result thereof, which he sustained grievous injuries and when he shifted to Medical college Jagdalpur for treatment, he died on the same day.

(4) Learned counsel for the appellant/Insurance Company would submit that the learned Claims Tribunal did not appreciate the evidence and materials on record on its proper perspective and erroneously passed the impugned award fastening liability upon the appellant/Insurance Company to pay compensation to the claimants. He further submits that the deceased was working as Sub-Divisional Officer and at the time of accident his income was Rs. 29, 287/-pm vide Ex. P/9 and P/10 therefore, the application filed by the claimant under

Section 163-A of the Motor Vehicle Act is not tenable and learned Tribunal wrongly fastened the liability upon the Insurance Company under the provisions of Section 163-A of the Act, 1988. He further submits that the appellant/Insurance Company has specifically taken his defence in his written statement that annual income of the deceased was more than Rs.40,000/- pa and hence the claim petition filed under Section 163-A of the Act, 1999 is not maintainable but the learned Tribunal after considering the income of the deceased awarded a higher amount of Rs. 11,99,500/- as compensation to the claimants, which deserves to be suitably reduced.

(5) On the other hand, learned counsel appearing for the respondents No. 1 & 2/claimants supported the award impugned and submits in the facts and circumstances of the case, the Tribunal has rightly fastened the liability upon the appellant/insurance company and the amount awarded by the Tribunal is also just and proper which does not call for any interference.

(6) Heard and perused the material available on record as well as the award impugned.

(7) The Supreme Court in the matter of **Deepal Girishbhai Soni and Others v. United India Insurance Co. Ltd. Baroda** reported in **(2004) 5 SCC 385**, has held that if the income of the deceased was more than Rs. 40,000/- per annum, the application filed under Section 163-A of the Motor Vehicle Act is not maintainable. In the instant case the learned Tribunal has not taken view in the light of the above stated Judgment of the Supreme Court in the matter of **Deepal Girishbhai Soni and Others (supra)** and passed the award of compensation

fastening liability upon the Insurance Company. Admittedly in this case the income of the deceased was Rs.29,287/-pm and as such the application filed under Section 163-A itself was not maintainable.

(8) In the result the appeal is allowed and the impugned award is hereby set aside. If the Insurance Company has deposited any amount with the Tribunal and as same has not been disbursed to the claimant it shall be entitled to get it back. If the amount so deposited by the Insurance Company has already been disbursed to the claimant, the Insurance Company is entitled to recover the same from the claimants in accordance with law.

Sd/-
(Gautam Chourdiya)
Judge

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