NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1128 of 2014

- The Oriental Insurance Company Limited, Branch Office, D-Commercial, Complex, near Taxi State, T.P. Nagar, Korba, Tahsil and District- Korba (C.G.).

---- Appellant

Versus

1. Smt. Champa Bai Wd/o Late Arun Kumar, aged about 22 years.
2. Ramgopal Maitri S/o Bisahu Lal, aged about 46 years.
3. Smt. Ramabai W/o Ramgopal Maitri aged about 43 years.
4. Mamta Kumari, D/o Ramgopal, aged about 16 years.
5. Kalyani D/o Ramgopal, aged about 8 years.
6. Tulsi Bai W/o Ramgopal, aged about 4 years.
7. Purushottam Singh S/o Late Arun Kumar, aged about 7 months. Minor through his natural guardian mother Smt. Champa Bai (respondent No. 1).

   No. 4 to 6 are minor through natural guardian father Ramgopal Maitri.

   All R/o Village Dongdarha, Police Station Kartala, Tahsil and District- Korba (C.G.).
8. Subhash Chandra S/o Late Ramchandra Ji Agrawal, R/o C/o Hotel Natraj, T.P. Nagar, Korba, Tahsil and District- Korba (C.G.).

---- Respondents

For Appellant :Shri Pankaj Agrawal, Advocate
For Respondent No. 2 :Shri Basant Kavirtiya, Advocate
For Respondent No.8 :Shri Vaibhav Agrawal, Advocate

Hon'ble Shri Gautam Chourdiya, J
Judgment On Board

07.03. 2019

This appeal has been filed by the appellant/Insurance Company against the award dated 26.08.2014, passed by 2nd Additional Motor Accident Claims Tribunal, Korba (C.G.) in Claim Case No. 16/2014.

(2) As against compensation of Rs.27,55,000/- claimed by unfortunate wife, parents & children of deceased- Arun Kumar, 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, the Tribunal awarded a total sum of Rs. 5,76,400/- 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 12.08.2012 deceased – Arun Kumar, aged about 24 years earning Rs. 3300/- as driver on the direction of Non-applicant No. 1 was driving vehicle Trailer bearing registration No. CG 12-S/2418 near Lodhi Nala, Gursiya due to technical fault in the vehicle deceased lost control on his vehicle and it turned turtle, as a result thereof, he sustained grievous injuries and died on the spot.

(4) Learned counsel for the appellant/Insurance Company submits that the learned Claims Tribunal did not appreciate the evidence and materials on record in 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 Tribunal has fallen in error in not holding that the driver was not a third party, therefore, no liability can be fastened upon the Insurance Company. He also submits that at the time of accident the deceased was working under the owner of the vehicle as an employee therefore, the application should have been filed under the Workmen's Compensation Act,1923 but the claimants had filed the application under Section 163-A of the Motor Vehicle Act, therefore, the application filed by the claimants under Section 163-A of the Motor Vehicle Act is not tenable and learned Tribunal has wrongly fastened the liability upon

the Insurance Company under the provisions of Section 163-A of the Act, 1988.

(5) Learned counsel for the respondent No. 8 /owner would support the award impugned.

(6) On the other hand, learned counsel appearing for the respondents/claimants supported the award impugned and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

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

(8) So far as liability fastened upon the appellant/Insurance Company to pay compensation to the claimants is concerned, it is not disputed that at the time of accident the deceased was working under the owner of the offending vehicle and as per insurance policy (Ex. P/6), the policy is package policy and the extra premium of Rs. 75/- was taken by the Insurance Company for the employee of the owner of offending vehicle, therefore as per terms & conditions of the insurance policy, the Insurance company is held liable to pay compensation to the claimants.

(9) The second contention raised by the appellant/Insurance Company that at the time of accident, the deceased was working under the employment of owner of the offending vehicle but instead of filing of claim petition under **Workmen's Compensation Act, 1923,** the claimant had filed application under Section **163-A of the Motor Vehicle Act,** which is not maintainable.

(10) At this stage, it would be appropriate to rely upon Section 167 of the Motor Vehicle Act, which reads as under:

> "**167. Option regarding claims for compensation in certain cases- notwithstanding anything contained in the Workmen's Compensation act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act**

> **and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.**

(11) Applying the provisions contained in Section 167 of the Motor Vehicle Act, 1988 and in the facts and circumstances of the case, it is quite apparent that claimants are not at fault to file claim petition under Section 163-A of the Motor Vehicles Act, 1988 claiming compensation for the death of deceased namely Arun Kumar and, therefore, the Claims 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.

(12) In view of the aforesaid legal analysis, the misc. appeal filed by the appellant/Insurance Company, being devoid of merit, is liable to be and is hereby dismissed. No cost(s).

Sd/-
(Gautam Chourdiya)
Judge

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