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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 318 of 2014**

- Branch Manager, The Oriental Insurance Company Limited
Rajendra Park Chowk, Durg, Tahsil and District Durg C.G.

----Appellant**Versus**

1. Top Singh Sahu S/o Chowaram Sahu Aged About 61 Years
2. Upendra Kumar S/o Top Singh Aged About 40 Years
3. Domendra Sahu S/o Top Singh Aged About 35 Years

All are R/o village Mohrenga, P.S. Berla, Distt. Bemetara C.G.

4. Goutam Singh S/o Chastir Singh R/o Bhawani Bigha, P.S. Silaw,
Distt. Nalanda Bihar
5. Dilip Kumar S/o Late Raghav Prasad R/o Amba Nagar, P.S.
Nurkharai, Nalanda Bihar
6. Pawan Kumar S/o Late Lakhan Sao R/o Sohasarai, P.S. Bihar,
Distt. Nalanda Bihar

---- Respondents

For Appellant
For Respondent Nos. 5 & 6

Shri Pankaj Agrawal, Advocate.
Shri Shrawan Agrawal, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

23/01/2019

This appeal is by the Insurance Company/non-applicant
no.4 against the award dated 20.12.2013 passed by the Additional
Motor Accident Claims Tribunal, Bemetara, District Bemetara, C.G.
in Claim Case No.49/12 awarding total compensation of
Rs.2,04,000/- with interest @ 6% per annum from the date of

application till realization, fastening liability on the non-applicant no.4/Insurance Company.

02. As per claim petition, on 18.05.2010 deceased Amrit Bai Sahu, aged about 60 years, Housewife, died in the motor vehicular accident caused due to rash and negligent driving of Truck bearing no. BR-52-5108 by non-applicant No. 1. Criminal Case no. 189/10 under Section 279, 304A IPC was also registered against the driver of the offending vehicle, charge sheet was filed before Chief Judicial Magistrate and that fact is not disputed by respondent no.4 driver of the offending vehicle and respondents nos. 5 & 6 owner of the offending vehicle.

03. On claim petition being filed by the claimants i.e. Husband and Children of deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.7,00,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

04. Learned counsel for the appellant submits that the Tribunal has wrongly fastened the liability on the Insurance Company as on the date of accident non-applicant no.1 driver was not having a valid and effective driving licence to drive the offending vehicle. He further submits that the claimants have not proved whether there was any nexus between the death of the deceased and the injuries sustained by her in the accident as no postmortem report has been filed by the claimants. He submits that the amount awarded

by the Tribunal is very much on the higher side without there being any cogent and reliable evidence on record.

05. On the other hand, learned counsel for the respondent nos. 5 & 6 supports the impugned award 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. Heard learned counsel for the parties and perused the material available on record.

07. The appellant Insurance Company examined its Administrative Officer Santu Ram Singh NAW-1. He has stated that the photocopy licence of non-applicant no.1 produced by the claimants was sent to their office at Hazari Bagh for verification and the Investigator Abhay Kumar Shrivastava after due inquiry found that licence no. 3384/08 PRO / Hazari Bagh was issued in name of Jagehswar Mehto and not in the name of Gautam Singh (non-applicant no.1), his report is Ex.D-1. Merely on the basis of report of the Investigator it cannot be held that non-applicant no.1 was not having a valid and effective driving licence on the date of accident. No authority from the concerned RTO has been examined by the Insurance Company before the Tribunal. Even the Investigator Abhay Kumar Shrivastava has not been examined before the Tribunal. In these circumstances only on the basis of report Ex.D-1 of the investigator it cannot be said that there was no valid and effective licence with non-applicant no.1 or the licence held by him

was a fake one. Hence, the Tribunal has rightly fastened liability on the Insurance Company on the ground of there being no breach of policy conditions.

08. As per statement of AW-1 Topsingh Sahu, non-applicant no.1 Gautam Singh by driving the vehicle bearing no. BR-52-5108 in a rash and negligent manner run over his wife Amrit Bai, as a result of which she died on the spot. Shatrughan an eye-witness to the accident has supported the contention of the claimant Topsingh Sahu. As per Ex.P-1 FIR under Sections 279 and 304A of IPC was registered against non-applicant no.1, as per Ex.P-2 written information of the accident was given by Topsingh Sahu to the concerned Police Station for taking action against non-applicant no.1 and after investigation charge sheet Ex.P-3 was filed under Sections 279 and 304A of IPC against non-applicant no.1. The above contention has not been denied by non-applicants. In these circumstances, the Tribunal found that death of the deceased was due to injuries suffered by him on account rash and negligent driving of the offending vehicle by non-applicant no.1.

09. The Tribunal considered the notional income of the deceased as Rs.3000/- per month, deducted 50% towards her personal and living expenses as her husband was the only dependent on her, applied multiplier of 9 in view of her age i.e. 60 years, awarded Rs.2000/- towards funeral expenses, Rs.10,000/- towards loss of consortium to claimant no.1, Rs.10,000/- towards loss of parental

consortium to claimant nos. 2 & 3 and Rs.10,000/- towards loss of estate. Thus, the Tribunal awarded a total sum of Rs.2,04,000/- in favour of the claimants with interest @ 6% per annum from the date of application till its realization. Considering the facts and circumstances of the case, the nature and quality of evidence adduced by the parties, this Court notices no illegality or infirmity in the findings recorded by the Tribunal while granting of compensation to the claimants.

10. In the result, the appeal being without any substance is liable to be and is, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge