

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 735 of 2012**

Future Generali Insurance Company Ltd. Through Branch Manager
Near Dhuppad Petrol Pump RKC College G E Road Raipur C G.

---- Appellant**Versus**

1. Mrs. Susheela Bai W/o Late Bablu Diwakar Aged About 25 Years
R/o Village Rampa Thana Kunda Tahsil Pandariya District
Kabirdham C. G.,
2. Ku Dipali D/o Late Bablu Diwakar Aged About 4 Years Minor
Through Mother Smt Susheela Bai R/o Village Rampa Thana
Kunda Tah Pandariya Distt Kabirdham C.G.
3. Ku Reena D/o Late Bablu Diwakar aged about 1 month Minor
Through Mother Smt Susheela Bai Village Rampa Thana Kunda
Tah Pandariya Distt Kabirdham C G.
4. Mrs. Fulmat Bai W/o Late Nanduram Diwakar Aged About 60 Years
R/o Village Rampa Thana Kunda Tah Pandariya Distt Kabirdham
C.G.
5. Narendra Singh Thakur S/o Rampratap Singh Aged About 25 Years
R/o Village Koilari Kampa Post Palasari Thana Pandariya Distt
Kabirdham C.G.
6. Devraj Singh S/o Nem Singh Thakur Aged About 55 Years R/o
Village Majnukampa Post Palansary Thana Pandariya Distt
Kabirdham C.G.

---- Respondents

For Appellant:

Shri Rohitashva Singh, Advocate.

For Respondents:

None, though served.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****01.03.2019**

1. This miscellaneous appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') by Non-applicant No. 3/Appellant-Insurance Company questioning the propriety of the Award dated 30.03.2012 passed by the Motor Accident Claims

Tribunal, Kabeerdham (C.G.) in Claim Case No. 50/2010, by which, the learned Claims Tribunal while allowing the claim petition in part has awarded total amount of compensation to the tune of Rs. 13,56,000/- (Rupees Thirteen Lakhs Fifty-Six Thousand only) with nine percent interest per annum from the date of filing the claim petition till its realisation.

2. Briefly stated the facts of the case are that on 19.06.2010 at 6:00 a.m., the deceased-Bablu Diwakar was coming on his motor cycle and on the way his vehicle was dashed vehemently from its back side by the offending vehicle "Tractor" bearing its Registration No. CG-10 A/4930, which was being driven rashly and negligently by its driver namely-Narendra Singh Thakur (Respondent No. 5 herein) which was owned and insured respectively by Respondent No.6-Devraj Singh and the Appellant-Future Generali Insurance Company Ltd. On account of alleged accident, the deceased sustained injuries badly and was immediately hospitalized where he expired on 20.06.2010.

3. On account of the aforesaid incident, a claim enumerated under Section 166 of the Act has been made by the legal representatives of the deceased by submitting *inter-alia*, that the deceased, 28 years old, was a driver by profession and used to earn Rs. 250/- per day as wages and Rs. 50/- as a daily allowance, thus he used to earn Rs. 9000/- per month. The claimants have thus claimed total amount of compensation to the tune of Rs. 22,50,000/-(Rs. Twenty-Two Lakhs Fifty Thousand only) on account of the alleged accident occurred 19.06.2010.

4. While contesting the aforesaid claim, it was pleaded by Non-applicants 1 & 2, the driver and the owner of the offending vehicle, that deceased himself was responsible for the alleged accident and pleaded

further that in case of any liability being fastened, the same would be indemnified by Non-applicant No. 3, the Insurance Company, as it was insured and was being driven without violating any of the terms and conditions of the insurance policy.

5. Non-applicant No. 3/The Appellant-Insurance Company has contested the claim on the ground that the driver of the offending vehicle, namely, Narendra Singh Thakur was not holding effective and valid driving licence and, thus, it was being used in violation of the insurance policy. It is contested further on the ground that the deceased used to earn Rs. 9000/- per month and pleaded further that since he himself was responsible for the alleged incident, therefore, the Insurance Company is entitled to be exonerated from its liability.

6. The claimants have examined as many as three witnesses in support of their claim, while none was examined by the Non-applicants.

7. After considering the evidence led by the claimants, the learned Claims Tribunal, vide its Award impugned, has arrived at a conclusion that the alleged incident has occurred on 19.06.2010 due to rashness and negligent driving by the driver of the offending vehicle, namely, Narendra Singh Thakur, Respondent No. 5 herein. It held further that the vehicle in question was not being used in violation of the insurance policy and held further based upon the unrebutted statement of Susheela Bai (A.W.-1), widow of deceased Bablu Diwakar as well as the owner of Dhani Travellers, namely, Karan Das Banjare (A.W.-3) that deceased used to earn Rs. 300/- per day and that by assessing his monthly income to the tune of Rs. 9000/- and that by deducting 1/3rd of it, monthly dependency has been worked out at Rs. 6000/-, yearly Rs. 72,000/- and that by

applying the multiplier of 18, awarded total amount of compensation to the tune of Rs. 13,56,000/-(Rupees Thirteen Lakhs Fifty-Six Thousand only) with nine percent interest per annum from the date of filing the claim petition till its realisation.

8. Being aggrieved, the Appellant/Insurance Company has preferred this appeal. Shri Rohitashva Singh, learned counsel for the Appellant submits that the Claims Tribunal has erred in awarding extremely higher amount of compensation by assessing monthly income of the deceased at Rs. 9,000/- even in absence of any documentary evidence in this regard and by applying multiplier of 18, instead of 17. He, therefore, submits that the Award impugned deserves to be modified.

9. I have heard learned Counsel for the Appellant and perused the entire record carefully.

10. On account of the accident occurred on 19.06.2010, the claim petition has been filed by the claimants wherein it has been alleged that on the date of incident, the deceased Bablu Diwakar was coming on his motor cycle which was dashed vehemently from its back side by the offending vehicle "Tractor". Perusal of the evidence would clearly show that the alleged accident has occurred due to rashness and negligent driving by said Narendra Singh Thakur, the driver of the offending vehicle. It appears further from the record that the Insurer has failed to examine any of its witnesses in order to establish the fact that it was being used in violation of the insurance policy. In absence thereof, it cannot be held that the vehicle in question was being used in violation of the policy, as contended. As such, the liability has rightly been fastened upon the Insurer.

11. In order to prove the income of the deceased, the widow of

deceased Susheela Bai (A.W.-1) and the owner of said Dhani Travellers, namely, Karan Das Banjare (A.W.-3) entered into the witness box and have stated very specifically that the deceased used to earn Rs. 250/- per day as his wages apart from daily allowance of Rs. 50/-. According to unrebutted statements of these witnesses, it is evident that the deceased used to earn Rs. 300/- per day while working as a driver of the said Dhani Travellers. It is true that no documentary evidence has been placed on record in this regard, but initial burden in order to prove the income of the deceased was discharged by the claimants, and it was shifted upon the Non-applicants. However, they failed to rebut the same. The learned Claims Tribunal has, therefore, not committed any illegality in assessing the monthly income of the deceased as Rs. 9,000/-. As far as multiplier of 18 is concerned, I do not find that it is on higher side, as contended by the learned counsel for the Appellant. In any case, the Appellant-Insurer cannot question the quantum as its application seeking to contest the claim on all the grounds under Section 170 of the Act has been rejected by the Tribunal vide its order dated 10.02.2012.

12. In view of the foregoing discussions, I do not find any substance in this appeal. The appeal being devoid of merits is dismissed. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE