

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1151 of 2014**

- ICICI Lombard General Insurance Co. Ltd. Thru- Its Legal Manager, ICICI General Insu.Co.Ltd., Ground Floor, Vanijya Bhawan, Devendra Nagar Road, Raipur C.G., (Insurer / Respondent No.3)

---- Appellant**Versus**

1. Manohar Chandrakar, S/o Late Juthel Chandrakar, Aged About 33 Years, R/o Village- Baghahha, Thana- Kunda, Tah. Pandariya, Distt. Kabirdham C.G.,
2. Nand Kumar Sahu, S/o Lekhwaram Sahu, Aged About 20 Years, R/o Atariya Khurd, Post- Damapur, Thana- Kunda, Tah. Pandariya, Distt. Kabirdham C.G.,
3. Suresh Sahu, S/o Lekhwaram Sahu, Aged About 23 Years, R/o Tatakasa, Thana- Kunda, Tah. Pandariya, Distt. Kabirdham C.G.,

---- Respondents

For Appellant	:	Shri Amrito Das along with Ms. Pratibha Das, Advocate
For Respondent 1	:	None, though served.
For Respondents 2 & 3	:	Ms. Upasana Mehta appears on behalf of Shri Dharmesh Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal**Award/Order on Board.****05.12.2019**

1. This Miscellaneous Appeal has been preferred by Non-Applicant No.3 – ICICI Lombard General Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the legality and propriety of the award dated 29th September 2014 passed by the Motor Accident Claims Tribunal, Kabirdham (Kawardha) in Claim Case No.88/2013 whereby the Claims Tribunal, while allowing the claim in part, awarded total amount of compensation to the tune of Rs.3,84,000/- with interest @ 7% per annum from the date of filing of claim petition till its realisation, if the

same has not been deposited within a period of 2 months from the date of award, while fastening the liability upon Non-Applicant No.3/insurance company. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that on 19.07.2013 when Piyariya Bai was crossing the road towards her home, at that juncture, she was dashed vehemently by the offending vehicle motorcycle bearing registration No.CG-09/H-4323, which was owned by Non-Applicant No.1 Nand Kumar Sahu and insured with Non-Applicant No.3, ICICI Lombard General Insurance Company Limited. At the relevant time, it was being driven in a rash and negligent manner by its driver Suresh Sahu, Non-Applicant No.2. As a result of which, Piyariya Bai sustained serious injuries and expired during the course of her treatment in Hospital.

3. On account of the aforesaid accident, her son Manohar Chandrakar, being a legal representative, instituted a claim petition under Section 166 of the Act of 1988 claiming total amount of compensation to the tune of Rs.6,50,000/- under various heads by submitting, inter alia, that his mother was a vegetable vendor and used to earn Rs.12,000/- per month.

4. The Non-Applicants have contested the aforesaid claim. Non-Applicant No.3, the insurer, contested the claim mainly on the ground that the deceased herself was responsible for the alleged accident and since the driver was not holding the valid and effective driving license, therefore, no liability could be fastened upon it.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 19.07.2013 due to rash and negligent driving by its driver Suresh Sahu resulting in the sad demise of

Piyariya Bai. It held further that the insurance company has failed to establish the fact that the driver of the offending vehicle was not holding the effective and valid driving license. As a consequence, while assessing the monthly income of the deceased to the tune of Rs.6,000/- and that by deducting half of it, awarded total amount of compensation to the tune of Rs.3,84,000/- with interest as mentioned herein above.

6. Being aggrieved, Non-Applicant No.3/insurer has preferred this appeal. Shri Amrito Das, learned counsel appearing along with Ms. Pratibha Das for the Appellant submits that since the Applicant was a major son and was not dependent upon the deceased, therefore, he is not entitled for any amount of compensation, except for the statutory amount, as provided under the head of 'no fault liability' under Section 140 of the Act of 1988. In support, he placed his reliance upon a decision rendered in the matter of *Manjuri Bera (Smt.) vs. Oriental Insurance Company Ltd. And another* reported in (2007) 10 SCC 643.

7. Ms. Upasana Mehta, learned counsel appearing on behalf of Respondents No. 2 & 3 has adopted the contention of the learned counsel for the Appellant.

8. I have heard learned counsel for the parties and perused the entire record carefully.

9. The main contention of the Appellant herein is that since the Applicant being the major son was not dependent upon his mother, the deceased, therefore, he is not entitled for any amount of compensation except for the amount, as provided under the said provision of the Act of 1988. In order to consider the said contention, I have examined the entire record carefully. According to the statement of Claimant Manohar Chandrakar, particularly,

para 10, his wife and children were dependents upon his mother and in cross-examination, it was deposed further that his mother was not dependent upon him. His evidence was duly corroborated by Shiv Kumar Yadav (A.W.2). The evidence of these witnesses could not have been rebutted in their cross-examination. That apart, it has neither been pleaded nor adduced any evidence by the Non-Applicants in order to disprove the said fact. As such, it appears that the Applicant, though major, was dependent upon his deceased mother. In such circumstances, the reliance as placed upon a decision rendered in the matter of **Manjuri Bera (Smt.) vs. Oriental Insurance Company Limited** (supra) is distinguishable from the facts involved in the present case as in the said case, a claim was made by a married daughter, who was admittedly not dependent upon her deceased father.

10. Having considered the facts and circumstances of the case, considering further the aforesaid un-rebuttal statement of the Claimant, I do not find any substance in this appeal. The appeal, being devoid of merit, is hereby dismissed. No order as to costs.

Sd/-
(**Sanjay S. Agrawal**)
Judge