NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1379 of 2017

1. The Oriental Insurance Co., Through its Branch Manager, Itwari Bazar, Raigarh, Tahsil and Distt.- Raigarh (C.G.)

   {Now represented through its Divisional Manager, IIIrd Floor, Rahul Complex, Above Axis Bank, Jagatpur, Dhimrapur Road, Raigarh (C.G.)}

---- Appellant

Versus

1. Bindu, W/o Durandas Mahant, aged about 32 years, Occupation 'Ashritaa', R/o Village Tenda (Nawapara), PS & Tahsil Gharghoda, Distt.- Raigarh (C.G.)
2. Rampyare, S/o Heerasai Ghansi, aged about 25 years, Occupation Driver, R/o Kudekela, P.S. Batauli, Distt.- Sarguja (C.G.).
3. Basant Kumar, S/o Gambhirsai, aged about 42 years, Occupation- Bus Operator, R/o Kudekela, P.S. Batauli, Distt.- Sarguja (C.G.).
4. Duran Das, S/o Bachandas, aged about 34 years, Occupation- Shop Keeping, R/o Lamikhar, P.S. Chhaal, Tahsil Dharamjaygarh, Distt. Raigarh (C.G.).

---- Respondents

For Appellants	:	Shri R. N. Pusty, Advocate.
For Respondent No.3	:	Shri A. N. Pandey, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

26.03.2019

This is insurer’s appeal against the award dated

30.06.2017, passed by Second Additional Motor Accident Claims Tribunal, Raigarh (henceforth, 'the Tribunal') in M.A.C.T. No. 107/2015.

2. As per award, mother of deceased- Anurag, aged about 4 years, filed an application under Section 166 of the Motor Vehicles Act, 1988 (for short "MV Act, 1988") seeking compensation along with interest for the death of his son – Anurg, aged about 4 years.

3. Learned Claims Tribunal after considering all the aspects of the matter, awarded a total compensation of Rs. 4,00,000/- alongwith interest @ 6% per annum from the date of application till its reliazation, fastening liability upon the driver, owner and insurer of the offending vehicle jointly and severely.

4. Facts of the case leading to filing of this claim petition are that when on 09.07.2015 at about 4.50 pm Anurag aged about 4 years, who is the only son of the mother/claimant, was playing near petrol Pump, non-applicant No. 2- Rampyare while driving the offending vehicle Tractor bearing No. CG 15 A 9947 dashed him, as a result of which he sustained grievous injuries on his head and other part of the body and succumbed to the injuries.

5. Learned counsel for the appellant/Insurance Company submits that deceased was travelling on the tractor in which there is only one sitting capacity of driver and no premium was paid by the owner for covering the risk of the deceased who was travelling as a gratuitous passenger. He further submits that learned Claims Tribunal considering the statement of Leeladhar (AW-2) only and ignoring the FIR vide Ex. P/1 filed by the claimant herself, in which it is narrated that

the deceased was sitting in the tractor as a gratuitous passenger; which aspect is also proved from Ex.D/5 (Naksha Panchnama) and final report (Ex.D/7) and further from the charge-sheet filed before the concerned Magistrate by recording a finding that the deceased was sitting in the tractor as a gratuitous passenger has occupied the plea of claimant that deceased was playing on road. Therefore, the learned Tribunal is absolutely unjustified in fastening the liability upon the appellant/Insurance Company. He further submits that the Claims Tribunal has fallen in error in applying multiplier of 18 in place of 15 looking to the age of the deceased –Anurag. He placed reliance upon the judgment of the Supreme Court in the matter of **Reshma Kumari & Ors. Vs. Madan Mohan & Anr.** reported in **II(2003)ACC907(SC)** in support of his submission.

6. Learned Counsel for the respondent No. 1/claimant while supporting the impugned award submits that Leeladhar was the eyewitness to the incident and no evidence in rebuttal was adduced by the Insurance Company except chargesheet filed before the Tribunal and, therefore, the Claims Tribunal has rightly fastened the liability upon the Insurance Company, which does not call for any interference in the instant appeal.

7. I have heard learned counsel appearing for the parties and perused the award impugned.

8. It is not disputed by both the parties that the accident occurred due to rash and negligent driving by the driver of the offending vehicle and as a result thereof deceased sustained grievous injuries and succumbed to these injuries. It is also an undisputed fact that as per

Insurance policy appellant/insurance company has not undertaken the risk of gratuitous passengers sitting in the Tractor-trolley.

9. The Only issue for consideration before this Court is that whether at the time of accident the deceased was sitting and trevelling in the tractor or not?

10. Learned Tribunal has clearly recorded a finding that at the time of accident, the deceased was playing near petrol pump and driver of the offending vehicle dashed the deceased due to which he died. Before the Claims Tribunal two sets of evidence are available; firstly, the evidence of NAW- 2 – Leeladhar, who is the eyewitness to the incident and secondly charge sheet (Ex. D/7) filed against the non-applicant No. 1, Leeladhar (NAW-2) was examined before the Claims Tribunal and he is also the witness of seizure memo and inquest report. Learned counsel for the appellant has laid emphasis on the documents produced by the claimant i.e. FIR(Ex. P/1) and chargesheet (Ex. D/7). As per charge sheet (D/7) Leeadhar is the witness to the incident and his statement is recorded and he was also the witness of the seizure memo and inquest report. Non-applicant witness No. 2- Leeladhar deposed before the Tribunal that the deceased was playing in corner of the road and driver of the offending vehicle dashed the deceased due to which he sustained injuries and died. No any confrontation with the inquest report and previous statement was made to the non-applicant witness No. 2 before the Tribunal by the Insurance Company, therefore, the non-applicant witness No. 2- Leeladhar is the actual eyewitness of the accident examined by the claimant. No other evidence was adduced by the

appellant/Insurance Company of any other eyewitness before the Tribunal or the statement of non-applicant witness No. 2-Leeladhar was confronted before the Tribunal.

11. Learned counsel for the appellant/Insurance Company submits that once the document is admitted on record on behalf of claimant can not be permitted to adduced any contrary oral & documentary evidence in view of the judgment of the Supreme Court in the matter of **Oriental Insurance Co. Ltd. Vs. Premlata Shukla & Ors** reported in **2007 AIR SCW 3591.** In this judgment it was held that the document was taken on record and it was relied upon, the claimant can not resile from the contents of the document. The instant case, it is also shown that the author of the FIR ASI namely D. Lakhra was not examined by the Insurance Company and that FIR is lodged on the basis of merg intimation. D. Lakra is not the eyewitness to the incident and author is not examined before the Tribunal and only the evidence of non-applicant witness No. 2-Leeladhar who is the eyewitness of this accident has proved this fact that the deceased was playing on the corner of the road therefore, he can be considered as third party, learned Tribunal rightly fastened the liability upon the Insurance Company. In theses circumstances, I do not find any illegality or perversity warranting interference in the instant appeal.

12. Looking to the age of sthe deceased as per settled principle of law laid down by the Supreme Court in the matter of **Reshma Kumar & others (supra) &** ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121*****,** the multiplier of 15 would be applicable instead of 18 as applied by the Tribunal and,

therefore, I propose to re-compute the amount of compensation as under:-

Sl. No.	Heads	Calculation
01.	Income of the deceased (as assessed by the Tribunal)	Rs.15,000/- per annum (as assessed by the Tribunal)
02.	Multiplier of 15 to be applied	Rs. 15,000 x 15=Rs.2,25,000/-
03.	For funeral expenses (as awarded by the Tribunal)	Rs.30,000/-
04.	For mental agony (as awarded by the Tribunal)	Rs.50,000/-
05	For love & affection due to death of her child (as awarded by the Tribunal)	Rs. 50,000/-
06.	**Total**	**Rs. 3,55,000/-**

For the reasons mentioned hereinabove, the appeal is allowed in part. The amount of compensation awarded by the Tribunal i.e. Rs. Rs.4,00000/- is reduced to Rs. **3,55,000**/-. The aforesaid amount shall carry interest @ 6 percent per annum from the date of application till its actual payment. Rest of all the conditions mentioned in the award shall remain intact. The award stands modified to the above extent.

13. Needless to say that the amount already deposited by the Insurance Company with the Tribunal shall be adjusted in the aforesaid amount of compensation assessed by this Court.

Sd/-

(Gautam Chourdiya)
Judge

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