

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 656 of 2013**

- Gajanand S/o Budhgaram Lahre Aged About 36 Years R/o Saraipal Chechang, P.S. Dabhra, Distt. Janjgir-Champa C.G.

---Appellant**Versus**

1. Antram S/o Amarnath Aged About 41 Years
2. Smt. Neeta Bai W/o Antram Aged About 38 Years
3. Kumari Malti D/o Antram Aged About 23 Years
4. Kumari Anjani D/o Antram Aged About 18 Years

All are R/o Jawali, P.S. Dabhra, Distt. Janjgir-Champa C.G.

---- Respondents

For Appellant
For Respondents

Ms. Sharmila Singhai, Advocate.
Mr. Dharmesh Shrivastava, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Order on Board

02/05/2019

1. This is an appeal by the owner of the vehicle/non-applicant under Section 173 of the Motor Vehicle Act against the award dated 11.04.2013 passed by the 2nd Additional Motor Accident Claims Tribunal, Sakti, District Jangir-Champa, C.G. in claim case No. 49/12, whereby the Tribunal in a death case has awarded a total sum of Rs.1,84,500/- with interest at the rate of 7% per annum from the date of application till its realization, fastening the liability on non-applicant.
2. As per averments in the claim petition, on 01.03.2012 at around 15:30 hours, the deceased Rameshwar Kurre, aged about 22

years, earning Rs.3,500/- per month, working as Driver, while driving the vehicle HMT Tractor bearing No.CG13A-6528 attached with Trolley CG13A-6529 owned by non-applicant was going from village Odekera to Saraipali, on account of mechanical fault in the steering and all of a sudden there being cattle in front of the vehicle, the driver of the vehicle Rameshwar lost control over the vehicle, as a result of which the vehicle over turned and Rameshwar having got pressed under the engine of the vehicle, died. It is not in dispute that at the time of accident, the vehicle in question was not insured.

3. On claim petition being filed by the claimants i.e. Parents and Sisters of deceased under Section 163A of the Motor Vehicles Act for compensation to the tune of Rs.12,80,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.
4. Learned counsel for the appellant submits that though she has raised various grounds in the memo of appeal, however, she is not pressing all those grounds and is assailing the award only on the two grounds that though the vehicle in question is owned by the appellant but the deceased was not his driver and in fact the deceased had taken away the vehicle without his permission and caused the accident for which the appellant/owner cannot be held responsible. This apart the claim petition under Section 163A of the Act itself was not maintainable on the ground that the claimants themselves have pleaded that the deceased was earning Rs.3,500/- per month i.e. Rs.42,000/- per annum whereas for maintaining a claim petition under Section 163A of the Act, the annual income of the deceased

does not exceed Rs.40,000/- per annum. Lastly, he submits that the interest awarded by the Tribunal on the compensation is also on the higher side and needs to be reduced suitably.

5. On the other hand, learned counsel for the respondents supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.
6. Heard learned counsel for the parties and perused the material available on record.
7. No counter appeal has been filed by the respondents as submitted by both the parties.
8. So far as maintainability of the claim petition under Section 163A of the Act is concerned, initially the claimants in their claim petition pleaded that the deceased was earning Rs.3,500/- per month as a driver under the non-applicant, however, subsequently, they filed an application under Order 6 Rule 17 seeking amendment in the claim petition to the effect that the deceased was working as a driver for 11 months and was doing agricultural work for one month and as such his annual income was Rs.38,500/-. No reply to the said application was filed by the non-applicant. The Tribunal after hearing the parties, upon due consideration allowed the said application and permitted the claimants to incorporate the said amendment in their claim petition.
9. AW-1 Aant Ram in is affidavit under Order 18 Rule 4 of CPC in para

3 has specifically stated that the deceased was earning Rs.3,500/- per month as a driver under the non-applicant. In para 4 he has made it clear that the deceased was working as a driver for 11 months and as such his annual income was Rs.38,500/-. AW-2 Resham Lal has also stated in para 3 of his affidavit that the deceased was earning Rs.38,500/- per annum as a driver. Likewise, AW-3 Acheram Bhardwaj has also stated that the deceased was working as a driver under the non-applicant and earning Rs.38,500/- annually. In their cross-examination by the non-applicant, nothing has been brought on record which could render their evidence to the effect that the deceased was working as driver under the non-applicant and earning Rs.38,500/- doubtful.

10. The appellant/non-applicant, owner of the vehicle, has stated that the deceased was not working as a driver of his vehicle and in fact the deceased had taken away his vehicle without his permission and caused the accident for which he lodged an FIR. However, no such FIR is there on record. In the FIR Ex.P-1 lodged by the appellant, it is not mentioned that his vehicle was unauthorizedly taken away by the deceased. Thus, considering the pleadings of the claimants, the oral evidence adduced by the claimants and their witnesses and the fact that no cogent and reliable evidence in rebuttal of the same has been adduced by the non-applicant, this Court is of the opinion that the application filed by the claimants under Section 163A of the Act was maintainable as the annual income of the deceased was pleaded to Rs.38,500/-.

11. As regards the interest awarded by the Tribunal, considering the facts and circumstances of the case, the fact that the accident occurred in the year 2012, the rate of interest prevalent at that time, this Court does not fine the interest on the higher side warranting any interference.

12. In the result, the appeal filed by the appellant/owner being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh