NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 290 of 2014

United India Insurance Company Limited Through Its Divisional Manager, Divisional Office- Sitamani, Main Road, Korba, Distt. Korba C.G.

––------- Appellant

Versus

1. Smt.Raj Bai Wd/o Late Vishnu Prasad Rathore Aged About 49 Years R/o Kailash Bihar, Durri, Hall Mukam- Kashi Nagar, Korba, Tah & Distt. Korba, Chhattisgarh.
2. Sunil Kumar Rathore S/o Late Vishnu Prasad Rathore Aged About 31 Years R/o Kailash Bihar, Darri, Hall Mukam- Kashi Nagar, Korba, Tah. And Distt. Korba, Chhattisgarh.
3. Anil Kumar Rathore S/o Late Vishnu Prasad Rathore Aged About 27 Years, R/o Kailash Bihar, Darri, Hall Mukam- Kashi Nagar, Korba, Tah. And Distt. Korba, Chhattisgarh.
4. Lakheshwar Prasad Sahu S/o Puran Lal Sahu Aged About 36 Years, R/o Shahimudi Thakur Para, Gopalpur, Tah. And Distt. Korba, Chhattisgarh.

---- Respondents

For Appellant:	: Shri Dashrath Gupta, Advocate.
For Respondents No. 1 to 3:	: Shri D. Kushwaha, Advocate.
For Respondent No.4:	: None, though served.

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

08.07.2019

1. This Miscellaneous Appeal has been preferred by the Non-applicant No. 2/United India Insurance Company Limited questioning the propriety of the award dated 06.11.2012 passed by the Motor Accident Claims Tribunal, (hereinafter referred to as the 'Claims Tribunal') Korba in Claim Case No. 190 of 2011, by which, the learned Claims Tribunal while allowing the claim petition in part has awarded total amount of compensation to the tune of Rs. 28,46,794/-(Rupees twenty eight lacs

forty six thousand seven hundred and ninty four only) with 6% interest per annum from the date of filing of Claim Petition till its realisation.

2. Shri Gupta, learned counsel for the appellant submits that the award impugned as passed by the Claims Tribunal is apparently on higher side. According to him, instead of deducting one third, the Claims Tribunal has erred in awarding the total amount of compensation by deducting one fourth. He submits further that the pay slip (Ex.P-5) was not properly considered as a sum of Rs. 7139/- (Rupees Seven thousand one hundred and thirty nine only), which was given to the deceased towards overtime was also required to be deducted. However, without deducting the same, the Claims Tribunal has committed an illegality in awarding the compensation extremely on higher side instead of awarding just and fair compensation to the Claimants.

3. On the other hand, Shri Kushwaha, learned counsel for the Respondents No. 1 to 3, while supporting the award impugned submits that just and proper compensation has been awarded to the claimants and therefore, the same does not require to be interfered.

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

5. A claim enumerated under Section 166 of the Motor Vehicle Act 1988, has been made by the Claimants on account of the death of one Vishnu Prasad Rathore, who was coming by his bicycle on 27.01.2010 and as soon as he reached near the main road Darri, Tehsil Katghora, District Korba, he was dashed vehemently from its back side by the offending vehicle “Motor cycle” bearing its registration No.C.G.-12N-2180, which

was being driven rashly and negligently by the owner/non-applicant No.1 Lakheshwar Prasad Sahu. The vehicle in question was insured with Non-applicant No. 2, the United India Insurance Company Limited, at the relevant time. It is pleaded in the claim petition that deceased Vishnu Prasad, aged 54 years old, was a Plant Assistant in C.G. Electricity Board and used to earn Rs. 50,016/- and, therefore, total amount of compensation has been made to the tune of Rs. 63,00,000/-

6. The aforesaid claim was contested by non-applicant No. 1 on the ground that no accident as such occurred with his vehicle and pleaded further that if it is found that the alleged accident has occurred with his vehicle then since the same is insured with non-applicant no. 2, therefore, in case of any liability being fastened, then he would be entitled to be indemnified by the said Insurance Company. While non-applicant No. 2, the Insurance company contested the claim on the ground that the driver of the offending vehicle was not holding the effective and valid driving license and, therefore, owing to the violation of the Insurance policy, the Insurance Company cannot be held liable for the alleged accident occurred on 27.01.2010. It is contested further on the ground that the amount of compensation as claimed by the claimants is extremely on higher side.

7. After considering the evidence led by the parties, the learned Claims Tribunal, vide its award impugned dated 06.01.2012, arrived at a conclusion that the accident occurred on 27.01.2010 at 10:15 P.M. near Kalmi Duga at main road Darri and due to the said accident, deceased Vishnu Prasad Rathore sustained serious injuries and expired. It held further that the vehicle in question was not being used in violation of

insurance policy and that by assessing the monthly income of the deceased to the tune of Rs. 34874/- (Rupees thirty four thousand eight hundred seventy four only) and by deducting one fourth of it, awarded total amount of compensation to the tune of Rs. 28,46,794/-(Rupees twenty eight lacs forty six thousand seven hundred and ninety four only) with 6% interest per annum from the date of filing of the claim petition till its realization.

8. The aforesaid amount of compensation as assessed by the Claims Tribunal appears to be just and reasonable as the monthly income of the deceased was duly considered to the tune of Rs. 34,874/- at paragraphs 14 and 15 of its award where additional wages, night allowance and incentive award along with income tax have duly been deducted from his pay, as evidenced from Pay-slip (Ex.P.5), in order to ascertain his monthly income. While assessing his monthly income as such, deducted one-fourth of it towards his personal expenses and that by applying the multiplier of 9, awarded the aforesaid amount of compensation by including other heads. Since the provision is enacted for the benefit of the victims, therefore, deduction of one-fourth instead of one-third cannot be held to be unreasonable and as such, I do not find any infirmity in the same. That apart, a deduction of Rs. 7,139/- cannot be made, as contended by learned counsel for the appellant, in absence of any cogent and reliable evidence being adduced in this regard. The amount of compensation, so awarded, as reflected from the analysis of the documents, cannot be held to be unreasonable so as to call for any interference. Considering the totality of the case, I do not find any infirmity in the assessment made by the Claims Tribunal in its

impugned award.

9. Consequently, the appeal being devoid of merit is hereby dismissed. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

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