AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 408 of 2015

- United India Insurance Company Limited, Branch Office, Ambikapur, District- Surguja (C.G.).

---- Appellant

Versus

1. Dineshwar Das S/o Late Kundan Das, aged about 30 years.
2. Smt. Lohmati Bai W/o Kudan Das, aged about 60 years.
3. Yashwant Das S/o Keshwar Das, aged about 18 years.
4. Minor Poonam Das D/o Late Keshwar Das, aged about 15 years.
5. Minor Balwant Das S/o Late Keshwar Das, aged about 10 years.

   No. 4 & 5 are minor, through natural guardian Dineshwar Das S/o Late Kundan Das.

   All are R/o Village Bimda, Tahsil Bagicha, District- Jashpur (C.G.)

6. Ajij Ansari S/o Late Rojid Ansari.
7. Hasib Ansari S/o Rjoid Ansari

   Both are R/o Village Bimda, Tahsil Bagicha, District- Jashpur (C.G.).

---- Respondents

For Appellant	:Shri H. B. Agrawal, Sr. Advocate with Ms. Meera Jaiswal, Advocate
For Respondents	: None appeared though served

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

13.03.2019

(1) This appeal has been filed by the appellant/Non-applicant No. 3- United

India Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (in short “the Act”) against the award dated 11.02.2015, passed by Motor Accident Claims Tribunal, Jashpur District Jashpur in Claim Case No. 10/2013, whereby the Tribunal has awarded a sum of Rs. 8,32,000/- as compensation with interest @ 9% p.a. in favour of the claimants, fastening liability on the Non-applicant No. 3/ Insurance Company. The Tribunal directed that if the aforesaid amount is not paid within a period of one month from the date of award than it shall carry additional interest @ 2% p.a.

(2) As per averments made in the claim petition, on 07.01.2013, Keshwar Das (since deceased), aged about 40 years earning Rs. 4,500/- by doing the work of loading & unloading the goods was coming back to village- Bimda sitting on a tractor bearing No. CG-14/A-3428. Non-applicant No. 2 – Haseeb Ansari was driving the said offending vehicle in a rash and negligent manner, due to which the deceased- Keshewar who was sitting in the left side of tractor fell off the vehicle, suffered grievous injuries and ultimately succumbed to the injuries sustained by him.

(3) On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties by the impugned award granted compensation in favour of the claimant as mentioned above.

(4) Learned counsel for the appellant/Insurance Company in the instant case is challenging the award only on two grounds as under:

(i) that deceased namely- Keshewar was sitting in the tractor whereas sitting capacity of tractor is only one (for driver of the tractor) therefore, appellant/Insurance Company is not statutory liable to cover the risk of person sitting in the tractor nor had assumed such risk by entering into special contract with the owner of the vehicle and by charging extra premium therefor, and therefore, the Tribunal has fallen in error in fastening the liability upon the appellant/Insurance Company.

(ii) that penal interest awarded on the amount of compensation @ 2% is against the law led down by the Apex Court in the matter of **National Insurance Co. Ltd. Vs. Keshav Bahadur & others** reported in **(2004) 2 SCC 370**, which deserves to be set aside.

(5) Heard learned counsel for the appellant/Insurance Company and perused the award impugned.

(6) The first contention made by the appellant/Insurance Company is that Insurance Company has not covered the risk of person sitting in the tractor as except driver there is no sitting capacity in the tractor. As per insurance policy attached with the record of the Tribunal premium of Rs. 50/- was taken by the Insurance Company for WC to employee-1 and as per finding of the learned Tribunal, at the time of accident deceased was working for loading and unloading articles as an employee, therefore, learned Tribunal rightly fastened the liability upon the Insurance Company to pay compensation to the claimants.

(7) So far as the interest part is concerned, in the matter of **Keshav Bahadur & others (supra)** relied upon by the appellant it is held as under:

> **"penal rate of interest- awarding of retrospective enhancement of interest for default amounts to imposition of penalty which is neither statutorily envisaged nor prescribed- once discretion has been exercised by the Tribunal awarding simple interest, there is no scope for retrospective enhancement-- but insurer cannot withhold the awarded amount indefinitely."**

In view of above decision, award of penal interest @ 2% on the compensation amount by the Tribunal is not legally sustainable and the same is liable to be set aside.

(8) For the reasons mentioned above, the appeal is allowed in part with

modification in the impugned award to the extent of penal interest. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

Amita