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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 557 of 2015

- The New India Assurance Company Branch Baloudabazar Through Authorized Signatory For The New India Assurance Company Limited Divisional Office Opposite Rajiv Plaza Old Bus Stand Bilaspur (C.G.)

---- Appellant/Insurer/Non-applicant No.3

Versus

1. Bitavan Bai aged 23 years Wd/o Hussain Sahu
2. Bansram Sahu aged 60 years S/o Mayaram Sahu
3. Smt. Diyas Bai aged 40 years W/o Bansram Sahu

   Respondents No.1 to 3 R/o Village Konari Tehsil Palari, P.S. Kasdol, District Baloudabazar (C.G.)

   (Claimants)
4. Padman Das Manikpuri aged 25 years S/o Barsan Das Manikpuri R/o Surguli, P.S. Bilaigarh District Baloudabazar(C.G.)

   (Driver of the Bus No.C.G.04/E/4055/Non-applicant No.1)
5. Toshan Lal Sahu aged 48 years S/o Fanduram Sahu R/o Village Kodwa Tehsil Palari District Baloudabazar (C.G.)

   (Owner of the Bus No.C.G.04/E/4055/Non-applicant No.2)

---- Respondents

For Appellant	:	Shri B.N. Nande, Advocate
For Respondents	:	None

Hon’ble Shri Justice Gautam Chourdiya, J

Judgment on Board

26.02.2019

1. This appeal is by the Appellant/Insurance Company under Section 173 of the Motor Vehicles Act, 1988 against the award dated 26.02.2015 passed by the Motor Accident Claims Tribunal, Baloudabazar, District Baloudabazar (C.G.) in Claim Case No. H 25/2013 awarding total compensation of Rs.14,20,064/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No. 1 & 2/driver & owner jointly and severally while exonerating the Insurance Company of its liability on the ground of breach of policy conditions. However, the Tribunal has ordered for pay and recover in this case.

2. As per claim petition, on 12.02.2012 while deceased Hussain Sahu was coming from Bilaigarh to Balaudabazar sitting as passenger in the offending vehicle

Bus bearing registration No. CG-04/E/4055 which was being driven by non-applicant No.1 in a rash and negligent manner, it turned turtle on the way near village Nardha Bhatiya, as a result thereof, Hussain Sahu sustained grievous injuries and later on, died during treatment.

3. Learned counsel for the Appellant/Insurance Company has assailed the award of the Tribunal on the two grounds, firstly that on account of there being specific breach of policy conditions when the Insurance Company ought to have been exonerated of its liability, the Tribunal though exonerated it but at the same time ordered for pay and recover and secondly, the Tribunal while computing the compensation has wrongly assessed the income and the amount under the conventional heads on higher side without any justification. Therefore, he prays for setting aside of the order of the Tribunal with respect to pay and recover and reduction of the compensation amount suitably.

4. Heard the learned counsel for the Appellant/Insurance Company and perused the material available on record.

5. So far as order of pay and recover is concerned, admittedly on the date of accident the offending vehicle was duly insured with non-applicant No.3 and the deceased was a third party. Therefore, keeping in view the decisions of the Hon'ble Supreme Court in ***Manuara Khatun and others*** Vs. ***Rajesh Kumar Singh and others, (2017) 4 SCC 796***, this Court is of the opinion that the Tribunal has not committed any illegality in passing the order of pay and recover in this case.

6. As regards the quantum of compensation, the Tribunal has assessed the age of the deceased as 33 years on the basis of postmortem report (Ex.-A/7) and as per Ex.-A/10, a certificate of Chhattisgarh State Bar Council, the deceased was a registered Advocate but no any evidence has been adduced regarding income, the income has been assessed as 10,000/- per month as non-practicing Advocate. Further, the Tribunal keeping in view of the decision in ***Smt. Sarla Verma and others*** Vs. ***Delhi Transport Corporation and another, (2009) 6 SCC 121***, applied the multiplier of 16 and made 1/3rd deduction towards personal and living expenses, which cannot be faulted with. So far as grant of amount under the conventional heads is concerned, considering the principles of law laid down in ***Magma General Insurance Co. Ltd.*** Vs. ***Nanuram @ Chuhru Ram and others in Civil Appeal No. 9581/2018 arising out of SLP (Civil) No. 3192/2018***, the amount of Rs.1,00,000/- towards loss of spousal consortium, Rs.20,000/- towards loss of parental consortium to Claimants No. 2 & 3, Rs.10,000/- towards loss of estate and Rs.10,000/- for funeral expenses awarded under the conventional heads also cannot be said to be excessive or exorbitant.

7. In the result, the appeal filed by the Insurance Company being without any substance deserves to be dismissed and is, accordingly dismissed.

Sd/-

(Gautam Chourdiya)
Judge

vatti