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HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 1344 of 2014**

1. Smt. Geeta Devi Yadav, W/o Late Munna Lal Yadav, Aged About 26 Years, Occupation-Housewife
2. Ku. Komal Yadav, D/o Late Munnalal Yadav, Aged About 7 Years
3. Ku. Kajal Yadav, D/o Late Munna Lal Yadav, Aged About 3 Years
4. Smt. Meeta Devi Yadav, W/o Shrinath Yadav, Aged About 55 Years
5. Shrinath Yadav, S/o Late Ramfer Yadav, Aged About 58 Years
[Appellant No. 2 to 3 being minor on behalf of through their legal guardian mother Smt. Geeta Devi Yadav Appellant No.1]
All R/o R.D.A. Colony, Heerapur, Raipur, Post Office Raipur, Police Station Amanaka, Raipur, District Raipur C.G.

---- Appellants**Versus**

1. Jashwant Singh S/o Prem Singh, Occupation Truck Owner & Transporter, R/o Panjab Roadways, Transport Nagar, Hathkhoj, Bhilai, Post Office Bhilai, Police Station Chhawani, Bhilai, District Durg C.G.
[Register Owner of vehicle Truck bearing registration No.CG07/C/7455]
2. The New India Insurance Company Limited through Divisional Manager, Divisional Office, Kutchery Chowk, Jail Road, Post Office Raipur, Police Station Gol Bazar, Raipur, Tahsil and District Raipur C.G.
[Insurer of owner of vehicle Truck bearing registration No.CG07/C/7455]
3. Sanjay Kumar Thakur, S/o Rajendra Thakur, Aged About 31 Years, R/o Village Aithapali, Post Office and Police Station Aithapali Jogipali, District Sambalpur (Odisha)
[Driver of vehicle Truck bearing registration No.O.R.15/K/9297]
4. Devender Sori, S/o Bhagwandas Sori, R/o Village Khetraipur, Post Office and Police Station Sambalpur, District Sambalpur (Odisha)
[Registered Owner of vehicle Truck bearing registration No.O.R.15/K/9297]
5. The Oriental Insurance Company Limited Through Branch Manager, Branch Office, Jail Road, Raipur, Post Office Raipur, Police Station Gol Bazar, Raipur, Tahsil and District Raipur C.G.
[Insurer of vehicle Truck bearing registration No.O.R.15/K/9297]

---- Respondents

For Appellants	: Shri Dharmesh Shrivastava, Advocate
For Respondent No.1	: None
For Respondent No.2	: Shri Sudhir Agrawal, Advocate
For Respondents No.3 & 4	: None
For Respondent No.5	: Shri Raj Awasthi, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

20.11.2020

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 02.09.2014 passed by the Chief Motor Accident Claims Tribunal Raipur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.28 of 2011 whereby learned Claims Tribunal allowed application filed under Section 163-A of the M.V. Act in part and awarded Rs.8,84,000/- as compensation in a fatal accident case.
2. Respondent No.2/Insurance Company has also preferred cross-objection to the appeal along with an application under Section 5 of the Limitation Act, 1963 (hereinafter referred to as 'Limitation Act') for condonation of delay in filing the cross-objection.
3. We will first deal with application for condonation of delay in filing the cross-objection filed by Respondent No.2/Insurance Company. Cross-objection has been shown to be filed after delay of 1433 days.
4. Shri Sudhir Agrawal, learned counsel for Respondent No.2 submits that after admission of appeal for hearing, no separate notice was issued to the Insurance Company and when the case was listed for hearing, they came to know that appeal was admitted and at the time of preparation, they found that impugned award is required to be challenged on their part,

hence, they have filed cross-objection on 06.03.2019. It is contended that as there was no notice after admission of appeal, cross-objection filed by respondent No.2 to be treated within time. It is further contended that this Court has jurisdiction to condone delay upon considering the application under Section 5 of the Limitation Act, hence, delay occurred in filing the cross-objection be condoned.

5. Shri Dharmesh Shrivastava, learned counsel for the appellants/claimants submits that notice of this appeal was issued by High Court on 18.02.2015. The case thereafter was listed for hearing before learned Single Judge on 15.05.2015, on which date, respondent No.2 was represented through counsel. He further submits that respondent No.2 was well aware of admission of the case, more so, notice was received by respondent No.2 prior to the date of hearing i.e. 15.05.2015. As per provisions under Order 41 Rule 22 of the CPC, limitation of 30 days starts running after receiving notice of the case by the concerned party or his/her pleader. It is further pointed out that in an application for condonation of delay, no satisfactory reason has been assigned explaining delay of each day for condoning the inordinate delay.
6. We have heard learned counsel for the respective parties.
7. Perusal of application filed under Section 5 of the Limitation Act for extension of time for filing cross-objection would show that respondent No.2 has admitted the fact that notice of appeal was served upon it on 05.03.2015. It is pleaded in paragraph-2 of the application that thereafter the case was fixed for hearing on

05.03.2019 and on that date, it revealed that there is requirement to file cross-objection challenging the impugned award. No other ground is raised in the application filed under Section 5 of the Limitation Act. Apart from above, perusal of record would show that respondent No.2 in compliance of mandatory deposit in compliance of Section 173 of the M.V. Act has filed covering memo on 09.11.2020, from which, it is apparent that respondent No.2 has deposited its part of liability vide cheque dated 29.09.2014 of Rs.5,49,766/-. Perusal of order-sheets would show that after issuance of notice on 18.02.2015, case was listed before learned Single Judge on 15.05.2015, on which date, respondent No.2 was represented through counsel and in his presence, appeal was admitted for hearing after condoning the delay in filing the appeal of claimants. Respondent No.2 was well aware of the fact that impugned award was challenged by the claimants as soon as notice was served upon it on 05.03.2015, thereafter, they got knowledge of admission of appeal on 15.05.2015. Respondent No.2 has not taken any step to challenge the impugned award, but rather they have complied with the award by depositing the entire amount of compensation, which fell on its part. The proceedings would show that respondent No.2 has accepted the award and liability fastened upon it to the extent of 50% of the amount of compensation awarded to the claimants. Even otherwise, if respondent No.2/Insurance Company was aggrieved with the findings recorded by learned Claims Tribunal and quantum of award, then it could have filed appeal separately as provided under Section

173 of the M.V. Act, which was not done, but they have accepted the award and complied with their part by depositing the amount of compensation. There is no explanation much less sufficient reason for condoning the delay in an application filed under Section 5 of the Limitation Act, but for the plea that after service of notice on 05.03.2015, the case was listed on 05.03.2019, which is not correct in view of aforementioned discussions.

8. Other aspect of the case is that respondent No.2 has deposited the amount of compensation which might have been disbursed to the appellants/claimants, who have lost their breadwinner in the year 2014 itself and it will be harsh upon poor claimants, if recovery is directed.
9. For the foregoing reasons, we are not inclined to condone the delay as no satisfactory reason has been assigned in the application filed under Section 5 of the Limitation Act. The application filed for extension of time for filing cross-objection is hereby dismissed. As a consequence, cross-objection is also dismissed.
10. So far as the appeal filed by the claimants are concerned, as per facts of the case, deceased Munnalal Yadav was driving Truck bearing No.CG-07/C/7455, owned by non-applicant No.1/respondent No.1 and insured with non-applicant No.2/respondent No.2/Insurance Company. The said truck dashed with another Truck bearing No.OR-15/K/9297 driven by non-applicant No.3/respondent No.3, owned by non-applicant No.4/respondent No.4 and insured with non-applicant No.5/respondent No.5/Insurance Company. In the said accident,

Munnalal Yadav, driver of one of the Truck died. Appellants/claimants filed an application under Section 163-A of the M.V. Act seeking compensation of Rs.12,50,000/- on different heads.

11. Non-applicants No.1, 3 and 4, who are owner of Truck bearing No.CG-07/C/7455, driver and owner of Truck bearing No.OR-15/K/9297 did not appear before learned Claims Tribunal and were proceeded *ex parte*.
12. Non-applicant No.2/respondent No.2/Insurance Company of Truck No.CG-07/C/7455 resisted the claim on the ground that amount of compensation claimed is highly exaggerated. The accident was on account of negligence on the part of deceased himself. Deceased was not a third party, hence, respondent No.2 was not liable to satisfy any amount of compensation. Further, taken a defence that there was no valid and effective driving licence with the deceased and there was no valid permit and fitness of the Truck insured by it.
13. Non-applicant No.5/respondent No.5/Insurance Company of Truck No.OR-15/K/9297, which was owned by non-applicant No.4 and driven by non-applicant No.3 resisted the claim on the ground that amount of compensation claimed is highly exaggerated. They have denied the age and income of deceased. It was further pleaded that there was negligence on the part of deceased himself; adding that, non-applicant No.3 was not possessed with valid and effective driving licence and there was no valid permit and fitness of the Truck insured by it.

14. On appreciation of the pleadings and evidence placed on record by the respective parties, learned Claims Tribunal held that Munnalal Yadav suffered motor accidental death on account of head on collision between two motor vehicles (two Trucks), awarded Rs.8,84,000/- as compensation and fastened liability to satisfy the amount of compensation upon non-applicants No.1 and 2 and non-applicants No.3 to 5 equally i.e. 50% on each Truck owner and insurer. Learned Claims Tribunal assessed the income of deceased as Rs.3,000/- per month, deducted 1/4th towards personal and living expenses, applied multiplier of 17, awarded Rs.4,59,000/- towards loss of dependency and further awarded Rs.4,25,000/- towards other conventional heads, totaling the amount of compensation as Rs.8,84,000/-.
15. Shri Dharmesh Shrivastava, learned counsel for the appellants/claimants submits that learned Claims Tribunal has erroneously assessed the income of deceased as Rs.3,000/- per month instead of Rs.3,200/- per month as pleaded by the claimants in claim application overlooking the occupation of deceased as driver of Truck. It is contended that learned Claims Tribunal has erred in not awarding any amount towards future prospects.
16. Shri Sudhir Agrawal and Shri Raj Awasthi, learned counsel for the respective Insurance Companies jointly submit that learned Claims Tribunal has awarded much more amount than what the claimants are entitled in claim application filed under Section 163-A of the M.V. Act. They further submit that deduction cannot be more than 1/3rd and maximum amount which could be

awarded towards other conventional heads is only Rs.9,500/-, but learned Claims Tribunal already awarded Rs.4,25,000/- towards other conventional heads.

17. Undisputedly, application filed by the appellants/claimants seeking compensation on account of unfortunate death of Munnalal Yadav under Section 163-A of the M.V. Act. In an application filed under Section 163-A of the M.V. Act, amount of compensation to the claimants is required to be awarded strictly in accordance with the Second Schedule formulated under Section 163-A of the M.V. Act. In the Second Schedule, deduction towards personal and living expenses has been shown to be 1/3rd only and there is no provision for varying deductions considering the number of dependents of deceased. Further, under Second Schedule, heads under which, damages to be awarded is also prescribed and amount under each head is also been quantified i.e. Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate and Rs.5,000/- towards loss of consortium to the spouse, but in the case at hand, learned Claims Tribunal has awarded much more amount of Rs.4,25,000/- towards other conventional heads.
18. In view of aforementioned facts and circumstances of the case, we do not find any merit in the submission made by learned counsel for the appellants/claimants. The appeal being devoid of substance, is liable to be and is hereby dismissed.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge