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**IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR**

**MISC. APPEAL [C] NO. 502 /2011**

**MISC. APPEAL UNDER SECTION 173 OF THE MOTOR  
VEHICLES ACT, 1988**

**Division Bench**

**APPELLANT  
INSURER**

**:-**

Reliance General Insurance Company  
Limited, Rectifier House, Naygam  
Cross Road, Vadala, Vadala, west  
Mumbai 400031

Through : its Legal Manager, Reliance  
General Insurance Company Limited  
301, 302 Corporate House 169, RNT  
Marg, Opposite Jhabua Tower, Indore  
(M.P.)

FFN No. 1276/11  
Presented by Smt. [Signature]  
Dated 11-4-11

**VERSUS**

**RESPONDENTS  
CLAIMANTS**

**:-**

1. Smt. Chandna Ghosh W/o Late.  
Pradeep Kumar Ghosh, aged about 45  
years,

2. Ku. Jyoti Ghosh D/o Late Pradeep  
Kumar Ghosh, aged about 18 years,

Both R/o Ward no.16, Haldibadi, P.S.  
Chirmiri, Tahsil Khdgaon, District  
Koriya (C.G.)

**DRIVER**

3. Sanwal Kumar Bharti S/o L\Shri  
Bhuneshwar Chauhan, aged about 37  
years, R/o Village - Bajtera, P.S.  
Sohramau, District - Unnav (U.P.)

**OWNER**

4. Dharmendra Kumar S/o Ramsumer  
Chauhan, aged about 21 years, R/o  
village Malak Pyagi, P.S. Soraon, Post  
- Khargapur, District - Allahabad,  
(U.P.)

present address - Subhash Colony  
Domanheel, P.S. Chirmiri, District -  
Koriya (C.G.)

**APPEAL VALUED AT RS. 22,79,356/-**  
**COURT FEE Rs. 15/-**





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HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH:

HON'BLE MR. I.M. QUDDUSI &  
HON'BLE MR. MANINDRA MOHAN SHRIVASTAVA, JJ.

M.A.[C] No.502/2011

Appellant

Reliance General Insurance Co. Ltd.

Vs

Respondents

Smt. Chandna Ghosh & others

Present:

Mr. Saurabh Sharma, Advocate for the appellant.

ORDER (Oral)

(29<sup>th</sup> April, 2011)

I.M. Quddusi, J:

1. With the consent of the learned counsel for the appellant, heard the matter finally at the admission stage itself.
2. The appellant-Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act, 1988') against the award dated 17.01.2011 passed by the learned 3<sup>rd</sup> Additional Motor Accident Claims Tribunal, (FTC) Manendragarh (CG) (for short 'the Claims Tribunal') in Claim Case No.46/2010 fastening liability on the appellant-Insurance Company to satisfy the award.
3. In the instant appeal the appellant-Insurance Company has challenged the quantum and liability fixed by the Claims Tribunal vide impugned award. However, application of the appellant-Insurance Company filed under Section 170 of the Motor Vehicles Act, 1988 for grant of permission to contest the claim case on all the available grounds has been rejected by the Claims Tribunal vide order dated 06.04.2010.
4. Facts of the case, in nutshell, are that on 14.4.2008 deceased Pradeep Kumar Ghosh was going to his work place i.e. R1 Mine, on his scooter and when he reached near the said mine a truck bearing registration number MP17-C-5351, driven in rash and negligent manner by its driver i.e. respondent No.3 herein, dashed scooter of the deceased, as a result, he

sustained grievous injuries on his head. He was taken to NCPH Hospital where he was declared dead. The claimants, who are widow & daughter of the deceased, had filed a claim petition before the Claims Tribunal seeking compensation to the tune of Rs.37,70,000/- on the ground that the deceased was the sole earning member in the family and due to his death, the claimants have suffered loss of income.

5. The Claims Tribunal vide impugned award dated 17.01.2011 allowed the claim application of the claimants and awarded a sum of Rs.22,79,356/- as compensation along with interest @ 6% p.a. from the date of filing of the claim application till the payment is made. The Claims Tribunal has further directed that if the amount awarded is not paid within a period of two months from the date of passing of the impugned award, interest @ 7% p.a. would be payable.
6. Learned counsel for the appellant-Insurance Company would argue that method adopted by the Claims Tribunal to assess monthly income of the deceased is defective and as such, the amount awarded to the claimants is excessive. He further argued that the Claims Tribunal erred in reaching to the conclusion that the accident was not the result of negligence on the part of the deceased. He also argued that in absence of any provision regarding penal interest in the Act, 1988, the Claims Tribunal has committed a mistake in directing that if the amount awarded is not paid within specified period, the interest shall be payable @ 7% p.a.
7. We have heard learned counsel for the appellant and perused the record of the Claims Tribunal.
8. Section 170 of the Motor Vehicles Act, 1988 reads as under:  
"170. Impleading insurer in certain cases.—Where in the course of any inquiry, the Claims Tribunal is satisfied that -
  - (a) there is collusion between the person making the claim and the person against whom the claim is made, or
  - (b) the person against whom the claim is made has failed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made."

9. In the matter of **National Insurance Company Ltd. Vs. Nicolletta Rohtagi and others** reported in 2003 (3) TAC 293 (SC) the Hon'ble Apex Court has held thus:-

"31. We have already held that unless the conditions precedent specified in Section 170 of 1988 Act is satisfied, Insurance Company has no right of appeal to challenge the award on merits....."

10. From perusal of the record, it is evident that application of the appellant-Insurance Company under Section 170 of the Act, 1988 for permission to contest the case on all available defence has been rejected by the Claims Tribunal vide order dated 6.4.2010. Therefore, in absence of permission under Section 170 of the Act 1988 the instant appeal on behalf of the appellant-Insurance Company challenging the quantum fixed by the Claims Tribunal vide impugned award is not maintainable and the same is liable to be dismissed as such.

Even otherwise, in the application under Section 170 of the Act 1988 the appellant Insurance Company has not been able to point out any collusion between the claimants and the owner & the driver of offending vehicle. Further, the driver & the owner of the offending vehicle, who were non-applicant Nos.1 & 2 before the Claims Tribunal, have filed their written statement and contended that income of the deceased shown by the claimants was excessive. They have also contended about the negligence on the part of the driver and that due to failure of brakes of the truck, the accident had taken place. Thus, it is evident that the claim was seriously contested by the driver and owner of the offending

vehicle and the Claims Tribunal has not committed any mistake in rejecting the application of the appellant filed under Section 170 of the Act, 1988.

11. Now coming to the second limb of argument advanced by learned counsel for the appellant i.e. regarding negligence on the part of the deceased. In this regard the Claims Tribunal has framed Issue No.3 i.e. whether the accident was the result of negligence of the deceased, and after considering the statement of Varun Sharma (AW-2), who had seen the accident and stated that non-applicant No.1/respondent No.3 herein by driving the offending vehicle in a rash and negligent manner dashed Pradeep Ghosh, has recorded a finding that since no evidence has come on record to show that the accident was the result of negligence of the deceased, therefore, Issue No.3 is answered in negative. On the contrary, Issue No.1, which was regarding negligence on the part of the non-applicant No.1-driver of offending vehicle, has been answered by the Claims Tribunal in affirmative. Thus, we do not find any force in the argument of learned counsel for the appellant that the deceased was responsible for the accident.
12. Now coming to the next argument advanced by learned counsel for the appellant that penal interest imposed by the Claims Tribunal @ 7% p.a. is not proper.
13. In the matter of National Insurance Company Ltd. Vs. Keshav Bahadur and others reported in (2004) 2 SCC 370 the Hon'ble Supreme Court has held that "*....direction in the award for retrospective enhancement of interest for default in payment of compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed, the Tribunal has erred in awarding penal interest*". In view of aforesaid settled position of law, we feel that penal interest imposed by the Claims Tribunal @ 7% is not proper and deserves to be set aside.
14. On the basis of above discussion, the instant appeal challenging the quantum part of the impugned award is hereby dismissed as not

maintainable. However, direction of the Claims Tribunal regarding imposition of penal interest @ 7% p.a. in case the amount of compensation is not paid within the stipulated period, is set aside. The appellant-Insurance Company shall pay only simple interest @ 6% per annum to the claimants from the date of filing of the application till the actual payment is made. Rest of the findings of the Claims Tribunal are hereby affirmed. No order as to costs.

15. Certified copy as per rules.

Sd/-  
I.M. Quddusi  
Judge

Roshan/-

Sd/-  
Manindra Mohan Shrivastava  
Judge