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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 244 of 2014**

- Gaukaran Prasad Chandravanshi s/o Tukaru Ram Chandravanshi aged about 55 years r/o. Manikpur, Post- Neuargaon, P.S. Bodala, Distt. Kabirdham C.G.

---- Appellant**Versus**

1. Laljee Chandravanshi S/o Baliram Chandravanshi aged about 46 years r/o. Shyam Nagar, Kawardha, Tah. Kawardha, Distt. Kabirdham C.G.
2. Chaman Maravi S/o Pratap Singh aged about 26 years r/o. Jamunapali, P.S. Chilpi, Tah. Bodala, Distt. Kabirdham C.G.
3. Aatmadev Chandravanshi S/o Siddh Chandravanshi r/o. Jhalmala, Post-Chachedi, Tah. Kawardha, Distt. Kabirdham C.G.
4. Bajaj Alliance General Insurance Co. Ltd., Satanand Chamber, Thru- Giriraj Builders Shop No. 212/213, First Floor, Station Road, Durg C.G.
5. The New India Assurance Company Limited Branch Office, Parakh Bhawan, Station Road Durg Chhattisgarh 491001.

---- Respondents**&****MAC No. 602 of 2014**

- Bajaj Allianz General Insurance Company Limited Thru- Branch Manager, Satanand Chamber, c/o. Giriraj Builders, Shop No. 212/213, First Floor, Station Road, Durg, Distt. Durg C.G. Pin Code 491 001 (alleged Insurance Company of Bolero Jeep No. CG 09/5299).

---- Appellant**Versus**

1. Lalji Chandrawanshi S/o Baliram Chandrawanshi aged about 46 Years r/o. presently at Shyam Nagar, Kawardha, Tah. Kawardha, Distt. Kabirdham C.G. (claimant).
2. Gokaran Prasad Chandrawanshi S/o Tukruram Chandrawanshi aged about 55 years r/o. Manikpur, Post- Neurgaon, Thana & Tah. Bodla, Distt. Kabirdham C.G. (owner of Tractor No. CG 09-C/5473).
3. Chaman Maravi S/o Pratap Singh aged about 26 Years R/O Jamunpani, Thana- Chilpi, Tah. Bodla, Distt. Kabirdham C.G. (Driver of Tractor No. CG 09/C/5473).
4. Atmadev Chandrawanshi S/o Siddha Chandrawanshi r/o. Jhalmala, Post-Chachedi, Tah. Kawardha, Distt. Kabirdham C.G. (Owner of Bolero Jeep No. CG/09/5299).

---- Respondents

Present:

Mr. Pravin Kumar Tulsiyan, counsel for the appellant in MAC No.244/2014 and respondent No.2 in MAC No. 602/2014

Mr. C.P. Lahrey, counsel for respondent No.1/claimant in both the appeals.

None for respondents No. 2 and 3 though served in MAC No.244/2014 and respondents No. 3 & 4 in MAC No.602/2014.

Mr. Sachin Singh Rajput, counsel for appellant in MAC 602/2014 and for respondent No.4 in MAC No. 244/2014.

Mr. Qamarul Aziz, counsel for respondent No.5 in MAC No. 244/2014.

Hon'ble Shri Justice Inder Singh Uboweja

CAV ORDER

08 -12-/2015

1. Since both the appeals arise out of same impugned award dated 19-12-2013 passed by Motor Accident Claims Tribunal, Kabirdham, Kawardha (for short, "the Tribunal") in Claim Case No. 41 of 2011, they are heard together and are being disposed of by this common order.
2. By filing MAC No. 244/2014, Owner of offending vehicle Tractor bearing registration No. CG 09-C/5473 and by filing MAC No. 602/2014, Insurer of vehicle, which was driven by claimant at the time of incident, Bolero bearing registration No. CG-09/5299 have challenged the impugned award dated 19-12-2013 passed by Motor Accident Claims Tribunal, Kabirdham, Kawardha (for short, "the Tribunal") in Claim Case No. 41 of 2011.
3. The facts of the case, in brief, are that claimant / Lalji Chandravanshi filed a claim petition before the Claims Tribunal under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act 1988") claiming compensation to the tune of Rs.9,60,000/- along with interest and costs against the owner and driver and owner of the vehicle Tractor bearing registration No. CG-09-C -5473 and owner of the vehicle Bolero bearing registration No. CG-09-5299 and the insurer of the vehicle for the injuries sustained by him in the motor accident which took place on 04-01-2011.

4. The Tribunal vide award dated 19-12-2013 assessed and awarded Rs.1,55,000/- along with interest @ 7.5 per annum from the date of filing of the application till its actual payment to the claimant for the injuries sustained by him in the said accident, failing which 9% interest would be charged on the total awarded amount, holding that owner and driver of the vehicle Tractor bearing registration No. CG 09-C-5473 and owner of vehicle Bolero bearing registration No. CG-09/5299 and its insurer were liable for payment of compensation jointly and severally. Being aggrieved by the impugned award, these appeals have been preferred.
5. This court allowed the appellant in M.A.C.No.244 of 2014 to add respondent No.5/The New India Assurance Co. Ltd., as a party respondent in this appeal.
6. By filing affidavit, New India Assurance Company Ltd., has admitted the factum of issuance of policy which covers the risk of the offending vehicle.
7. Mr. Pravin Kumar Tulsiyan, learned counsel appearing for the appellant would submit that appellant's vehicle was duly insured with the New India Assurance Co. Ltd., and award has been passed without impleading respondent/Insurance Company as a party respondent in the claim case, therefore, the matter may be remitted back to the concerned Claims Tribunal for decision afresh.
8. Mr. Qamural Aziz, learned counsel appearing for respondent No.5 / The New India Assurance Company Ltd., while admitting issuance of policy of insurance contended that since New India Assurance Co. Ltd., was not a party in the claim petition before the Tribunal, therefore, it has no chance to take any defence which is available to it under Section 149 of the Act,

1988 and therefore, course open is to remand the matter to the concerned Tribunal.

9. Mr. Sachin Singh Rajput, learned counsel appearing for the appellant in M.A.C.No. 602/2014 and for respondent No.4 in MAC No. 244/2014 would submit that the policy of the vehicle i.e., Bolero Jeep bearing registration No. CG 09-/5299 was canceled as the cheque given by the respondent No.4 for premium of policy was dishonoured and the contract of insurance became void *ab initio* and contract of insurance was not in existence. He would further submit that learned Tribunal did not appreciate the evidence and material on record to its proper perspective and erroneously passed the impugned award, therefore, the impugned award passed by the Claims Tribunal be set aside.
10. Per contra, Mr. C.P. Lahrey, learned counsel appearing for respondent No.1/claimant in both the appeals has supported the impugned award.
11. I have heard learned counsel appearing for the parties and perused the impugned award including the records of the Tribunal.
12. Indisputably, the award has been passed by the Tribunal without impleading New India Assurance Company Limited as a party respondent in the claim application. It is also not in dispute that offending vehicle was insured with respondent No.5/New India Assurance Company Ltd., Considering all the facts and circumstances of the case and in view of the above, there is no option left with this Court but to remand the matter to the concerned Tribunal for decision afresh.
13. For the reasons mentioned herein-above, the appeals are allowed and impugned award passed by the Claims Tribunal is set aside. Now the matters are remitted back to the concerned Tribunal for deciding claim petition afresh after affording opportunity to the claimant to implead New

India Assurance Company Ltd., as a party respondent. Needless to mention here that the Tribunal shall afford proper opportunity to the parties to lead evidence and to file additional documents, if any.

14. The claimant need not to refund the amount deposited by the appellants and the Tribunal shall pass appropriate order while passing the award.
15. Records of the Tribunal be sent back forthwith.
16. Parties are directed to appear before the concerned Tribunal on 28-01-2016.
17. No order as to costs.

**Sd/-
(I.S.UBOWEJA)
Judge**

