NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 75 of 2015

1. Smt. Shobha Dubey W/o Rajesh Dubey Aged About 40 Years R/o Smriti Bhawan Ward No. 17, Parakh Complex Near Green Chowk Durg Tahsil & District Durg Chhattisgarh
2. Akansha Dubey D/o Rajesh Dubey aged about 20 years, R/o Smriti Bhawan Ward No. 17, Parakh Complex Near Green Chowk Durg Tahsil & District Durg Chhattisgarh

---- Applicants

Versus

1. Girish Verma S/o Mohan Lal Verma Aged About 29 Years R/o Plot No. 73 Sector 2 Geetnjli Nagar Raipur, Tehsil And District Raipur Chhattisgarh
2. United India Insurance Company Ltd. Through Branch Manager, Branch Office, Tara Complex Power House, G.E. Road Bhilai Tehsil And District Durg Chhattisgarh

---- Respondents

For applicants : Mr. A. C. Sahu, Adv.
For Respondent No. 2 : Mr. Dashrath Gupta, Adv.
For Respondent No. 1 : None though served.

Order On Board

14/09/2015

1. Heard learned counsel for the parties on I.A. No. 1/15 for condonation of delay in filing the revision as the same is preferred after 144 days of its limitation and also on admission.

2. Learned counsel for the applicants submits that as the applicant was house lady, she did not know the process of filing revision before this Court and after getting sufficient information from counsel, she has filed instance revision. Hence the delay is bonafide. Same may be condoned and instant revision be admitted for consideration. It is further submitted on behalf of the applicants that as the award passed by the Claims Tribunal is less than Rs. 10,000/-, hence no appeal against the same can be filed under sub-section (3) of Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act').

3. Learned counsel for the applicants further submitted that before

criminal court, it is held that some other driver was driving the vehicle at the time of accident. Insurance company failed to prove breach on the part of the applicants. Before fastening liability on the applicants, it was the duty of the Tribunal to provide opportunity of hearing to them and the CG State Consumer Redressal Commission, Raipur in Appeal No. FA/12/255 vide order dated 25-7-2012 in para 8 held that at the relevant time the scooty in question was being driven by Shri Rituraj Pandey and he is having valid and effective driving licence. It does not show any breach on the part of applicant. Since the award passed against the applicant by 4th Additional Motor Accident Claims Tribunal, Durg in Claim Case No. 0001648/2013 is perverse. It requires interference and the applicants pray that impugned award dated 28-11-2014 be set aside and the revision be allowed.

4. A perusal of the impugned award shows that the applicants was represented through her counsel. Merely on the ground that she is a house lady, it cannot be held that delay is bonafide. In the considered opinion of this Court as she was well represented it was her duty to obtain advice for further challenge before appropriate authority. Delay is not satisfactorily explained.

5. Consequently, I.A. No. 1/15 is not liable to be allowed.

6. As regards merit of the revision, the applicant has taken the ground that in criminal case, non-applicant No. 1 stated that one Rituraj Pandey was driving the vehicle at the time of accident. CG State Consumer Redressal Forum also reached to the conclusion that at the time of accident one Rituraj Pandey was driving the offending vehicle but learned Claims Tribunal did not believe the fact and wrongly fastened the liability upon the present applicant. As per settled law, before criminal court, a party has to prove its case as per fact before the criminal court. Also for proving any fact before the State Consumer Redressal Forum or before Commission the facts mentioned by the parties have to be proved as per law. So far as the application for compensation filed before the Claims Tribunal is concerned, it is an independent proceeding where the parties are expected to prove their case independently. On the basis of proving a fact before in any other forum, the same fact cannot be held to be

proved in the matter of claims tribunal also. A perusal of the entire facts and evidence goes to show that the applicant failed to prove that she was not driving the scooty thereby she failed to prove this fact as expected from her to prove before claims tribunal. Also the Tribunal held that the vehicle in question was being driven against the terms and conditions of the policy. After appreciation of the evidence and facts, the claims tribunal passed the award and directed the applicants jointly and severely to pay Rs. 8,000/- to the non- applicant No. 1.

7. On due consideration, I do not see any illegality or impropriety in the award passed by the claims tribunal.

8. Consequently application for condonation of delay in filing the revision with a delay of 144 days is dismissed. The revision is also dismissed as not maintainable.

9. No order as to costs.

Sd/-

Chandra Bhushan Bajpai

Judge

Pathak