

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. No. 843 OF 2003**

National Insurance Company Ltd. through its Branch Manager, Bilaspur Office, Bilaspur (C.G.)

---- Appellant**Versus**

1. Smt. Dharmsheela Devi, wife of late Shri Ravendra Kumar Singh, aged about 36 years.
2. Suresh Kumar Singh, son of Ravendra Kumar Singh, aged about 20 years.
3. Brijesh Kumar Singh, son of Ravendra Kumar Singh, aged about 19 years.
4. Kumari Neelu Singh, Daughter of Ravendra Kumar Singh, aged about 18 years.
5. Kumari Neelam Singh, Daughter of Ravendra Kumar Singh, aged about 17 years through next friend M/o Smt. Dharmsheela.

(All the respondents from S. No. 1 to 5 are R/o Village Charcha Colliery, P.S. Charcha, Tahsil Baikunthpur, Distt. Koriya (C.G.)

6. Sanjay Kumar Singh, son of J.P. Singh, aged about 24 years Occupation Contractor, R/o Staff Quarter, Charcha Colliery, P.S. Charcha, Tahsil Baikunthpur, Distt. Koriya (C.G.).

-----Respondents

For Appellant	:	Shri Goutam Khetrapal, Advocate
For Respondents No. 1 to 5	:	Shri D.N. Prajapati, Advocate

Hon'ble Shri Sanjay Agrawal, J.**Award On Board****09/12/2016**

1. This is an appeal filed by the Insurance Company against the award dated 30/06/2003 passed by the Additional Motor Accident Claims Tribunal, Baikunthpur District Koriya, C.G. (hereinafter referred to 'the Claims Tribunal') in Motor Accident Claim Case No. 77/2002 whereby the Claims Tribunal while allowing the claim in part has awarded total compensation of Rs.3,69,500/- by fastening the liability upon the appellant/Insurance Company.

2. Brief facts of the case are that on 25/09/1999 at about 7.45 p.m., Ravindra Kumar Singh was dashed vehemently by the driver of the Scooter namely Sanjay Kumar Singh, who was also owner of the said vehicle and because of the said accident, the deceased Ravindra Kumar Singh had sustained injuries and thereafter expired. The vehicle in question was insured with the appellant/Insurance Company.

3. On account of the aforesaid accident, a claim enumerated under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to 'M.V. Act') has been made by the claimants/legal representatives of deceased by submitting *inter alia* that Ravindra Kumar Singh was performing his duty as Fitter/Helper, Category-II and used to earn Rs.6,500/- per month and, thus, a total amount of compensation of Rs.30,00,000/- was claimed.

4. Non-applicant No. 1-Sanjay Kumar Singh has contested the claim by submitting that the deceased himself was responsible for the alleged accident and, in case, it is found that the alleged accident was occurred because of his rash and negligent driving, then in the said eventuality, he is entitled to be indemnified by the Insurance Company.

5. Non-applicant No. 2/Insurance Company has contested the claim mainly on the ground that the vehicle in question, i.e. Scooter was not insured by it as the policy was issued on 04/10/1999 whereas the accident has occurred prior to that. It is contested further on the ground that the *Deposit Challan* which was issued on 25/09/1999 was in fact a forged and fictitious document and has been prepared by the owner of the vehicle in order to fasten the liability upon the Insurance Company.

6. The Claims Tribunal, vide its impugned award dated 30/06/2003 has come to the conclusion that the alleged accident has been occurred due to rash

and negligent driving of the Scooter driver, namely Sanjay Kumar Singh; held further that the Insurance Company has failed to establish the fact that the same was insured after the alleged accident. In consequence, while fastening the liability upon the Insurance Company, the Claims Tribunal has awarded total compensation of Rs.3,69,500/- with 9% interest per annum from the date of claim petition i.e. 05/01/2001 till its realization.

7. Shri Goutam Khetrapal, learned counsel appearing for the appellant/Insurance Company has argued that the vehicle in question was not insured from its Insurance Company and urged further that the *Deposit Challan*, which was issued on 25/09/1999 was a forged and fictitious document and it has been prepared just to fasten the liability upon the appellant/ Insurance Company.

8. Shri D.N. Prajapati, learned counsel appearing on behalf of non-applicants No. 1 to 5, the claimants, has argued that the Claims Tribunal has rightly passed the award impugned.

9. I have heard learned counsel appearing for the respective parties and perused the record carefully.

10. From perusal of the record, it is clear that a sum of Rs.404/- has been collected by the employee of the Insurance Company towards premium amount of it by issuing a *Deposit Challan* (Ex. NA1-2) in its printed form. It is the submission of Shri Khetrapal, that after the issuance of the said *Deposit Challan* on 25/09/1999, another *Deposit Challan* was issued by the Insurance Company on 01/10/1999 by collecting a premium amount of Rs.384/- from its owner, therefore, under such circumstances, the Insurance Company based upon the earlier forged *Challan*, cannot be held liable to pay the amount of compensation. However, the *Deposit Challan* which was issued earlier on 25/09/1999 was in fact the document, which was issued by the employee of the appellant/Insurance

Company in its printed form. Therefore, the burden was heavily upon the Insurance Company to establish the fact that the same is a forged and a fictitious document by adducing cogent evidence. However, upon examining the written statement filed by the Insurance Company as well as the evidence adduced in this regard would show that the Insurance Company has failed completely to prove the said fact.

11. Even otherwise, the alleged document was issued by the employee of the Insurance Company, therefore, the appellant/Insurance Company is bound by the act of its employee. In any case, the owner being a stranger cannot be held to suffer on account of any mistake or wrongdoing committed by the employee of the appellant/Insurance Company as the relationship of the employer and employee was in existence at the time of accident and the amount of *Deposit Challan* was collected by the appellant/Insurance Company through its employee. Therefore, the finding of the Claims Tribunal in this regard is not liable to be set aside. I, therefore, affirm the same.

12. In view of the forgoing discussions, the appeal is devoid of merit and is hereby dismissed. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge