NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1184 of 2015

Amrendra Kumar S/o Mathura Prasad, Aged About 39 Years R/o Durga Nagar Birgaon, Raipur, P. S. Raipur, Civil & Revenue District - Raipur (Chhattisgarh)

---- Appellant

Versus

1. Kaushilya Bai Wd/o Mayadas Manikpuri, Aged About 39 Years R/o Village Chilpi, Thana Chilpi, Tahsil Bodla, District Kabirdham (Chhattisgarh)
2. Santosh Das S/o Mayadas Manikpuri, Aged About 20 Years R/o Village Chilpi Thana Chilpi Tahsil Bodla District Kabirdham (Chhattisgarh)
3. Neelam S/o Mayadas Manikpuri, Aged About 14 Years Minor, Through Respondent No. 1 Mother, R/o Village Chilpi Thana Chilpi Tahsil Bodla District Kabirdham (Chhattisgarh)
4. Rani D/o Mayadas Manikpuri, Aged About 12 Years Minor, Through Respondent No. 1 Mother, R/o Village Chilpi Thana Chilpi Tahsil Bodla District Kabirdham (Chhattisgarh)
5. Govind Das S/o Gulabdas Manikpuri, Aged About 70 Years R/o Village Chilpi Thana Chilpi Tahsil Bodla District Kabirdham (Chhattisgarh)
6. Gollo Bai W/o Govind Das, Aged About 69 Years R/o Village Chilpi Thana Chilpi Tahsil Bodla District Kabirdham (Chhattisgarh).........(Claimants)
7. Neharu Das S/o Saukhidas Manikpuri, Aged About 45 Years R/o Village Chilpi Thana Chilpi Tahsil Bodla District Kabirdham (Chhattisgarh).......(Driver)
8. Bajaj Alliance General Insurance Company Limited, Branch Raipur, Vidhan Sabha Road, Shiv Mohan Bhavan Pandri, Raipur (Chhattisgarh)........(Insurance Company)

---- Respondents

Shri Ajit Singh, counsel for the appellant/s.
Shri Kaushal Yadav, counsel for respondent No.8 / Insurance Company.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

03/03/2016

The appellant / owner has assailed the legality and validity of order dated

10/08/2015 by which the Claims Tribunal has directed payment of no fault liability to be paid by the appellant / owner.

2. Learned counsel for the appellant submits that at the initial stage, when no full fledged trial has taken place, the Tribunal ought not to have recorded any finding with regard to the ultimate liability of the Insurance Company or the owner. At this stage, what is required to be seen is that the vehicle was insured or not. In the absence of there being any material with regard to vehicle being not insured, the liability for payment ought to be fastened on the insurance company only.

3. On the other hand, learned counsel for the Insurance Company submits that a prima facie consideration has been made by the learned Claims Tribunal that as the vehicle was not plying and the accident was with the standing vehicle, insurance company may not be held liable. He submits that it is a prima facie consideration and not a final order.

4. This Court fails to understand why the Claims Tribunal travelled into the merits of the case. This is not the stage to record any finding with regard to the liability of the Insurance Company or the owner. This would depend only after examination of oral and documentary evidence that may be led by the parties on the basis of their respective pleadings. At this stage, unless there are exceptional circumstances, once it is found that vehicle was insured, the amount of no fault liability ought to be paid by the Insurance Company.

5. In that view of the matter, the impugned order cannot be sustained in law and is accordingly set aside to the extent it directs no fault liability to be paid by the owner of the vehicle.

No fault liability of Rs.50,000/- shall be paid by respondent No.8 / Insurance Company. Appeal is accordingly allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Deepti