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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 860 OF 2010

Shri Ram General Insurance Company, through its Manager and Competent Officer, M.P. Nagar, Bhopal (M.P.)

… Appellant

versus

1. Smt. Phuleshwari, W/o Late Hemant Nishad, aged about 22 years
2. Ku. Shakshi, D/o Late Hemant Nishad, aged about 1 year
3. Ku. Rukhmani, W/o Krishna Murari Nishad, aged about 42 years
4. Krishna Murari Nishad, S/o Lakhan Lal Nishad, aged about 46 years

All Respondents are R/o Village Sondar, P.S. Dharsinwa, District Raipur (C.G.)

(Respondents No. 2 and 3 are minor, through natural guardian mother Smt. Phuleshwari)

5. Mohd. Naim, S/o Mohd. Tahid, aged 50 years, R/o Dhimrapur Chouk, Raigarh, Th. + District Raigarh. Other address: Mohd. Jamaluddin Dmmani, near Petrol Pump, Bhanpuri, Raipur, District Raipur (C.G.)
6. Mohd. Jamaluddin Dmmani, near Petrol Pump, Bhanpuri, Raipur, District Raipur (C.G.)

… Respondents

MISC. APPEAL (C) NO. 832 OF 2010

Shri Ram General Insurance Company, through its Manager, Competent Officer, M.P. Nagar, Bhopal (M.P.)

… Appellant

versus

1. Smt. Uma Bai, W/o Late Roshan Lal Nishad, aged about 24 years
2. Yash Kumar, S/o Late Roshan Lal Nishad, aged about 2-1/2 years
3. Ku. Archana, D/o Roshan Lal, aged about 4 months
4. Smt. Seeta Bai, W/o Mantram Nishad, aged about 45 years

All Respondents are R/o Village Sondar, P.S. Dharsinwa, District Raipur (C.G.)

(Respondents No. 2 and 3 are minor, through natural guardian mother Smt. Uma Bai W/o Roshan Lal Nishad)

5. Mohd. Naim, S/o Mohd. Tahid, aged 50 years, R/o Dhimrapur Chouk, Raigarh, Th. + District Raigarh. Other address: Mohd. Jamaluddin Dmmani, near Petrol Pump, Bhanpuri, Raipur, District Raipur (C.G.)
6. Mohd. Jamaluddin Dmmani, near Petrol Pump, Bhanpuri, Raipur, District Raipur (C.G.)

… Respondents

MISC. APPEAL (C) NO. 847 OF 2010

1. Smt. Uma Bai, W/o Late Roshan Lal Nishad, aged about 24 years
2. Yash Kumar, S/o Late Roshan Lal Nishad, aged about 2 & ½ years
3. Ku. Archana, D/o Roshan Lal, aged about 4 months
4. Smt. Sita Bai, W/o Mantram Nishad, aged about 45 years

Appellant No. 2 and 3 are minor, hence represented by their natural guardian and mother Smt. Uma Bai Wd/o Roshan Lal Nishad, appellant no.1.

All R/o Village Sondar, Thana Dharsiwa, District Raipur (C.G.)

… Appellants

versus

1. Mohd. Naim, S/o Mohd. Tahid, aged 50 years, Occupation- Driver, R/o Dhimrapur Chowk, Raigarh, Tehsil & District Raigarh (C.G.). Present Address: C/o Mohd. Jamaluddin, Near Dammani Petrol Pump, Bhanpuri, Raipur, District Raipur (C.G.) (Driver of Vehicle Truck bearing Registration No. C.G.04/J.A./8674)
2. Mohd. Jamaluddin, near Dammani Petrol Pump, Bhanpuri, Raipur, District Raipur (C.G.) (Owner of Vehicle Truck bearing Registration No. C.G.04/J.A./8674)
3. Shriram General Insurance Company Limited, through Manager, Presiding Officer, Shriram General Insurance Company Limited, Office M.P. Nagar, Bhopal (M.P.) (Insurer of the Vehicle Truck bearing Registration No. CG04/J.A./8674) (Insurance valid from 3/3/09 to 2/3/2010)

… Respondents

- Mr. Ghanshyam Patel, Advocate, for the Appellant-Insurance Company, in MAC No. 860/2010 and MAC No. 832/2010.
- Mr. Suresh Tandan, Advocate, for the Respondents-Claimants, in MAC No. 860/2010 and MAC No. 832/2010 and for Appellants-Claimants in MAC No. 847/2010.
- Mr. Sachin Singh Rajput, Advocate, for Respondent No.3-Insurance Company, in MAC No. 847/2010.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/09/2017

1. The present three appeals, under Section 173 of the Motor Vehicles Act, 1988, arise out of the two awards dated 26.2.2010 passed by the 10th Additional Motor Accident Claims Tribunal (F.T.C.), Raipur, in MACT No. 54/2009 and MACT No. 55/2009 respectively.

2. MAC No. 860/2010 and MAC No. 832/2010 which arise out of MACT No. 54/2009 and MACT No.55/2009 respectively are the appeals preferred by the Insurance Company assailing the award. MAC No. 847/2010 is an appeal preferred by the Claimants, arising out of MACT No.55/2009, seeking enhancement of the compensation awarded by the Tribunal.

3. Insofar as the appeals of the Insurance Company is concerned, the common ground which has been raised in these appeals is, that the Insurance Company has not been allowed to adduce evidence to substantiate their contentions which they had raised. According to the Insurance Company, it was the specific plea in their written statement that the driver of the offending vehicle at the time of accident did not have a valid driving licence. Further, that the matter has been closed by the Tribunal without fixing the date for evidence to the non-applicants. According to the Insurance Company, it is a case where the Claimants closed their right to lead evidence on 24.2.2010 and on the same day the right to lead evidence of the Insurance Company was also closed without even fixing the case for evidence of the Insurance Company. This, according to the Insurance Company, has deprived the chance of the Insurance Company of leading evidence to substantiate their contentions which they had raised in their written statement.

4. During the course of argument, learned Counsel for the Insurance Company submits that the evidence which they intended to be lead was to prove that the driver of the offending vehicle did not have a licence on the date of accident. That the licence which he was having had got expired on 6.5.2007 and which was subsequently renewed only after about more than 3 years' time i.e. on 18.6.2010, whereas the accident in the instant case had occurred during the intervening period when there was no valid licence, i.e., on 4.3.2009. According to the Insurance Company, in case, if the Insurance Company is able to lead evidence in this regard they could be exonerated of their liability of indemnifying the owner of the offending vehicle.

5. Perusal of the order-sheet would clearly show that the contentions which have been stated by the Insurance Company are in fact true as the Claimants' evidence was closed on 24.2.2010 and on the very same date the evidence of the Insurance Company was also closed, after the driver and owner of the offending vehicle had stated that they do not intend to lead any evidence. The order-sheet also speaks that the counsel appearing for the Insurance Company had sought for time to lead evidence but was refused and their right closed on the same date. This, under no circumstances, can be accepted to be a case where the Insurance Company has foreclosed their right to lead evidence or they had, in spite of opportunity being granted, not adduced evidence. It is a case where in fact the Insurance Company has been denied the right to lead evidence. Thus, the award passed, under the given circumstances, is difficult to be sustained and the same deserves to be and is accordingly set aside.

6. Since the parties are present before this Court, they are directed to remain present before the Tribunal on 14.11.2017, on which date the witnesses of the Insurance Company who are under their control may be kept present for leading their evidence. So far as the witnesses who have to be summoned from the office of the concerned Regional Transport Office, necessary summons may be issued calling for their presence and a fresh award may be passed taking into consideration the evidence which shall come on record.

7. It is expected that the Tribunal shall conclude the proceedings at the earliest within a period of 90 days from 14.11.2017.

8. Registry is directed to ensure that the record of the Tribunal, if any, is sent back to the concerned Tribunal forthwith so that the record reaches the Tribunal well in advance.

9. So far as the appeal of the Claimants is concerned, since the impugned award itself has been set aside by this Court in the appeals preferred by the Insurance Company, the appeal of the Claimants has become inconsequential, reserving the right of the Claimants to challenge the fresh award in the event of the Claimants being dissatisfied with the compensation awarded by the Tribunal. The appeal of the Claimants thus also stands disposed of.

10. In the result, the two appeals of the Insurance Company, i.e., MAC No. 860/2010 and MAC No. 832/2010 stand allowed and the appeal of the Claimants, i.e., MAC No. 847/2010, stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

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