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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 363 OF 2001

United India Insurance Company Limited, through the Branch Manager, Dayalband, Bilaspur (District Bilaspur (C.H.)

… Appellant

Versus

1. Nand Kumar Sahu, S/o Late Ghurau Prasad Sahu, aged about 40 years, R/o Birkona, Tahsil & District Bilaspur (C.H.)
2. Kashmir Singh, S/o Didar Singh, aged about 65 years, R/o Tatiband, Raipur (C.H.)

… Respondents

MISC. APPEAL NO. 370 OF 2001

United Indian Insurance Company Limited, through the Branch Manager, Dayalband, Bilaspur (C.G.)

… Appellant

Versus

1. Smt. Tara Devi, W/o Late Murari Lal Sahu, aged about 24 years
2. Damodar Prasadad, S/o Late Murari Lal Sahu, aged about 3 years, Minor, through Guardian Mother-Smt. Tara Devi Sahu
3. Jagdish Prasad, S/o Late Motilal Sahu, aged about 72 years
4. Smt. Roopa Bai, W/o Jagdish Prasad Sahu, aged about 63 years
   All R/o Village Birkona, Tahsil and District Bilaspur (C.G.)
5. Kashmir Singh, S/o Didar Singh, aged about 55 years, R/o Tatibhand, Raipur (C.G.)

… Respondents

For Appellant-Insurance Company	:	Mr. H.B. Agrawal, Senior Advocate, assisted by Mr. Pankaj Agrawal, Advocate.
For Respondents-Claimants	:	Mr. A.L. Singroul, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/08/2017

1. These are the two appeals under Section 173 of the Motor Vehicles Act, 1988, filed by the Appellant-Insurance Company, assailing the common award dated 23.4.2001 passed by the Fourth Additional Motor Accident Claims Tribunal, Bilaspur, in two connected Claim Cases being No. 19 of 1999 and 20 of 1999.

2. The factual matrix of the case so far as the accident is concerned is not in dispute. On 13.2.1999 when the injured-claimant in Claim Case No.

19 of 1999 was going on his Motorcycle No. MP26-KB/3889 along with one pillion-rider Murarilal Sahu, the said motorcycle was hit by a Truck No. MP23-B/9676 which was coming from the opposite direction. The said Truck was being driven and owned by the Respondent - Kashmir Singh and was insured with the Appellant-Insurance Company. As a result of the said accident, the pillion-rider Murarilal Sahu died and the driver of the motorcycle, i.e., the claimant - Nand Kumar Sahu sustained grievous injuries.

3. The Tribunal in a proceeding under Section 166 of the Motor Vehicles Act, 1988, after recording the pleadings and considering the evidence which have come on record, vide the impugned award, has awarded a compensation of Rs. 2,19,000/- and Rs. 26,000/- respectively to the Claimants in Claim Case Nos. 19 of 1999 and 20 of 1999, fastening the liability for payment of compensation upon the owner-cum-driver and insurer of the offending Truck, with interest thereon at the rate of 9% per annum from the date of filing of the claim case with a further direction that in the event if the compensation is not paid within a period of 45 days then the interest shall be at the rate of 12%.

4. It is this award which is under challenge in the present appeals by the Insurance Company.

5. Two grounds have been raised by the Insurance Company assailing the impugned award. The first is, that the cover note of the offending Truck being a fake document and that the offending Truck was never insured by the Insurance Company. The second ground is that the driver of the offending Truck was not having a valid driving licence at the time of accident. In support of the plea being of the Insurance Company that the policy was a fake policy, they have led the evidence of their two witnesses, namely, Chandrakant Vasudev (NAW-1) and D.D. Poptani (NAW-2), both of whom were the officers of the Insurance Company, one from the local office at Korba and the other being an administrative officer of their Bombay office. The witnesses of the Insurance Company have categorically produced documents before the Tribunal proving the aspect that the cover note which had been produced was a fake document. They have stated that the policy which is said to have been produced as the policy of the offending Truck was not in fact in respect of any Truck but was of an Auto Rickshaw plying in Maharashtra. Counsel for the Insurance Company thus prayed for the exoneration of the Insurance Company of its liability to pay compensation.

6. Learned Counsel for the Respondents-Claimants however opposes the appeals and submits that the accident in the instant case is of February, 1999 and the award has been passed on 23.4.2001 i.e. almost 17-18 years ago and that except for the amount already deposited by the Insurance Company, the Claimants have not received any further compensation and who yet denied of their rightful claim. He further submits that the owner-cum-driver of the offending Truck was *ex parte* all along and did not take part in the proceeding either before the Tribunal nor before this Court.

7. Considering the facts and submissions which have been brought on record, both oral as well as documentary, this Court has no hesitation in reaching to the conclusion that the Insurance Company had sufficiently established its case before the Tribunal to the extent of the Company having not issued any policy at all for the offending Truck and the policy which has been produced before the Tribunal was in fact a fake document. What also cannot be lost sight of is the fact that the accident is of almost about 17-18 years ago, the impugned award is again 17 years old and that, at this juncture, if the Insurance Company is exonerated of its liability the claimants would be denied of their rightful claim which fell due almost about two decades ago. At the same time, we can also not ignore the fact that the two witnesses of the Insurance Company have led specific evidence before the Tribunal bringing to the notice of the Tribunal that the policy which is said to have been issued against the offending Truck was not a policy of the said Truck but in fact was an policy pertaining to an Auto Rickshaw No. MH-002/7966 which was issued by the Borivali office of the Appellant-Insurance Company. Thus, from the said evidence, it is evidently clearly that the Insurance Company had not received any premium whatsoever for the offending Truck. In the said circumstances when the Insurance Company has not received any premium covering any risk over the offending Truck, the Insurance Company cannot be fastened with the liability of payment of compensation for indemnifying the owner who himself has played fraud and mischief with the Court as well as with the Insurance Company by producing fake insurance policy for keeping himself exonerated of the payment of compensation part.

8. In the given factual matrix of the case, this Court is of the opinion that the 50% of the amount which has already been deposited by the Insurance Company before the Tribunal may be disbursed to the Claimants if it has not been disbursed till now. However, the Insurance Company would be at liberty to recover the said amount from the owner of the offending Truck. At the same time, the liability of payment of balance 50% of the compensation or the compensation in addition to what has already been deposited by the Insurance Company shall be upon the owner of the offending Truck. In case, if the owner of the offending Truck does not honour the same, the Claimants shall be entitled for initiating appropriate recovery proceeding against the owner of the offending Truck.

9. The two appeals are accordingly allowed. It is held that the Insurance Company stands exonerated from the payment of compensation part except the extent of amount which has not been paid by them till now and the amount which has been already paid by them shall be recovered by the Insurance Company from the owner of the offending Truck.

Sd/-
(P. Sam Koshy)
Judge

/sharad/