NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

Misc. Appeal No. 487 of 2002

Sayed Khan & Another

Vs.

Shri P. Mohanti & Ors.

For Appellants	:	Shri Varunendra Mishra, Advocate.
For respondents	:	Shri HB Agrawal, Sr. Advocate along with Shri Dashrath Gupta and Smt. Meera Jaiswal, Advocates.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

24/07/2017

1. The present appeal under Section 173 of the Motor Vehicles Act is filed against the award dated 14.02.2002 passed by the 4th Additional Motor Accident Claims Tribunal, Durg, in Claim Case No.36/1999. Vide the said impugned award the Tribunal has granted compensation of Rs.2,42,000/-to the claimants along with interest @ 9 percent per annum from the date of application. It is this award which is under challenge in this appeal.
2. Learned counsel appearing for the appellant-owner submits that it is a case where the appellant had duly got the vehicle insured with the respondent No.3 and this fact has not been properly appreciated by the Tribunal while fastening the liability upon the owner and exonerated the insurance company from its liability. It was further contended that the policy admittedly was issued on 18.01.1999 which

is not in dispute. Therefore, since the policy is issued on 18.01.1999 i.e. on the date of accident, it has to be presumed that on the date of accident, the vehicle was duly insured and as such the liability ought to have been fastened upon the insurance company instead of appellant-owner.

3. Counsel for the respondent-Insurance Company however opposes the appeal and submits that the document which was adduced before the Tribunal during the course of evidence clearly reflects that at the time of accident there was no insurance policy and immediately the appellant rushed to the office of insurance company and got the policy issued in the evening as the policy itself reflects that the time of insurance was 7:30 pm whereas the accident took place at around 1:30 in the afternoon. It is further submitted that a criminal case has been registered against the owner of the vehicle where the offence under Sections 279 and 304-A IPC and in addition, offence under Section 146/196 of MV Act was also registered against the appellant-owner for the vehicle being driven without insurance, further strengthens the contention of the insurance company that at the time of accident there was no insurance policy in existence.

4. Having considered the rival contentions put forth on either side and on perusal of record, indisputably, the accident took place on 18.01.1999 at 1:30 pm. At that point of time, the vehicle was not insured. The policy of insurance was taken on the same day in the evening at around 7:30 pm. The record of the court below, more particularly the policy and policy details itself reflects that the

appellant had gone to the office of insurance company and deposited cash payment at around 7:30 pm and only thereafter the policy was issued. Further, from the criminal case which has been registered shows that there is charge levelled against the appellant of not having mandatory insurance policy of the vehicle involved and for which charge under Section 146/196 of the MV Act was also levelled.

5. To add with it, the other entry which goes against the appellant is the fact that while filing the application for release of vehicle on Supurdnama, he himself had submitted that the policy was issued at around 7:30 pm on the date of accident itself which further strengthens the finding of the Tribunal.

6. In view of the same, this court does not find any strong case made out for interference against the award. Thus, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder