NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 878 OF 2006

Rakesh Kumar Agrawal, aged about 36 years, S/o Dhajaram Agrawal, Caste Agrawal, R/o Pathalgaon, Tahsil Pathalgaon, District Jashpur (C.G.)

… Appellant

Versus

1. Smt. Savita Singh, W/o Late Shri Bhanu Pratap Singh, aged about 27 years, occupation Housewife.
2. Abhisek Singh, S/o Late Shri Bhanupratap Singh, aged about 7 years, occupation Student.
3. Ku. Jagani, S/o Late Shri Bhanupratap Singh, aged about 4 years, occupation Student.
4. Preetam Singh, S/o Late Shri Bhanupratap Singh, aged about 2 years,
5. Kamla Bai, W/o Shri Keshav Prasad Singh, aged about 50 years
6. Keshav Prasad Singh, S/o Late Shri Raghuvir Singh, aged about 70 years

   No. 2 to 4 minors, through natural guardian mother Smt. Savita Singh, Wd/o Late Shri Bhanupratap Singh, All R/o. Village Bandana, P.S. Sitapur, Tahsil Sitapur, District Surguja (C.G.)
7. Branch Manager, The Oriental Insurance Company Ltd., Ranchi, Main Road Ranchi-I (Jharkhand), through Branch Manager, The Oriental Insurance Company Limited, Ambikapur, Ambedkar Chowk, Ambikapur, District Surguja (C.G.)
8. Mohd. Israil, S/o Mohd. Sarafddin, Caste-Musalman, aged about 34 years, Occupation- Driver of Truck, R/o, Lohardaga, Tahsil and District Lohargada (Jharkhand)

… Respondents

For Appellant	:	Mr. Akhand Pratap, Advocate, under instructions of Mr. Sanjay Agrawal, Advocate.
For Respondent No.7	:	Mr. Ghanshyam Patel, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01/09/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, by the owner, assailing the award dated 29.11.2005 passed by the First Additional Motor Accident Claims Tribunal, Ambikapur, in Motor Accident Claim Case No. 29/2005.

2. Vide the said impugned award, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act initiated by the Claimants, has awarded a compensation of Rs. 1,91,000/- to the Claimants with interest thereon at the rate of 7% per annum from the date of claim application. While passing the award, the Tribunal has fastened the liability of payment of compensation upon the owner and driver of the offending Truck, exonerating the Insurance Company from its liability.

3. Contention of the appellant-owner was that he had produced before the Tribunal a photocopy of document insuring the offending Truck but the same has not been appreciated by the Tribunal and has wrongly fastened the liability upon the owner instead it ought to had been upon the Insurance Company.

4. It is a case where the deceased Bhanupratap Singh, a pedestrian, was hit by the offending Truck (Registration No. CG04-ZC/7463) on 12.5.2004. As a result of the injuries sustained in the accident, the said Bhanupratap Singh succumbed to his injuries.

5. The parties to the dispute entered appearance before the Tribunal and submitted their respective written statement. The owner of the offending Truck had submitted that the Truck was duly insured and the policy period was between 16.12.2003 to 15.12.2004 and the accident took place in between the said period i.e. on 12.5.2004. Thus, the offending Truck being duly insured the liability of payment of compensation if any shall be upon the Insurance Company.

6. On the contrary, the Insurance Company filed its reply categorically denying the contentions of the claimants as well as the owner of the offending Truck being duly insured. The stand of the Insurance Company was that the policy which has been placed by the owner in fact appeared to be a fake document and that no such policy was issued from any of the branches of the Insurance Company neither does the policy provide the details of branch from which it was issued, thus, prayed for the Insurance Company being exempted from its liability.

7. Learned Counsel for the appellant-owner submits that as far as the owner is concerned, they had brought on record a photocopy of the policy, and the original of which was with the police authorities when the documents pertaining to the vehicle involved in the accident were seized by them. He further submits that, the fact that the owner had produced a valid policy along with their reply by itself should have been taken as the owner having discharged his duties and thereafter the burden shifts upon the Insurance Company who ought to have established by leading cogent evidence to prove the fact that the policy which was issued was in fact a fake policy. He also contended that though the Insurance Company has examined three witnesses but none of them could conclusively prove before the Tribunal of the policy being fake and that their statements only were as bald as they could be, that is, only oral averments were made without there being any substantive evidence. He next submits that the Insurance Company also has failed to conduct a proper investigation of the genuineness of the policy and in the absence of a proper investigation also the liability could not have been fastened upon the owner. Thus, prayed for the appeal being allowed and the Insurance Company be saddled with the liability of payment of compensation.

8. Learned Counsel for the Insurance Company however opposing the appeal drew the attention of this Court to the evidence which have come on record particularly the evidence of NAW-1, P.K. Dewangan, Senior Assistant from the Ambikapur Branch of the Insurance Company. Counsel for the Insurance Company refers to the documents, Exhibits NA1/2 to NA1/4, all pertaining to the correspondences made at different point of time from different offices at Ranchi in respect of verification of the policy produced by the owner examining it genuineness. All the correspondences so received from the different branch offices of the Insurance Company prove that the policy was never issued from their Ranchi office.

9. The Insurance Company all the more has also led evidence, i.e., Exhibits NA1/5 to NA1/8, which are the different policies which were issued at Ranchi at different points of time matching the policy which was relied upon by the owner and thus it stood proved and established that no such policy which has been produced by the appellant-owner was issued from the office of the Insurance Company at Ranchi. Thus, prayed for the rejection of the appeal.

10. Having considered the rival contentions put forth on either side and on perusal of the records and the evidence on behalf of the Insurance Company it clearly reveals that the Insurance Company so far as its burden is concerned has discharged it by leading cogent and substantive evidence with which the Insurance Company has proved that no such policy has been issued from their branches at Ranchi, thus, also proving that the policy which has been produced by the owner being a fake document. The other fact which cannot be brushed aside is the fact that the owner in spite of having filed his reply has not adduced any evidence, though he was granted much opportunities to lead evidence yet he chose not to lead any evidence which further creates doubt in the mind of the Court so far as the genuineness of the claim of the offending Truck being duly insured. In the absence of specific evidence by the appellant-owner it is difficult to accept the contentions put forth by the appellant-owner more particularly when the Insurance Company has examined three witnesses and has also adduced various documents from their Ranchi branches to show that no such policy was issued from their branch.

11. In the given facts and circumstances of the case, this Court is of the opinion that no strong case has been made out calling for interference with the impugned award and the appeal thus being devoid of merits deserves to be and is accordingly dismissed. The interim relief granted earlier also stands vacated. It shall be the liability of the appellant-owner to pay the entire amount of compensation awarded.

12. None appears on behalf of Respondents No. 1 to 6/Claimants. It is a matter of about 11 years old. The Registry of this Court is directed to send a copy of this order to the Secretary, District Legal Services Authority, Ambikapur, who, in turn, shall make all efforts in getting the order of this Court serve upon the Claimants which would enable them for initiating appropriate execution proceeding for realizing the award which is in their favour.

13. The appeals stands accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/