NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MA No.845 of 2002

The Oriental Insurance Company Limited

Versus

Leela Devi & Others

For Appellant : Shri Abhishek Sinha and Shri Ghanshyam Patel, Advocates.
For respondent-Claimant : Shri Rishi Mahobia, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

28/08/2017

1. This is insurer's appeal under Section 173 of the Motor Vehicles Act against the award dated 23.04.2002 passed by the IInd Additional Motor Accidents Claims Tribunal, Jashpur Nagar, in Claim Case No.8/2002. Vide said impugned award, the Tribunal in a proceeding under Section 166 of the Motor Vehicles Act in a death case has awarded compensation of Rs.1,32,000/- to the claimants.
2. The appellant-insurance company has challenged the liability of payment of compensation fastened upon it. The contention of the appellant is that, it was only a photocopy of the insurance policy which was produced and which technically is not an acceptable document nor can it be said to have been effectively proved before the Tribunal with which the liability could be fastened upon the

insurance company. It was also contended that the said photocopy of the policy which has been produced before the Tribunal was infact a fake document and the same should not have been accepted for fastening the liability.

3. It is also the contention of the appellant that there is no evidence led by the owner and driver of the offending vehicle before the Tribunal. Neither is there any evidence on behalf of the owner to rebut the contentions of the insurance company by filing a written statement. It was lastly contended that it was the primary duty of the claimant to have established the fact that the vehicle involved in the accident was duly insured by producing the original insurance policy with which the liability could have been fastened upon the insurance company. Thus, the Tribunal has committed an error of law in accepting the photo copy of the insurance policy for the liability to be fastened upon the insurance company which is not admissible under the Evidence Act.

4. In the present appeal the appellant has moved an application under Order 41 Rule 27 CPC for taking additional evidence on record. A perusal of said document would show that all that the appellant-insurance company seeks is to take note of the complaint which was lodged by the insurance company before the Police Station Jashpur on 29.01.2003 in respect of the forged insurance policy and for an inquiry.

5. Having heard the counsel for the appellant-insurance company and on perusal of records what reflects from the record is that, the

insurance company has not led any evidence before the Tribunal to prove the contentions which they have raised in their written statement. The allegation of the insurance company of the policy produced before the Tribunal being a fake or forged document also has not been proved or established by leading any evidence by the insurance company.

6. The application under Order 41 Rule 27 CPC filed before this court also has only one document dated 29.01.2003 and that the said document also was filed only in the year, 2013. The appellant has not been able to show any further development that has occurred subsequent to 2003 by which it could be held or established that the policy produced before the Tribunal was a fake or forged document.

7. What is relevant to be taken note is that the photocopy of insurance policy has been produced before the Tribunal by the claimant and which was marked as Annexure A-29 by PW-2. The owner and driver of the offending vehicle had already been proceeded exparte right from the beginning. When the owner and the driver had been proceeded exparte, the responsibility fell more upon the insurance company to have taken all possible stand to disprove the contentions that have been raised by the claimants and also ensuring that the insurance company is not fastened with the liability of payment of compensation.

8. For the aforesaid reasons, particularly the fact that the appellant-insurance company has not been able to show any further development that has transpired on the complaint that they have

raised to the police authorities, this court is of the opinion that no substantial material has been produced before this court for entertaining the application under Order 41 Rule 27 CPC. The same deserves to be and is accordingly rejected.

9. When the insurance company themselves have failed to discharge their duties, this court does not find any strong case made out by the appellant for interfering with the impugned award. The appeal thus fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

inder