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HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 620 of 2004

The New India Assurance Co. Ltd., Divisional Office, Raipur (CG) through the Branch Manager, New India Assurance Co. Ltd. Bilaspur Branch, Rajendra Nagar Chowk, Bilaspur (CG).

---- Appellant

Versus

1. **A.** Smt. Revti Verma, aged about 58 years, W/o Badri Prasad Verma, occupation House wife (mother of deceased Kranti Kumar)
   B. Khemchand Verma, aged about 31 years, S/o Badri Prasad Verma, occupation Labour (Brother of deceased Kranti Kumar).
   C. Shrawan Kumar Verma, aged about 27 years, S/o Badri Prasad Verma, occupation Student (Brother of deceased Badri Prasad Verma).
   D. Ku. Kalyani Verma, aged about 18 years, D/o Badri Prasad Verma, occupation Student (Sister of deceased Badri Prasad Verma).
   All residents of village Deori, PS Neora, Tehsil Tilda, Distt. Raipur (CG).
2. Khubchand Verma, aged about 23 years, S/o Ghanshyam Verma R/o Village Tulsi, PS Neora, Tah. Tilda, Distt. Raipur (CG).
3. National Insurance Co. Ltd. Navin Bazar, Tatyapara chowk, Raipur.
4. Gyanchand S/o Suchit, aged about 28 years, caste Kumhar, R/o village Deoriakala, PS Ketna Distt. Balia (UP).
5. Devendra Kumar Mishra aged about 40 years, S/o SR Mishra, R/o vilalge Tah. Jajpur (Orrissa).

---- Respondents

For Appellant : Shri Dashrath Gupta, Advocate.
For Respondent No.3 : Shri Goutam Khetrapal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

10/07/2017

1. The present is an appeal under Section 173 of Motor Vehicles Act against the award dated 31.03.2004 passed by the 8th Additional Motor Accident Claims Tribunal (FTC), Raipur (for short, the Tribunal), in Claim Case No.54/2002. Vide the said award, the Tribunal has in a proceeding under Section 166 of MV Act awarded compensation of Rs.1,62,000/- to the parents of the deceased Kranti Kumar, who died in an accident that took place on 24.04.1999.
2. The facts in brief is that, the deceased Kranti Kumar was working as Conductor of Minibus bearing registration No.MP23-D-9559 which was owned and driven by respondent No.2. When the said Minibus reached near Raju Dhaba, Raipur, it was dashed by the Truck coming from opposite direction bearing registration No.ORY-4005 which was driven by the respondent No.4 and owned by respondent No.5. The appellant in the present case is the insurer of the said Truck and the respondent No.3-National Insurance Co. Ltd. is the insurer of the Minibus.
3. The sole contention of challenge by the appellant in the present appeal is that the liability which has been erroneously saddled upon the appellant-The New India Assurance Co. Ltd. According to him, the finding of the Tribunal in its award dated 31.03.2004 is bad in law and is contrary to another award which has been passed in Claim Case No.81 of 1999 decided on 23.08.2001 which arose out of the same accident in respect of claimants who had preferred claim

application on the death of one Digendra Dewangan, a passenger in the same Minibus. The contention of the appellant is that, in the said Claim Case No.81 of 1999 the award has been passed in favour of the claimants and the liability has been fastened upon the respondent No.3-National Insurance Co. Ltd. who had insured the Minibus. In the said case the Tribunal has given a finding that the accident arose on account of rash and negligent driving on the part of driver of the Minibus. It is also contended that the Truck which allegedly hit the Minibus whether was insured with the National Insurance Company or not has also not been properly established before the Tribunal.

4. Learned counsel for the appellant submits that the Tribunal already having passed an award in Claim Case No.81 of 1999, the subsequent contrary finding given by the Tribunal in other claim case arising out of same accident would amount to conflicting view taken by the Tribunal holding that accident arose of rash and negligent driving of the Driver of the Truck which was insured with the present appellant. He submits that it cannot be a case where two persons arising out of same accident being given compensation by two different insurance companies with there being categorical finding that the drivers of both the vehicles involved in the accident were negligent for the accident resulting in death of two persons. This would lead to an ambiguous and total conflicting and contradictory view taken by the two Tribunals in a case arising out of the same accident.

5. Learned counsel appearing for the respondent No.3-National

Insurance Co. opposing the appeal submits that it is a case where the appellant in the instant case have not led any evidence before the Tribunal to substantiate their defence so also to prove their case that they are not liable for payment of compensation. According to him, in the absence of any evidence on the contentions raised, the appeal deserves to be rejected without any interference on the impugned award.

6. Having heard the counsel on either side and on perusal of record what cannot be lost sight of is certain admitted facts, that the accident did take place on 24.04.1999; there was two vehicles involved in the accident one Minibus bearing registration No.MP-23-D-9559 which was insured by the respondent No.3-National Insurance Co. Ltd. and the second being Truck bearing registration No.ORY-4005 which was insured by the present appellant-the New India Assurance Co.Ltd.. That in the said accident two persons had died. One was the deceased in the present claim case namely Kranti Kumar and the other being the deceased Digendra Dewangan. The dependents of deceased Digendra had filed a claim case before the Claims Tribunal, Raipur which was registered as Claim Case No.81 of 1999. The said case was decided earlier than the present case i.e. on 23.08.2001. In the said case, the compensation has been ordered to be paid by the respondent No.3-National Insurance Co. Ltd. who had insured the Minibus. In that case there is a finding that accident arose because of rash and negligent driving of the driver of Minibus. In that case, the present appellant was also a party respondent. On the

contrary, the finding in the present case is that there is rash and negligent driving of the driver of Truck No.ORY-4005. Thus, these two findings cannot be stand together for the simple reason that there cannot have been an accident without there being a finding of contributory negligence by holding that accident arose because of the negligence of drivers of the respective vehicles which had collied.

7. In the instant case, the findings in one case is just opposite to the findings in the other case, which, in the opinion of this court would not be justified, proper and legal. It can be a case where the accident must have occurred because of negligence of only one of the vehicle or could have been contributory negligence of both of the vehicles. In the evidence which have come on record, there is no discussion so far as contributory negligence is concerned. On the contrary, the finding is that there is rash and negligent driving on the part of driver of one vehicle in one case and the driver of the other vehicle in the other case and the liability has been shifted on the insurance company of the two vehicles involved in the accident. This again would be a totally conflicting and contrary finding in the two proceeding before the two Tribunals arising out of the same accident.

8. So far as the present appeal is concerned, true it is that in spite of fact that the impugned award in claim case No.81 of 1999 was passed even before the written statement in the present case was filed by the insurance company. It is also the case where the judgment also obviously was passed much after the judgment in other case, yet, the respondent No3.-National Insurance Co. also did

not raise any such objection before the Tribunal nor did it care to lead evidence in this regard before the Tribunal. Therefore, the present appellant cannot escape of being negligent in their conduct in the present case. At the same time, the respondent No.3-National Insurance Co. Ltd. also cannot be exonerated of its liability for the simple reason that the said insurance company also in spite of coming to know about the judgment which was passed much before the present claim case was decided, did not bring it to the notice of the Tribunal. Nor did the officer of the insurance company care to bring these facts to the notice of the lawyer who was contesting the case, which if produced before the Tribunal at the right time, could have resulted in avoidance of conflicting view and findings of the two Tribunals.

9. In the aforesaid factual matrix of the case, where the insurance company of both the vehicles are apparently negligent on their part in conducting their case before the Tribunal, both the companies should be saddled with the liability of sharing the compensation equally.

10. Thus, the present appeal is allowed in part to the extent that liability of payment of compensation shall be equally borne by the present appellant-The New India Assurance Co. Ltd. as well as the respondent No.3-National Insurance Co. Ltd.

Sd/-
(P. Sam Koshy)
Judge

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