

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR
MAC No. 732 of 2010

Bajaj Allianz General Insurance Co. Ltd. through Branch Manager,
 Shiv Mohan Bhawan, Vidhan Sabha Marg, Pandri, Teh. And Distt.
 Raipur (CG).

-----Appellant

Vs.

1. Dilip Kumar Age 48 years, S/o Chhannulal Sahni
2. Smt. Meena Sahni, age 42 years W/o Dilip Sahni, Both R/o Sahni Para, Rajim Than & Tahil Rajim, Distt. Raipur (CG).
3. Kedarnath Patel, age 28 years, S/o Shyamlal Patel, R/o village Pirda, Thana Tumgaon, Teh. And Distt. Mahasamund (CG).
4. Bhupendra Chandrakar, S/o Awadhram Chandrakar, age 23 years R/o Jhalap Chowk, Bagbahra, Thana Bagbahra, Teh. And Distt. Mahasamund (CG).

For Appellant	:	Shri SS Rajput, Advocate.
For respondents No.1&2:		Shri Goutam Khetrapal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy
Order On Board

17/11/2017

1. Since there was no representation on behalf of the claimants/respondents No.1&2, this court considering the seniority of the case, requested Shri Goutam Khetrapal, Advocate, to assist the court for disposal of the appeal.
2. This is insurer's appeal under Section 173 of the Motor Vehicles Act against the award dated 11.05.2010 passed by the Additional Motor Accident Claims Tribunal, Gariyaband (in short, the Tribunal) in Claim Case No.33/2009. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded compensation of Rs.2,17,000/- along with interest @ 7.5 percent per annum from the date of application.

3. The contention of the appellant-insurance company is that, the involvement of vehicle belonging to the respondent No.4 which was being driven by the respondent No.3 on the date of accident seems to be a fabricated story on the part of the claimants. He submits that though the accident occurred on 16.01.2009 and an FIR was lodged on the same day, but it was against unknown person and unknown vehicle and it is only in the month of February, 2009, the name of respondent No.3 as a driver of offending vehicle was brought to the notice of the police authorities who thereafter proceeded with the matter and filed a charge sheet against the respondent No.3 prosecuting him for the offence under Sections 279,337 and 304-A IPC.
4. It was also contended that witness namely Sunil Yadav, AW-2, has been examined before the Tribunal, but various contradictions and omissions are found in his statement which gives rise to a great element of doubt on the story of the claimants with regard to involvement of vehicle belonging to respondent No.4 or the accident to have occurred at the hands of respondent No.3 while driving the motorcycle bearing registration No.CG-06-C-8861. He further referred to the written statement of the owner wherein he had initially by filing written statement denied the entire accident, but has taken an entirely different stand in his evidence before the Tribunal where he has admitted the accident to have occurred from his vehicle which was being driven by the respondent No.3 on the date of accident. It was thus prayed for setting aside the award and for dismissal of the

complaint as the vehicle insured by the appellant was not involved in the accident which resulted into death of deceased Mahendra Sahni.

5. Per contra, Shri Goutam Khetrapal, Advocate, assisting the court on behalf of the respondents-claimants submitted that it appears that the insurance company has taken the stand on the basis of a report of the investigator of the insurance company who has submitted his report only in September, 2009 i.e. after about nine months time from the date of accident. Meanwhile, the claim application had also been filed and the owner and the driver had already entered appearance and have submitted their written statements before the Tribunal. He further submits that the report of investigator is a belated report and that the police authorities in the instant case had already in the month of March itself filed a charge sheet against the respondent No.3 for rash and negligent driving resulting into death of deceased Mahendra Sahni. Thus, there is no scope of any interference with the impugned award.
6. It was further contended by the claimants that up till 13th September, 2009, there was no allegation from any corner so far as false claim having been filed by the claimants against the respondent No.3 and/or in respect of a false criminal case having been filed against the respondent No.3 by the police authorities in respect of the accident that took place on 16.01.2009.
7. Having considered the contentions put forth on either side and on perusal of records, indisputably the accident took place on 16.01.2009 resulting into death of deceased Mahendra Sahni, aged around 22

years. The only issue required to be considered is whether the motorcycle bearing registration No.CG-06-C-8861 owned by respondent No.4 and driven by respondent No.3 on the date of accident was involved in the accident in which the deceased had died?.

8. Before the Tribunal, there is a statement of owner of the vehicle who has in a very categorical term have accepted the accident to have occurred from his motorcycle which was being driven by respondent No.3-Kedarnath. Further, from the evidence it also reflects that the claimants have also got an evidence of one Sunil Yadav, AW-2, stated to be an eyewitness, examined and there is not much from his cross examination which has been extracted with which his statement could be doubted.
9. Last but not the least, what is also paramount is the fact that indisputably, the respondent No.3, Kedarnath has been prosecuted in criminal case for the offence under Sections 279,337 and 304-A IPC. There is no finding of any court so far as the said criminal prosecution to be either fake or fabricated. In the absence of any such findings and where the driver has been prosecuted in a criminal case, this court is of the opinion that no strong case is made out by the insurance company to interfere with the impugned award or to reach to a conclusion that the vehicle belonging to the respondent No.4 was not involved in the accident.
10. The appeal thus fails and is rejected.

Sd/-
(P. Sam Koshy)
Judge