NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR
MAC No.763 of 2009

1. Chandrahas Sahu S/o Shri Babulal Sahu, aged about 33 years.
2. Tarachand Sahu S/o Shri Jawaharlal Sahu, aged about 24 years.
3. Tekram Sahu S/o Shri Jagdhar Sahu, aged about 30 years.

   All are R/o Village Kosamkhuta, Post Ganod, Tahsil Arang, District Raipur (C.G.).

---Appellants

Versus

1. Aasmat Bai Wd/o Late Shyamlal Sahu, aged about 34 years.
2. Fabendra S/o Late Shyamlal Sahu, aged about 16 years.
3. Khemraj S/o Late Shyamlal Sahu, aged about 10 years.
4. Ku.Sangeeta D/o Late Shyamlal Sahu, aged about 06 years.
5. Kewal S/o Late Shyamlal Sahu, aged about 03 years.
6. Ajuram S/o Malgaldas Sahu, aged about 65 years.
7. Dukli Bai W/o Ajuram Sahu, aged about 60 years.

   Respondent Nos.2 to 5 are minor represented through natural grardian mother Smt.Asmat Bai.

   All are R/o Village and Post Dondekala, Thana Dharsiva, District Raipur (C.G.).
8. The New India Assurance Company Limited, Through Divisional Manager, Division No.1, Jail Road, Raipur, District Raipur (C.G.).
9. National Insurance Company Limited, Through Branch Manager, First Floor, Naveen Bazar, Phool Chowk, Raipur (C.G.).

---Respondents

AND

MAC No.764 of 2009

1. Chandrahas Sahu S/o Shri Babulal Sahu, aged about 33 years.
2. Tarachand Sahu S/o Shri Jawaharlal Sahu, aged about 24 years.
3. Tekram Sahu S/o Shri Jagdhar Sahu, aged about 30 years.

   All are R/o Village Kosamkhuta, Post Ganod, Tahsil Arang, District Raipur (C.G.).

---Appellants

Versus

1. Madho Ram Sahu S/o Late Manohar Sahu, aged about 47 years.
2. Ben Kumar Sahu S/o Madho Ram Sahu, aged about 23 years.
3. Poshan Sahu S/o Late Madho Sahu, aged about 17 years, minor through natural guardian father Madho Sahu.
4. Shyam Bai Sahu W/o Late Manohar Sahu, aged about 70 years.

   All are R/o Village Kosamkhuta, Post Ganod, Tahsil Arang, District Raipur (C.G.).
5. The New India Assurance Company Limited, Through Divisional Manager, Division No.1, Jail Road, Raipur, District Raipur (C.G.).
6. National Insurance Company Limited, Through Branch Manager, First Floor, Naveen Bazar, Phool Chowk, Raipur (C.G.).

---Respondents

Shri S.S.Rajput, Advocate for appellant Nos. 1 & 2 in both the appeals.
Shri Dashrath Gupta, Advocate for The New India Assurance Co.Ltd.
Shri Goutam Khetrapal, Advocate for National Insurance Co.Ltd.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

26/10/2017

1. These are the two appeals filed by the owner under Section 173 of the Motor Vehicles Act assailing the award dated 02/04/2009 passed in two different Claim Cases i.e. Claim Case No.64/2007 and Claim Case No.94/2007 decided by the 8th Additional Motor Accidents Claims Tribunal, Raipur.
2. The brief facts relevant for adjudication is that, the accident took place on 29/04/2007 from the Tractor bearing registration No.CG-04-DA-0735 with the Trolley bearing registration No.CG-04-D-2704.
3. The appellant No.1 is the owner of the Tractor, the appellant No.3 is the owner of the Trolley and the appellant No.2 is the person who was driving the Tractor on the date of the accident. The Tractor was insured with the New India Insurance Company Limited and the Trolley was insured with the National Insurance Company Limited.
4. As a result of the said accident, two persons had died namely Shyamlal Sahu and Pila Bai Sahu. The legal representatives of Shyamlal Sahu had filed a Claim Case No. 64/2007 whereas the legal representatives of Pila Bai Sahu had filed a Claim Case No.94/2007.
5. The accident occurred when the Tractor was going to attend the Post Marriage Rituals. The Tribunal vide the impugned award dated 02/04/2009 in two Claim Cases have awarded the compensation of Rs.4,11,000/- with interest @ 7.5% per annum from the date of application in Claim Case No.64/2007 and Rs.2,79,000/- with interest @ 7.5% per annum from the date of application in Claim Case No.94/2007.

6. While passing the impugned awards, the Tribunal exonerated the two Insurance Companies of its liabilities and fastened the liability of payment of compensation upon the appellants.
7. The sole ground raised by the counsel for the appellants is that, the Insurance Company in the instant case had failed to led sufficient evidence to prove there contention as regards the liability of the Insurance Company is concerned. He further submits, that it was the responsibility and burden on the Insurance Company to prove its case in the absence of which the finding of the Tribunal was erroneous and deserves to be set aside and the liability should be shifted upon the Insurance Company. He further submits, that the liability further also ought to had been apportioned between the two Insurance Companies which had insured the Tractor as well as the Trolley. He further relied upon the decision of the Hon'ble Supreme Court reported in the case of ***Lakhmi Chand Vs. Reliance General Insurance Co.Ltd. [{2016} 3 SCC 100]*** to stress on the argument which he has raised.
8. According to the counsel for the appellants, in the instant case though the Insurance Companies had led the evidence, but witness was an officer of the R.T.O. and that no officer of the Insurance Companies was examined and therefore the Insurance Companies has not discharged its burden in proving its case and therefore the liability fastened upon the appellants is bad in law and the same deserves to be set aside and shifted upon the Insurance Companies.
9. The counsel appearing for the respondents however opposing the appeal submits, that it is a case well established to prove before the Tribunal and that the finding of the Tribunal is purely on the facts and on the evidence which have come on record and same therefore does not warrant any interference. According to the counsel for the respondents there is admission on part of the appellants before the Tribunal so far as

the two policies issued pertaining to the Tractor as well as Trolley and both the policies did not cover the risk of any person other than the owner cum driver and the paid driver and so far as the Trolley is concerned, it was covering the risk of own damage and thus the case of the appellants does not have sufficient force and prayed for the rejection of the same.

10. Having considered the rival contention put forth on either side and on perusal of record what stands admitted from the facts of the case is the accident which arose on 29/04/2007, the vehicle involved in the accident being the Truck and the Trolley, the appellant No.1 & 3 being the owner of the Tractor and the Trolley respectively, the appellant No.2 being the driver of the Tractor and Trolley at the time of the accident.

11. The Insurance Policy of the Tractor as well as the Trolley was marked as Exhibit – D/8 & D/9 before the Tribunal and both these documents are as explicit as it can be showing, that it covers only the risk of the owner cum driver and the paid driver and the Trolley covers only the risk of own damage and no premium was paid to the Insurance Company covering the risk of any extra person or occupants.

12. The witness of the R.T.O. has been examined on behalf of the Insurance Company to show, that there was no sitting capacity and the Tractor apart from the driver and also that no person is allowed to travel on the Trolley.

13. In view of the aforesaid factual matrix of the case all that now is to be seen whether the contentions put forth by the counsel for the appellants is strong enough for setting aside the finding of the Tribunal. Once when the policy Exhibit D/8 & D/9 marked before the Tribunal stood admitted by the appellants, all that was required to be seen is to the extent of the coverage which undisputedly did not cover any additional person except for the owner cum driver and the paid driver.

14. In the given factual matrix of the case this court is of the opinion, that once when the policy stood admitted, the burden was upon the appellants to have prove before the Tribunal with cogent evidence with the vehicle since it was insured at the relevant point of time, the entire liability would fall upon the Insurance Company.

15. Since, the appellants have not entered appearance before the Tribunal by leading any evidence in there support this court is of the opinion, that no any strong case has been made out by the appellants calling for interference with the impugned award and the two awards passed by the Tribunal is held to be proper, legal and justified.

16. The appeals thus being devoid of merits deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Sumit