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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 660 of 2014

National Insurance Company Ltd. Branch Office- Gumla (Jharkhand), through its Divisional Manager, Divisional Office, B-1, Taha Complex, Ring Road-1, Priyadarshini Nagar, Bilaspur, Distt. Bilaspur C.G.

---- Appellant

Versus

1. Etwa Ram S/o late Dinuram aged about 12 years, Minor, through natural guardian (Uncle), Meenuram, S/o Jhumaram, R/o Dharen, Distt. Jashpur (C.G.)
2. Sandeep Ram S/o late Dinuram aged about 10 years, Minor, through- natural guardian (Uncle), Meenuram, S/o Jhumaram, R/o Dharen, Distt. Jashpur (C.G.)
3. Rameshwar Singh S/o Ram Sanehi Singh aged about 55 years, R/o Darbari Toli, Jashpur, Tah. and Distt. Jashpur C.G.

---- Respondents

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---- Respondents

For Appellant : Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

19/07/2017

These are the two appeals arising out of the same accident. The challenge in the present two appeals is the award dated 31.03.2014 passed in MAC Nos. 34/2011 and 33/2011 by the Additional Motor Accident Claims Tribunal, Kunkuri, district Jashpur.

2. Since the claimants, the owner of the offending vehicle, the Insurance Company and the facts in both the appeals are same, this Court proceeds to decide both the appeals by a common order.

3. Facts of the case in brief are that on 02.05.2010, Deenuram and his wife Yamni Bai were going on a bicycle to Jashpur. When they reached near old Kutchery Rest House, a truck bearing registration No. CG 14ZC 0210 coming from the opposite direction dashed against the couple causing grievous injuries to which they succumbed later. The claimants in the two appeals are the minor children of the deceased couple. At the time of accident the offending truck was being driven by one Sevaram who is said to have died on 08.09.2010. The claimants had initiated the present claim cases under Section 166 of the MV Act seeking for compensation.

4. The Tribunal taking into account the evidences and the pleadings which have come on record vide impugned award dated 31.03.2014 allowed the applications in both the cases. In Claim Case No.34/11, an amount of Rs.4,31,000/- was granted to the claimants as compensation with interest @ 6% per annum. Likewise, in Claim Case No. 33/11, compensation of Rs.5,57,000/- was granted with interest @ 6% from the date of application.

5. It is these two awards which are under challenge in the present appeals.

6. The solitary ground raised by the appellant Insurance Company to challenge the appeals is the fact that the driver of the vehicle i.e. Sevaram who died on 08.09.2010 was not having a valid driving licence to drive the truck. He submits that in fact it is a case where the driver did not have any licence as is evident from the criminal case which was initiated against the driver in as much as, apart from the other offences, the criminal Court had charged him for the offence under Sections 3/181 and 5/180 of the MV Act as also against the owner of the said truck. Counsel for the appellant took the Court through the evidence of Shri J. K. Verma, the witness who was examined on behalf of the Insurance Company before the Tribunal and the said witness had produced before the Court Ex. D-1 which is a report of the Investigating Officer informing the Insurance Company that the alleged photo copy of the driving licence of the driver of the offending vehicle produced by the claimants during the course of the claim proceedings was on due investigation found to be a fake certificate. For all these grounds, counsel for the appellant prays that both the appeals may be allowed and the Insurance Company may be discharged of its liability of making payment of compensation by fastening the liability upon the owner.

7. Having considered the contentions put forth by the counsel for the appellant and on perusal of the record what clearly reflects is the fact that the driver of the offending vehicle unfortunately died as early as on 08.09.2010 i.e. much before the proceedings before the Tribunal could have concluded. As a consequence of the death of the driver, the criminal case which was initiated against the driver must have been abated without there being a final outcome of either acquittal or conviction. So the only material which could have been taken into consideration by the Tribunal for determining the breach of policy condition was the evidence which has come before the Tribunal. During the course of proceedings the Insurance Company except for the evidence of Shri J. K. Verma who was only an administrative officer of the Insurance Company, no other witness were examined to substantiate their contention made in their written statement. Though the said witness has produced Ex.D-1 which is said to be a report of the Investigating Officer but the said Investigating Officer has not been adduced as a witness to prove the said document. Further the report of the Investigating Officer that he had prepared the same on the basis of the information collected from the office of the District Transport Officer, Gumla or any officer of the State from where the licence was issued was not examined to further establish the contention which the Insurance Company that the driving licence was found to be fake. In the absence of any such evidence adduced by the Insurance Company, this Court does not find any fault on the part of the Tribunal in fastening the liability upon the Insurance Company for the purpose of payment of compensation.

8. This Court therefore holds that no sufficient material has been produced before the Tribunal during the course of evidence to prove beyond doubt that the driver of the offending vehicle at the relevant point of time was not having a proper licence neither is there any such material produced in the appeals. Thus, both the appeals being devoid of merits, deserve to be and are accordingly dismissed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola