

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 971 of 2017

Branch Manager The New India Assurance Company Limited,
Through Divisional Manager, In front Of Project Auto Mobile, G.E.
Road, Power House Bhilai, Tahsil And District Durg, Chhattisgarh

---- Appellant

Versus

1. Smt. Neera Bai W/o Shivkumar Aged About 39 Years
2. Shiv Kumar Sapha S/o Lakhani Lal Aged About 42 Years
Both are R/o Diprapara, Durg, Police Station Durg, District Durg, Chhattisgarh
3. Rajkumar Rai S/o Manilal Rai Aged About 32 Years R/o Paktasatar Ghat, Police Station Digwa Dubouli, District Gopalganj (Bihar), Presently R/o Village Heerapur, Nearby Outpost, Gaushala, Police Station Kabirnagar, Raipur, District- Raipur, Chhattisgarh
4. Harvinder Singh Waliya S/o Ranveer Singh R/o Waliya Tower Heerapur, Mig-231, Tatibandh Raipur, District- Raipur, Chhattisgarh

---Respondents

AND

MAC No. 839 of 2017

Branch Manager, The New India Assurance Company Limited
Through Divisional Manager, In front Of Project Auto Mobile, G.E.
Road, Power House Bhilai, Tahsil And District Durg, Chhattisgarh.

---- Appellant

Versus

1. Smt. Malti Yadav Wd/o Late Raman Yadav, Aged About 22 Years
2. Yash Yadav S/o Late Raman Yadav, Aged About 3 Years Minor
Through Natural Guardian Mother Smt. Malti Yadav Wd/o Late Raman Yadav.
3. Kapil Yadav S/o Raman Yadav, Aged About 1 Years Minor Through Natural Guardian Mother Smt. Malti Yadav Wd/o Late Raman Yadav.
4. Smt. Laxmi Bai Yadav W/o Shri Kamal Yadav, Aged About 45 Years
5. Kamal Yadav S/o Late Pancham Yadav, Aged About 52 Years
All Respondents No. 1 to 5 are R/o Diprapara, Durg, Police Station Durg, District Durg, Chhattisgarh.
6. Rajkumar Rai S/o Manilal Rai, Aged About 32 Years R/o Paktasatar Ghat, Police Station Digwa Dubouli, District Gopalganj (Bihar), Present Residing At Village Heerapur, Nearby Outpost Gaushala, Police Station Kabirnagar, Raipur, District Raipur, Chhattisgarh
7. Harvinder Singh Waliya S/o Ranveer Singh, R/o Waliya Tower Heerapur, M I G 231, Tatibandh Raipur, District Raipur, Chhattisgarh

-----Respondents

For Appellant

:

Mr. Raj Awasthy, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/08/2017

1. For the reasons that the default pointed out in one of the cases, document is already filed in the other connected appeal, the default pointed out by the registry stands over-ruled.
2. These are the two appeals filed by the Insurance Company challenging two awards passed by the Additional Tribunal to the First Additional Motor Accident Claims Tribunal, Durg in claim case No.304/2015 and 305/2015 decided on 15/02/2017.
3. Vide the said impugned award the Tribunal in a claim case under section 166 of the Motor Vehicle Act has awarded compensation of Rs.15,07,000/- and Rs.24,10,250/- along with interest @ 9% per annum.
4. The liability of payment of compensation was fastened upon the present appellant-Insurance Company, the insurer of the offending vehicle. The offending vehicle was Eicher Mazda bearing Registration No. CG-04-JD-2399.
5. Ground of challenge by the Insurance Company is that, from the facts which has come on record it reflects that the offending vehicle had hit stationery goods transport vehicle (Chhota Hathi) bearing Registration No.CG-07-CA-6814 from beyond. Thus their appears to be some negligence on the part of the owner and driver of the said goods transport vehicle also and therefore the amount of compensation awarded ought to had been distributed between the owner, driver and Insurance Company of the two vehicles.
6. Likewise it was also the contentions of the counsel for the Insurance Company that, there is also a breach of policy condition to the accident in as much as there was no proper valid license in possession with the driver of the offending vehicle as the license has not been produced during the course of the evidence or is before the court below in its record to establish that he had a valid license.
7. In addition, counsel for the appellant has also questioned quantum awarded by the Tribunal in as much as amount of compensation awarded

under the head of loss of dependency is on much higher side with no substantial proof or evidence in respect of salary/wages of the deceased persons.

8. Having heard the learned counsel for the appellant and on perusal of record what clearly reflects is that, in the instant case Insurance Company has not led any evidence. It is a case where Insurance Company has not examined any of its officials as there witness to prove the contentions that they have raised. Neither was the investigating officer appointed by the Insurance Company have been examined to prove the contributory negligence and the driver of the offending vehicle was also not called upon or produced for evidence to establish the breach of policy condition raised and also with respect to the aspect of contributory negligence.
9. In the absence of any evidence led by the Insurance Company this court is of the opinion that, ground of challenge raised by the Insurance Company cannot be accepted and the appeal accordingly being devoid of merit deserves to be and is dismissed.

Sd/-
(P. Sam Koshy)
Judge

Sumit