NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1059 of 2017

Divisional Manager, National Insurance Company Limited, Branch No. 1, Bhutani Complex, G. E. Road, Power House Bhilai, Tahsil and District Durg Chhattisgarh through Authorised Signatory for National Insurance Company Limited Divisional Office B-1 Taha Complex Ring Road Priyadarshani Nagar, Bilaspur, Chhattisgarh.

---- Appellant

Versus

1. Bhawarlal S/o Late Eatu Tandon, aged about 48 years, R/o Village Bodegaon, Police Station Nandini Nagar, Tahsil and District Durg, Chhattisgarh.
2. Nirmla Bai W/o Bhawarlal Tandon, aged about 44 years, R/o Village Bodegaon, Police Station Nandini Nagar, Tahsil and District Durg, Chhattisgarh.
3. Prahlad Rajput S/o Narsingh Rajput, aged about 30 years, R/o Village Pathariya, Police Station Nandini Nagar, Tahsil Dhamdha, District Durg Chhattisgarh (Driver)
4. Rana Vikrant Singh S/o Shri Rana Arun Kumar Singh, R/o Old Nehru Nagar, (East) Police Station Supela, Tahsil and District Durg Chhattisgarh. (Owner)

---- Respondents

For Appellant	:	Shri B. N. Nande, Advocate
For Respondents 1 & 2	:	Shri P. R. Patankar, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

05/09/2017

Heard on I.A. No.01/17 for condonation of delay in filing the appeal.

2. For the reasons assigned in the said application and finding them to be satisfactory, I.A. No.01 is allowed and the delay of 21 days in filing the appeal stands condoned.

3. Also heard on admission.

4. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act challenging the award dated 28.03.2017 passed by the 1st Additional Motor Accident Claims Tribunal, Durg in Claim Case No. 00000100/2015. Vide the impugned award the Tribunal in a proceeding under Section 166 of the MV Act has awarded a compensation of Rs.8,29,000/- with interest @ 9% per annum from the date of application to the claimants.

5. The challenge by the Insurance Company to the award is on the ground that there is no sufficient evidence which has come on record with which it could be said that the accident occurred with the vehicle i.e. a truck bearing registration No. CG07 C 0957 belonging to respondent no.4 and driven by respondent no.3.

6. Counsel for the appellant Insurance Company referring to the criminal case registered against the driver submits that the driver has been acquitted in the said case and therefore the accident itself is doubtful and the claim has been wrongly allowed by the Tribunal. Counsel for the appellant contended that the evidence of the driver before the Tribunal would show that there is a denial on his part so far as the accident is concerned and therefore the case of the claimants is not fully established. What is also challenged by the appellant is the fact that the claimants not being the eye witness could not have proved the accident having occurred from the vehicle belonging to respondent no.4. Thus, prayed for the appellant Insurance Company being exonerated of its liability.

7. Counsel appearing for the claimants i.e. respondents 1 & 2 in the present case, however, opposing the appeal submits that there is sufficient evidence which has come before the Court below particularly the evidence of the driver of the offending vehicle to establish the accident. Therefore, the appeal of the Insurance Company deserves to be rejected. He referred to the final report which was submitted in the criminal case registered against the driver of the offending vehicle i.e. respondent no.3 to further strengthen his case.

8. Having considered the rival contentions put forth on either side and on perusal of the record what is apparently clear is the fact that the Insurance Company in the instant case has not led any evidence. What is also apparent is the evidence given by the driver of the offending vehicle who has been examined on behalf of the owner and who in his deposition has accepted the truck being plied during the prime time from the place of accident. He admits some person on a motorcycle dashing against the body of the truck from behind on the fateful day. He further accepts of being criminally charged for the said offence. The driver has also accepted the fact that immediately after the accident he fled away with the truck. All these facts provide sufficient preponderance of the accident to have arisen from the use of the truck belonging to respondent no.4 and driven by respondent no.3 and which was duly insured by the present appellant.

9. In the given factual matrix of the case, this Court is of the opinion that no strong case has been made out by the appellant with which it could be said that the finding of the Tribunal is perverse or contrary to the evidence on record.

10. Thus, the appeal of the Insurance Company fails and is accordingly dismissed.

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

Bhola