NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1225 of 2010

The Oriental Insurance Co. Ltd. Through: Divisional Manager, Bilaspur, Divisional Office, Rajiv Plaza, Bus Stand, Tahsil and District Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Mangilal Kurrey, S/o. Shivram Kurrey, Aged about 40 years,
2. Smt. Brij Bai Kurrey, W/o. Mangilal Kurrey, Aged about 38 years,

   Both are R/o. Village Ameri (Satyanagar), Thana Chakarbhata, Tahsil Takhatpur, District Bilaspur Chhattisgarh (Claimants)
3. Lalaram Sahu, S/o. B.R. Sahu, Aged about 40 years, R/o. Village Semaria, Police Chowki, Khandsara, Police Station Bemetara, District Durg Chhattisgarh (Driver and Owner)

–--Respondents

For Appellant	:	Mr. Chitra Shrivastava, Advocate
For Claimants	:	Mr. P.K. Tulsyan, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20/11/2017

1. At the outset, the counsel for the Respondents submits that Respondent No.1 since has expired on 17.08.2017, and the appeal would now be sustainable only so far as the Respondent No.2 is concerned.

2. The present is an appeal by the Insurance Company challenging the award dated 21.10.2010, passed by the 5th Additional Motor Accident Claims Tribunal, Bilaspur, in Claim Case No. 116/2010. Vide the impugned award the Tribunal in a death case has awarded a compensation of Rs.1,72,000/- with interest @ 7.5% per annum from the date of application.

3. While passing the award, the Tribunal has fastened the liability upon the present appellant- Insurance Company. The solitary ground of

challenge by the Insurance Company is that the accident in the instant case has not been proved and that there is no proof of the vehicle belonging to the respondent No.3 involved in the accident of which the present appellant is the insurer.

4. Counsel for the appellant submits that though it is said that the accident took place on 22.06.2006, but the F.I.R. was lodged only on 30.01.2008 i.e. after almost 1½ years and therefore it is difficult to reach to a conclusion that it was the vehicle belonging to the respondent No. 3, which had caused the accident. It is further submitted that there was no intimation as regard the accident sent by the hospital authorities to the police authorities with which it could be said that the accident had occurred on 22.06.2006 from the motorcycle belonging to the respondent No.3.

5. Counsel for the Insurance Company further submits that the cause of the accident as per the mother, which she has said immediately on the date of accident, was that the injuries was caused on account of fall from a high wall and it was only later on that the story has been changed and therefore it is hard to believe that an accident has in fact occurred from the vehicle belonging to the respondent No.3.

6. However, perusal of record would show that the Insurance Company has not led any evidence in support of their contentions before the Tribunal. Moreover, the record also shows that the merg intimation was lodged in respect of the said accident at the CIMS Hospital, Bilaspur on the 28.06.2006 i.e. on the 6th day of the incident. Further more what is also relevant to take note of the fact is that the respondent no.3 was prosecuted by the criminal Court on an F.I.R.

lodged before the Police Station Bemetara and he was prosecuted also for the offence under Section 304A of I.P.C. All these facts lead to the only interference which could be drawn that the accident did occur from the vehicle belonging to the respondent No.3.

7. Further, the another finding which is seem to be a pertinent finding is that there was a suggestion put by the counsel appearing for the Owner as well as the counsel for the Insurance Company that immediately after the incident, the Owner himself had taken the child and had got the first aid down and this suggestion from the Owner and Insurance Company further proves that the accident did occur from the motorcycle belonging to the respondent No.3.

8. In the aforesaid factual background of the case, this Court does not find any strong case made out by the Insurance Company calling for an interference with the impugned award.

9. The appeal of the Insurance Company thus being devoid of merit deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved