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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 320 OF 2017

The Oriental Insurance Company Limited Through Branch Manager, The Oriental Insurance Company Limited, Itwari Bazar, Raigarh, Chhattisgarh

… Appellants

Versus

1. Netranand Behra S/o Dubraj Behra, Aged About 46 Years Occupation Agriculture, Caste Sodhi, R/o Village Khamhariya, Tahsil Gharghoda, District Raigarh, Chhattisgarh.
2. Mohargi W/o Netranand Behra Aged About 44 Years Caste Sodhi, R/o Village Khamhariya, Tahsil Gharghoda, District Raigarh, Chhattisgarh.
3. Gulapi Wd/o Late Shri Omprakash Aged About 22 Years, Caste Sodhi, R/o Village Khamhariya, Tahsil Gharghoda, District Raigarh, Chhattisgarh.
4. Minor Vikash S/o Late Shri Omprakash Aged About 3 Years Through Natural Guardian Gulapi Wd/o Omprakash, Caste Sodhi, R/o Village Khamhariya, Tahsil Gharghoda, District Raigarh, Chhattisgarh
5. Minor Vivek S/o Late Shri Omprakash Aged About 8 Years Through Natural Guardian Mother Gulapi Wd/o Omprakash Behra, Caste Sodhi, R/o Village Khamhariya Tahsil Gharghoda, District Raigarh, Chattisgarh
6. Mata Road Carrier Through Manager, Mata Road Carrier, Occupation Vehicle Owner, R/o Behind Jaine Petrol Pump, Tatibandh, Raipur, District Raipur, Chhattisgarh
7. Kameshwar Ram S/o Mukhlal Aged About 30 Years Occupation Diver Of Vehicle, R/o Village & Post Tilour, District Palamu, Jharkhand.

… Respondents

For Appellant	:	Mr. Raj Awasthi, Advocate.
For Respondent Nos. 1 to 5	:	Mr. M.K. Sinha, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/07/2017

1. The present is an appeal under Section 173 of the Motor Vehicle Act preferred by the Insurance Company assailing the award dated 6.12.2016 passed by Motor Accident Claims Tribunal, Raigarh, M.A.C.T. No. 487 of 2005 (Old Claim Case No. 43 of 2006).

2. Factual details of the instant case are not in dispute, so far as the accident occurred on 25.4.2005 and the deceased Om Prakash Behra having died in the accident and the said accident occurred in using of the offending vehicle i.e. TATA Truck, bearing Registration No. CG04-G/8215, belonging to Respondent No.6, driven by Respondent No.7 and insured with the present Appellant-Insurance Company at the relevant point of time. Since the aforesaid facts are not in dispute, this Court is refraining itself from giving the details so far as the accident is concerned.

3. The Tribunal considering the pleadings and evidence which have come on record, vide impugned award, allowed the claim application of the claimants and ordered for payment of compensation of Rs.6,78,000/- to the claimants with interest at the rate of 3% per annum from the date of filing of the claim application. It is this award which is under challenge in the present appeal.

4. According to the learned Counsel for the Appellant, the Tribunal on an earlier occasion i.e. on 30.3.2007 had passed an award granting compensation of Rs.5,61,000/- along with interest at the rate of 6% per annum thereon, which was challenged by the Insurance Company vide M.A.(C) No. 226 of 2008 before the High Court. The said appeal was allowed in part and the award was set aside and the matter was sent back to the Tribunal for fresh adjudication. Subsequently, the Tribunal without granting sufficient opportunity of defence to the Insurance Company has closed its right and passed an award quantifying the amount of Rs. 6,78,000/- under challenge.

5. The solitary ground which has been raised by the Insurance Company is that the plea of the Insurance Company all along was that the driver of the offending vehicle was not having a valid driving licence at the relevant point of time. The contention was that the offending vehicle was a Heavy Goods Commercial Vehicle for which the licence ought to have been that of HGV whereas the driver at the relevant point of time had only the licence of LMV. The Tribunal in spite of there being an order in this regard by the High Court in M.A.(C) No. 226 of 2008 has not granted sufficient time to prove this aspect by the Insurance Company and decided the claim application fastening the liability upon the Insurance Company to pay the compensation.

6. Learned Counsel for the Claimants however opposing the appeal submits that the Tribunal had in fact granted an opportunity to the Insurance Company but since the Insurance Company did not avail the opportunity granted, the Tribunal was justified to proceed and decide the matter and therefore the appeal deserves to be rejected.

7. Having considered the contentions put forth by the learned Counsel for the Appellant what is required to be ascertained is, whether in the light of the order of the High Court passed in M.A.(C) No. 226 of 2008 on 28.7.2011, the Appellant had been granted an opportunity to defend its case.

8. After the remand, the Tribunal in fact on an application moved by the Appellant, had allowed the witness of the concerned Regional Transport Office being examined on commission and accordingly one Santosh Mishra, an Advocate, was appointed as a Commissioner to examine the concerned authority of the Transport office to ascertain the contention raised by the Insurance Company. The Insurance Company was directed to deposit the requisite fees to meet the expenses but it failed to deposit the necessary fees required as directed and therefore on 2.12.2016 the Tribunal closed the right of the Insurance Company in this regard and proceeded further to decide the case on merits. This fact which has come on record by itself is a sufficient indication that the Insurance Company was in fact given sufficient time to prove its case or to take necessary steps to prove its case and having failed to take prompt action, hence the Tribunal cannot be blamed to have proceeded further and closed the matter.

9. What is also relevant at this juncture is to take note of the fact that the accident took place in the instant case in the year 2005 i.e. on 25.4.2005 to be precise i.e. almost about 12 years ago. The claimants have been running from pillar to post to get the compensation in spite of a death case where the wife has lost her husband, the parents have lost their son and the minor children have lost their father and in spite of more than 12 years having passed, till date they have not received any amount of compensation except for the amount of compensation that has been awarded vide earlier award dated 30.3.2007 which according to the Claimants though has been deposited but till date has not been disbursed to the Claimants.

10. From the perusal of the award it also reflects that the sole evidence which has been led by the Insurance Company was that of NAW-3 Ramesh Kaknani who has relied upon the investigating report of an Investigator, namely, Anand Vijay, whose report is said to be the basis of the stand of the Insurance Company of the driver was not having a valid driving licence. However, the said person Anand Vijay was also not examined by the Insurance Company and later on the Insurance Company also failed to take prompt step to get the Transport officer examined on commission in spite of a Commissioner being appointed.

11. What also cannot be brushed aside is the fact that the application was entertained by the Tribunal in the light of an appeal preferred by the Insurance Company itself on an earlier occasion and the matter getting remanded back. It was all the more necessary for the Insurance Company to have been vigilant and prompt in taking necessary steps at the right time, in the absence of which they cannot now cry foul of not getting an opportunity to defend themselves.

12. In the given factual backdrop of the case, it cannot be said that the Insurance Company has not been granted any opportunity to prove its stand of the driver not having a valid driving licence at the relevant point of time.

13. The appeal thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

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