NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No.946 of 2017

Shriram General Insurance Co. Ltd. Plot No.1, E-8, EPIP, RIICO, Industrial Area, Sitapur, Jaipur, Rajasthan, 303022, Through Branch Manager, Branch Office- Plot No.1, 4th Floor, Maruti Heights, Saraswati Nagar, Raipur, Tahsil And District Raipur, Chhattisgarh ....(Alleged Insurer of Indica Car No. C.G.04 B 2559)

---- Appellant

Versus

1. Jitendra Kumar Sahu S/o Late Ishwar Sahu, Aged About 33 Years R/o Village Umarpoti (Sardar Badi Road), Post Purod, Thana Utai, Tahsil And District Durg, Chhattisgarh ....(Claimant)
2. Narayan Vaishnav S/o Ashok Vaishnav, Aged About 24 Years R/o Shanty Nagar, Janjgiri, Charoda, thana Bhilai-3, Tahsil Patan, District Durg, Chhattisgarh ....(Driver & Owner Of Indica Car No. C.G.04 B 2559).

---- Respondents

For Appellant : Shri Sachin Singh Rajput, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

24/08/2017

1. This is insurer's appeal under Section 173 of the Motor Vehicles Act assailing the award dated 10.04.2017 passed by the Ist Additional Motor Accident Claims Tribunal, Durg, in Claim Case No.06/2014. Vide the said impugned award, the Tribunal in a case of amputation of right leg of the claimant, an Army personnel, has awarded a compensation of Rs.15,27,942/- along with interest @ 6 percent per annum from the date of application.
2. The appellant-insurance company has challenged the liability part of the award inasmuch as the cover note which has been produced during the

course of the evidence to show that the vehicle involved in the accident was insured by the appellant was infact a document which is said to have been found missing from the employee of the insurance company and for which a missing report was already lodged with the police station and paper publication in this regard was also made in daily news paper. He further submits that it is one of those missing cover notes which has been misused for indemnifying the respondent-owner of the vehicle in this case. A report in this regard against the owner of the vehicle was also lodged.

3. It is further submitted by the appellant-insurance company that considering the fact that appellant had taken all necessary measures promptly in respect of lodging of complaint to the police authorities in respect of missing cover note book and also having made a paper publication in this regard, the insurance company should not be burdened with the liability of payment of compensation where the owner of the offending vehicle has appears to have misused one of the missing cover note.

4. Having heard the counsel for the appellant-insurance company and on perusal of records, what clearly reflects is the fact that the witness who was examined on behalf of the insurance company has deposed before the court below that since he was not in possession of the relevant register maintained in the office of the insurance company, he is not in a position to whether the vehicle involved in the accident was duly insured from the appellant's company. He further stated in his cross examination that seal on the said cover note appears to be a fake seal, which itself means that it has not been verified by the authorities concerned whether

the seal affixed on the cover note is infact a fake seal or not.

5. The said witness has also admitted in his cross examination the fact that as per practice in the insurance company, the dealers and the sales executives are provided with cover note also with a seal already put on it. Further, from the evidence of witness on behalf of the insurance company it also reflects that the witness appearing before the court below had not brought the relevant register and documents by which it could be shown that the cover note which is said to have been issued in favour of the offending vehicle was not infact issued from the office of the appellant. The statement also reflects that the insurance company had not conducted any sort of inquiry or investigation from the owner of the vehicle, who is allegedly said to have used the cover note, ascertaining from where he had obtained the said cover note and what was the mode of payment that he has made for issuance of the policy etc.

6. Further, from the records it appears that all the necessary steps which have been taken by the appellant are much after the date of accident. Between the date of lodging of complaint to the police authorities and the publication made in the daily news paper, there is a gap of more than 20 days. Another vital facts which further weakens the case of the appellant-insurance company is the fact that the insurance company has not examined the alleged person from whose custody the cover note has gone missing i.e. Karan Rao. Except for the solitary witness examined who happens to be a legal officer of the insurance company, there is no other witness adduced by the insurance company to substantiate its contention.

7. For all these aforesaid reasons, this court finds it difficult to accept the contention put forth by the counsel for the appellant-insurance company to interfere with the findings arrived at by the Tribunal. The appeal thus, fails. The same deserves to be and is hereby dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder