

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1185 of 2017

The Oriental Insurance Co. Ltd. Ambedkar Chowk, Ambikapur, District Sarguja, Through Its Branch Manager (Now Divisional Manager, Divisional Office Ambikapur, Ambedkar Chowk, District Sarguja, Chhattisgarh.

----Appellant

Versus

1. Sujeet Kumar S/o Late Kenda Toppo, Aged About 19 Years Caste Uraon, R/o Village Korima, Police Station Dhaurpur, Tahsil Lundra, Post Office Udari, District Sarguja, Chhattisgarh. (Claimant)
2. Mohd. Hasan S/o Mohd. Abdul Hasib, Aged About 31 Years Cast Muslim, R/o Village Surajpur, Police Station Surajpur, District Sarguja, Chhattisgarh. C/o Mohd. Shakid Ansari, S/o Hanif Ansari, R/o Village P.O. Udari, Tahsil Lundra, District Sarguja, Chhattisgarh. (Driver)
3. Mohd. Sakir Ansari S/o Hanif Ansari, R/o Village & Post Udari, Tahsil Lundra, District Sarguja, Chhattisgarh. (Owner)

---Respondents

For Appellant	:	Mr. R.N. Pusty, Advocate
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

28/11/2017

1. Present appeal has been filed assailing the award dated 16.05.2017, passed by the Motor Accident Claims Tribunal, Ambikapur, District Sarguja, Chhattisgarh, in Motor Accident Claim Case No.143/2016.
2. Vide the impugned award the Tribunal, in a death case, has awarded a compensation of Rs.5,70,000/- with interest @7% per annum from the date of application.
3. The challenge to the appeal by the Insurance Company is on two grounds, firstly, the quantum of compensation awarded is on the higher side. Secondly, the liability aspect has been questioned on the ground that in spite of best efforts being made the Owner and Driver of the offending vehicle have not produced the permit and

fitness certificate of the offending vehicle. The other ground raised was that the deceased in the said case also was not having a proper license at the time of accident. The Owner and Driver of the offending vehicle i.e. Tipper Truck bearing registration No. CG-15-AC-3110 were proceeded ex-parte before the Tribunal and that after due service.

4. The counsel for the appellant submits that the Insurance Company in the instant case had moved an application under Order 11 Rule 12 and subsequently under Order 16 Rule 6 and then under Order 16 Rule 7-A seeking for a direction to the Owner and Driver to produce necessary information regarding the permit and fitness certificate of the vehicle, but there was no cooperation on the part of the Driver and Owner in producing these documents. Therefore, an adverse inference should have been drawn by the trial Court.
5. So far as the quantum part is concerned, the counsel for the appellant submits that the Tribunal ought to have appreciated that there was an element of contributory negligence on the part of the deceased in the accident in as much as he was not having a valid license as is evident from the deposition of the Claimant/son of the deceased. As regards the question of the vehicle not having valid permit and fitness, this Court is of the opinion that there appears to have been efforts made by the Insurance Company before the Tribunal calling upon the Owner and Driver to produce these facts, but they have deliberately avoided appearance before the Tribunal only on the basis of the vehicle being dully insured with the present appellant. This attitude of the insured definitely is not appreciable.

6. Giving the said fact, this Court is of the opinion that no fruitful purpose would be served in keeping the appeal pending after issuance of the notice to the Owner and Driver, who remained ex-parte before the Tribunal itself and ends of justice would meet if the award is modified to the extent that the liability of payment of compensation is discharged by the Insurance Company with the modification in the award to the extent of the amount assessed be paid or deposited by the Insurance Company with the liberty of recovering the same from the Owner-cum-Driver.
7. It is ordered accordingly that the appellant would be liable to deposit the compensation as awarded with the liberty of recovering the same from the Owner-cum-Driver applying the principle of Pay and Recover.
8. So far as quantum of compensation and the aspect of contributory negligence is concerned, there is no strong case made out or sufficient ground available to interfere with the finding in the light of the judgment of the Hon'ble Supreme Court in the case of "***Sudhir Kumar Rana vs. Surinder Singh (2008) 12 SCC 436***", thus the said ground stands negated.
9. In the light of the aforesaid observations made in the preceding paragraphs, the appeal is allowed in part to the extent of the amount of compensation being directed to be deposited by the appellant with the liberty to recover from the Owner-cum-Driver.

Sd/-
(P. Sam Koshy)
Judge