NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1437 of 2017

1. Abdul Faiz S/o Mukhtar Hussain, aged about 34 years, R/o Masjid Para, near bank of Baroda, Mnendragarh, Tahsil Manendragarh, District Korea Chhattisgarh....................... (Owner of vehicle Maruti Bearing No. C. G. 16, B - 2049).
2. Saif Ali S/o Akbar Ali, aged about 20 years, R/o Masjid Para, near bank of Baroda, Manendragarh, Tahsil Manendragarh, District Korea Chhattisgarh ....(Driver of vehicle Maruti Bearing No. C. G. 16, B - 2049).

---- Appellants

Versus

1. Smt. Rashida Bano W/o late Altaf Hussain, aged about 48 years, R/o Ward No. 3, Kotma, Tahsil Kotma, District Anuppur (Madhya Pradesh)..............(Claimant)
2. Ku. Insiya Bani, D/o late Altaf Hussain, aged about 16 years (Minor), through natural guardian Smt. Rashida Bano, R/o Ward No. 3, Kotma, Tahsil Kotma, District Anuppur (Madhya Pradesh).................(Claimant)
3. Shriram General Insurance Company Limited, Corporate Office, E - 8, EPIP, RIICO Industrial Area, Sitapur, (Jaipur (Rajasthan) through Branch Manager, Jabalpur, 123 Rameshwar Nilay, Napior Town, Jabalpur, District Jabalpur (Madhya Pradesh). ....(Insurer of vehicle Maruti Bearing No. C. G. 16, B - 2049).

---- Respondents

For Appellants : Shri Palash Tiwari, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

30/10/2017

Present is an appeal under Section 173 of the Motor Vehicles Act challenging the award dated 31.07.2017 passed by the 1st Additional Motor

Accident Claims Tribunal, Manendragarh, district Korea (CG) in Motor Accident Claim Case No. 14/2016. Vide the impugned award, the Tribunal in a claim case under Section 166 of the MV Act has awarded compensation of Rs.22,25,000/- with interest @ 9% per annum from the date of application.

2. While passing the impugned award the Tribunal has exonerated the Insurance Company of its liability as the cover note produced before the Tribunal was found to be fake and has fastened the liability of payment of compensation upon the owner and the driver of the offending vehicle i.e. the present appellants.

3. Challenge in the present appeal is primarily to the liability which has been fastened upon the appellants.

4. Counsel for the appellants submits that the appellants in the instant case have produced a cover note of a policy issued in respect of the vehicle involved in the accident and that the said cover note was issued covering the period from 02.02.2013 to 01.02.2014. He submits that since the original of the said cover note was seized by the Police Authorities in the criminal case which was registered against appellant no.2/driver of the vehicle at the relevant point of time, the same could not be produced before the Tribunal. The Tribunal therefore should have drawn an inference against the Insurance Company while fastening the liability. So far as the burden of proving of the case is concerned, the appellants have discharged their responsibility by producing the documents which they had in their possession in respect of the insurance in as much as the photo copy of the cover note was produced before the Tribunal. He submits that there was no reason for the Tribunal to have taken a different view than treating the cover note as a genuine document. He further submits that the statement of the witnesses who were examined on behalf of the Insurance Company would not be reliable and strong enough to accept their version as they were interested witnesses and adducing statements taking the interest of the Insurance Company. Therefore, the Insurance Company should have been held liable for payment of compensation indemnifying the appellants.

5. Having heard the contentions put forth by the counsel for the appellants and on perusal of the records the undisputed facts are: the date of accident, the vehicle involved in the accident i.e. motorcycle in which the deceased Altaf Hussain was travelling and the offending Maruti vehicle owned by appellant No.1 bearing registration No. CG16B 2049.

6. What is disputed in the instant case is the cover note which has been produced by the appellant owner of the Maruti van during the course of hearing. According to the appellant no.1, he had got a cover note issued by the Insurance Company, the validity of which was from 02.02.2013 to 01.02.2014. The number of the cover note is 458277.

7. At this juncture, it would be relevant to refer to paragraph-19 of the impugned order where the Tribunal has discussed the evidences which have come on record. The evidence clearly reflects that the Insurance Authorities had got the cover note verified and found the same to be a fake document in as much as the Insurance Company had not received any premium for insuring the vehicle bearing registration No. CG16B 2049 during the relevant period. That no cover note was issued in the name of Abdul Faiz- appellant no.1 covering the policy of Maruti vehicle bearing registration No. CG16B 2049. It was also stated by the witnesses on behalf of the Insurance Company that the number which is reflected in the cover note was also got verified and it was found that the said number pertains to a vehicle bearing registration No. RJ 20 P 5122 owned by one Ashok Kumar Sharma resident of Kewal Nagar, Kota, Rajasthan and the policy issued under the said number was effective from 13.04.2010 to 12.04.2011.

8. When the Insurance Company has led evidence giving such minute details, it clearly gives an indication of the Insurance Company having thoroughly verified the cover note which was produced by the present appellant owner seeking indemnification of the appellants.

9. In the light of the aforesaid evidences, it cannot be said that the finding of the Tribunal was either perverse or contrary to the evidences which have come on record. So far as the burden of proof is concerned, the Insurance Company on receipt of a cover note produced by the owner of the vehicle has discharged its burden firstly by verifying the contents of the said cover note and further getting it verified as to who is the actual owner of the vehicle insured by the said cover note. Under this circumstance, this Court is of the opinion that no strong case has been made out by the appellants calling for interference with the impugned award.

10. The appeal thus being devoid of merit deserves to be and is accordingly dismissed.

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

Bhola