NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 790 of 2013

Manager, The Oriental Insurance Company Limited Divisional Office, Near U.T.I. Bank, Opp. Rajeev Plaza, Bus Stand, Bilaspur, Tah. and Distt. Bilaspur C.G.

---- Appellant

Versus

1. Smt. Anjora Bai W/o Krishna Rajak Aged About 44 Years
2. Krishna Rajak S/o Pardeshi Aged About 47 Years
3. Ku. Eeshwari Rajak D/o Krishna Rajak Aged About 15 Years
4. Sanjay Rajak S/o Krishna Rajak Aged About 12 Years
5. Ajay Rajak S/o Krishna Rajak Aged About 8 Years
6. Smt. Heera Bai W/o Pardeshi Ram Aged About 65 Years
7. Pardeshi Ram Rajak S/o Murit Ram Aged About 70 Years

All the claimants are R/o Bharni, Tah. Takhatpur, P.S. Chakarbhata, Distt. Bilaspur C.G.

8. Baisakhu Gond S/o Samnu Singh Gond Aged About 45 Years R/o Khamhariya, P.S. Chachai, Distt. Anuppur M.P.
9. Shri Natthu Lal Gupta S/o Late Eeshwarideen R/o Dhanpuri, Shahdol, Present Address- Gol Bazar, Bilaspur C.G.

---- Respondents

For Appellant	:	Shri Ghanshyam Patel, Advocate.
For Respondents 1to7	:	Shri Dharmesh Shrivastava, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

05/07/2017

1. The present appeal has been filed against the award dated 10.05.2013 passed by the 6th Additional Motor Accident Claims Tribunal, Bilaspur (in short, the Tribunal) in Claim Case No. 26/2013. Vide the said award, the Tribunal has in a case of death of deceased Bahorik Rajak, who is son of claimants No.1&2 and grandson of claimants No.6&7 and the sibling of claimants No.3 to 5, awarded compensation to the tune of Rs.3,44,000/- along with interest @ 7.5

percent per annum from the date of application.

2. Brief facts of the case is that the deceased while he was walking at Bus Stand, Bharni, PS Chakarbhata, on 23.03.2009 at around 8:30 PM was dashed by the Truck bearing registration No.CG-10-ZB-2608 which was being driven by the respondent No.8 and was owned by the respondent No.9. Subsequently, the claimants had filed the claim application. All the respondents entered appearance including the owner and driver of the Truck and contested the case. The owner's address is the same address which was there in the claim application and where notices were issued and served and the said owner contested the case on merits. However, when the notices were issued in the present appeal on the same address, the same has been returned unserved with a note that the said person is not traceable on the given address.

3. The Tribunal taking into consideration the evidence led, material placed and submissions made, vide impugned award allowed the claim application of the claimants and have ordered for payment of compensation of Rs.3,44,000/- along with interest @ 7.5 percent per annum from the date of application holding the insurance company as well as driver and owner jointly and severally liable for payment of said compensation. It is this award which is under challenge in this appeal.

4. The contention of the insurance company is that it is a case where the Driver of the offending Truck at the relevant point of time was having fake licence and since the Driver was not having valid licence

rather was having a fake driving licence, the liability cannot be fastened upon the insurance company. The liability should be shifted upon the owner and the Driver of the Truck as there is clear violation of terms of the policy. Relying upon the judgments of Supreme Court in cases of New India Assurance Co.Ltd. Shimla Vs. Kamla & Ors, 2001 (4) SCC 342, National Insurance Co. Ltd. Vs. Swaran Singh & Ors, 2004(3) SCC 297 and National Insurance Co. Ltd. Vs. Geeta Bhat & Ors.,2008(12)SCC 426, he prays that insurance company be discharged of its liability.

5. Counsel appearing for the respondents No.1 to 7 submits that it is a case where the undisputed fact is the date of accident, death of deceased in the said accident and also the relationship of claimants with the deceased. He submits that it is also not in dispute that the vehicle involved in the accident was insured by the present appellant-insurance company. Therefore, so far as quantum is concerned, the award does not warrant any interference.

6. Having considered the rival contentions put forth on either side and on perusal of record, what clearly reflects is that the Driver i.e. the respondent No.8 had entered appearance before the Tribunal and has accepted the fact that originally he had a licence from RTO Jaipur (Rajasthan) and subsequently he got a new licence from RTO Shahdol and which was being renewed from time to time. This statement is also affirmed by the owner in his statement before the Tribunal. So far as challenge to the licence issued in favour of the Driver being fake is concerned, this court is of the opinion that the

present is a case where on the date of accident the driver of the vehicle was having a licence which was renewed from time to time periodically. The witness from the RTO office, Shahdol appeared before the Tribunal and had accepted the fact that licence which the driver was having was issued from the RTO office, Shahdol and it was also renewed periodically from time to time.

7. So far as the contention whether the original licence which the driver was having and was issued from RTO, Jaipur is concerned, even if this contention of insurance company is accepted even then the owner of the vehicle i.e. respondent No.9 cannot be held to be at fault of having committed any breach of policy conditions.

8. Indisputably, on the date of accident, the driver had a licence which was duly issued from the RTO, Shahdol and which has been affirmed from the witness of RTO office, Shahdol. The earlier licence which was said to have issued from RTO, Jaipur could not have been taken into consideration by the owner. Therefore, it cannot be said that the owner was at fault because once when a driver is engaged, the maximum precaution which the owner has to take care is to ask asto whether he has licence or not. In the instant case the driver did show a licence to the owner issued from the RTO, Shahdol. Thus, it cannot be said the owner has not enquired about the the driver while engaging him as a driver.

9. In the given factual matrix of the case and in view of evidence led, it cannot be said that the findings arrived at by the Tribunal in fastening the liability of payment of compensation upon the insurance company

to be perverse or contrary to the evidence which have come on record.

10. The appeal thus, being devoid of merit is liable to be and is accordingly dismissed. No order asto costs.

Sd/-

(P. Sam Koshy)
Judge

inder