NAFR

HIGH COURT of CHHATTISGARH, BILASPUR
MAC No. 106 of 2008

Manager, National Insurance Co. Ltd. Kolkata, through Manger, Divisional Office, Taha Complex, Vyapar Vihar Road, Bilsapur (CG).

---- Appellant

Versus

1. Khatoon Bee, W/o late Abdullah, aged about 52 years, Caste Musalman, occupation dependant R/o Jagatpur (Near Dimrapur Chowk), Raigarh, Distt. Raigarh (CG).
2. Md. Asahar S/o Md. Atahar, occupation driver, Permanent R/o Tar Bungalow Raniganj Mohalla, Tikiapara, PS Raniganj, Distt. Vardhman, West Bengal at present R/o Chiraipani, Damar Plant, Distt. Raigarh (CG).
3. Shri Bhagvan Mishra, S/o RN Mishra, occupation owner of vehicle R/o 13/3, CGR Road, Kolkata 23, West Bengal.

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
For respondent No.1	:	Shri R.K. Pali, Advocate (Appointed by the court.)

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

14.11.2017.

1. Since there was no representation on behalf of respondent No.1, this court considering the seniority of the case thought it fit for taking assistance of Shri RK Pali, Advocate, for disposal of this appeal.
2. The present is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act (for short, the MV Act) against the award dated 20.09.2007 passed by the 4th Additional Motor Accident Claims Tribunal (FTC), Raigarh (for short, the Tribunal) in Claim Case No.12 of 2006. Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV Act in a death case has awarded a compensation of Rs.2,07,000/- to the claimants along with interest @ 7.5 percent per annum from the date of application. The liability of payment

of compensation has been fastened upon the insurance company.

3. Learned counsel for the appellant submits that it is a case where the policy which was produced by the claimants before the Tribunal was a forged policy and that the insurance company has led sufficient evidence before the Tribunal with which it could be concluded that the policy which was produced before the Tribunal was fake and forged document. Thus, the insurance company cannot be saddled with the responsibility of payment of compensation for the said accident.

4. From perusal of statement of Sudarshan Das, Deputy Manager of the National Insurance Co.Ltd. Bilaspur, who had produced the register from the Calcutta office of the insurance company for the relevant period during which the said policy was issued and from the records it reflects that such policy was never issued at all. Further, the policy did not bear the code number of the Branch from which it was issued. All these goes in favour of the insurance company. Further, what is also relevant to consider is that the driver and the owner inspite of proper service deliberately avoid appearance before the Tribunal so also before this court.

5. In the given factual matrix of the case and also considering the fact that it is a case where sufficient material has been produced by the insurance company in respect of policy being forged and fabricated, and further there is no evidence on behalf of the claimants or for that matter the driver and owner inasmuch as to prove the policy to be genuine and original, this court is inclined to accept the appeal of the insurance company and modify the award to the extent that the insurance company shall be exonerated of its liability and the responsibility of payment of

compensation shall be upon the respondents No.2&3, driver and owner of the offending vehicle.

6. It is made clear that whatever amount deposited by the appellant-insurance company, be permitted to be released to the claimants with liberty to recover the same from the owner and driver and the balance amount shall be recovered from the respondents No.2&3, driver and owner by initiating appropriate recovery proceedings.

7. Before parting with the matter, this court renders a word of appreciation to Shri R.K. Pali, Advocate, for his valuable assistance rendered in the disposal of appeal.

Sd/-
(P.Sam Koshy)
Judge

inder