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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1095 of 2016

Bajaj Allianz General Insurance Co. Ltd , Through Branch Manager, In-Front Of Main Gate Of Rajkumar College, Near I C I C I Bank, G.E.Road, Raipur, Chhattisgarh, At Present- Shiv Mohan Bhawan, Vidhan Sabha Road, Pandri, Police Station Pandri, Tahsil And District Raipur, Chhattisgarh.

---- Appellant

Versus

1. Smt. Nilima Wd/o Suraj Agrawal, Aged About 21 Years.
2. Ku. Riya D/o Late Suraj Agrawal, Aged About 3 Months (Minor) Representing Through Mother Smt. Nilima Agrawal Wd/o Late Suraj Agrawal.
3. Bhagwat Lal S/o Late Lalji Agrawal, Aged About 72 Years.
4. Sagar S/o Bahgwat Lal Agrawal, Aged About 21 Years
All are R/o Ward No.6, Sonarpara, Khairagarh, Police Station And Tahsil Khairagarh, Dist. Rajnandgaon, Chhattisgarh.
5. Lalit Sori S/o Naval Sori, Aged About 30 Years R/o Vill. Singanpur, Police Station Keskhal, Tahsil Keskhal, Dist. Kondagaon, Chhattisgarh.
6. Umashankar Shukla S/o Late Gajadhar Prasad Shukla, Aged About 60 Years R/o Vardhman Colony, Jagdalpur Police Station Jagdalpur Dist. Jagdalpur, Chhattisgarh.

---Respondents

AND

MAC No. 1094 of 2016

Bajaj Allianz General Insurance Co. Ltd , Through Branch Manager, In-Front Of Main Gate Of Rajkumar College, Near I C I C I Bank, G.E.Road, Raipur, Chhattisgarh, At Present- Shiv Mohan Bhawan, Vidhan Sabha Road, Pandri, Police Station Pandri, Tahsil And District Raipur, Chhattisgarh.

---Appellant

Versus

1. Ku. Mahak D/o Vijay Lal Chopda, Aged About 18 Years.
2. Smt. Sundar Bai Wd/o Late Manak Lal Chopda, Aged About 72 Years.
3. Vinay Chopta S/o Vijay Lal Chopda, Aged About 16 Years Minor, Representing Through Grand Mother Smt. Sundar Bai Chopda Wd/o Late Manak Lal Chopda.
4. Vijay Lal Chopda S/o Late Manak Lal Chopda, Aged About 46 Years
All are R/o Ward No.12, Amlipara, Khairagarh, Police Station And Tahsil Khairagarh, Dist. Rajnandgaon, Chhattisgarh.
5. Lalit Sori S/o Naval Sori, Aged About 30 Years R/o Vill. Singanpur, Police Station Keskhal, Tahsil Keskhal, Dist. Kondagaon, Chhattisgarh.
6. Umashankar Shukla S/o Late Gajadhar Prasad Shukla, Aged About 60 Years R/o Vardhman Colony, Jagdalpur Police Station Jagdalpur Dist. Jagdalpur, Chhattisgarh.

---Respondents

For Appellant	:	Shri Nilesh Kumar Thakur and Shri Rohitashva Singh, Advocates
For Respondent No.1 to 4	:	Shri Abhishek Pandey, Advocate
For Respondent No.5 & 6	:	Shri R.N.Jha, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/09/2017

1. The challenge in the present two appeals is to the award dated 30/04/2016 passed by the Additional Motor Accident Claims Tribunal, Khairagarh in two Claim Case Nos. 26/2013 and 27/2013.
2. Vide the said impugned award, the Tribunal under Section 166 of the Motor Vehicle Act has allowed these two claim cases by granting Rs.4,28,000/- in claim case No.26/2013 and Rs.3,80,000/- in claim case No.27/2013 along with interest @ 9% per annum from the date of application.
3. It is relevant at this juncture to mention that, this court in another appeal preferred by the same appellant in connection with another claim case i.e. MAC No. 1220/2017 have dismissed the appeal of the Insurance Company vide its order dated 31/08/2017 which arose out of the claim case No.51/2013 from the same court.
4. The counsel for the appellant stressed upon three grounds to assail the impugned award. First being the driver of the offending vehicle having a fake license. Second being the license of the driver of the offending vehicle not having proper endorsement for driving the vehicle carrying dangerous and hazardous item. Thirdly, the fact that the Tribunal has not considered the contributory negligence aspect while deciding the quantum of the compensation.
5. So far as first two grounds are concerned, as regards fake license and the fact that the license of the driver of the offending vehicle not having proper endorsement permitting him to carry dangerous and hazardous item as required in rule 9 of the Central Motor Vehicle Rules 1989, this court is not inclined to accept the arguments put forth for the simple reason that, this court has already rejected these two contentions while deciding MA No.1220/2017 which also arose from the same accident. The said grounds therefore deserves to be rejected in the present case also and is accordingly rejected.
6. So far as ground No. three of contributory negligence is concerned, the only piece of evidence which was harped upon by the counsel for the appellant is the statement of Lalit Sori - the driver of the offending vehicle wherein he has stated that, he was moving cautiously and since it was a turning, he could not see the vehicle coming from the opposite direction which resulted in the accident. It was further submitted by the counsel for

the appellant that the said Lalit Sori also stated before the court that, he was moving on the left side of the road at a slow speed.

7. Except for the statement of this driver of the offending vehicle, there is no other evidence on record with which it could be said that, there was any negligence on the part of the driver of the other vehicle involved in the said accident.
8. What is also pertinent is the fact that, no any criminal case was initiated against the driver of the vehicle coming from opposite direction whereas criminal case was registered only against the Respondent No.5 whose statement is being relied upon by the counsel for the Insurance Company. Since he is accused in criminal case, he was obviously try to take stand of not being negligent and the negligence being on the other side for which there is no evidence.
9. In addition, what is also relevant to be taken note is the fact that, the witnesses who have been examined on behalf of the Insurance Company have also not in their deposition dealt with so far as contributory negligence is concerned.
10. For the aforesaid reasons, this court does not find any strong case worth admitting the present appeal and the appeals thus fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge