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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1113 OF 2014

National Insurance Company Limited: through its Divisional Manager, Divisional Office- Taha Complex, Vyapar Vihar, Ring Road No.1, Bilaspur, Tah. & Distt. Bilaspur (C.G.)

… Appellant

versus

1. Smt. Vimla Devi, W/o Late Bhagwan Sah, aged about 43 years
2. Dilip Sah, S/o Late Bhagwan Sah, aged about 25 years
3. Mamta Kumari, D/o Late Bhagwan Sah, aged about 17 years
4. Sunil Kumar Gupta, S/o Late Bhagwan Sah, aged about 15 years
5. Sunita Kumari, D/o Late Bhagwan Sah, aged about 14 years

Respondents No. 3 to 5 are minor through their mother Smt. Vimla Devi (Respondent No.1).

Respondents No. 1 to 5 all are R/o Village Badka, Nimdihra, P.S. & Tah. Kudra, District Kaimoor (Bihar)

6. Shiv Prasad Yadav, S/o Bachau Yadav, aged about 25 years, R/o Village- Sahijankhurd, P.S. & Tah. Robersganj, District Sonbhadra (U.P.)
7. Shyamanand, S/o Ramprasad, R/o Village- Sahijankala, P.S. & Tah.- Robertsganj, Distt. Sonbhadra (U.P.)
8. Branch Manager, The New India Assurance Company Limited, Branch-Office-Bramha Road, Ambikapur, District- Surguja (C.G.)

… Respondents

MISC. APPEAL (C) NO. 1114 OF 2014

National Insurance Company Limited: through its Divisional Manager, Divisional Office, Taha Complex, Vyapar Vihar, Ring Road No.1, Bilaspur, Tah. & Distt. Bilaspur (C.G.)

… Appellant

versus

1. Smt. Laxmi Mehar, W/o Late Guna Mehar, aged about 27 years
2. Bhavesh, S/o Late Guna Mehar, aged about 5 years
3. Karan, S/o Late Guna Mehar, aged about 3 years,

Respondents No. 2 and 3 are minor- through their mother- Smt. Laxmi Mehar (Respondent No.1).

Respondents No. 1 to 3 all are R/o Village- Shrinagar-Bargah, P.S. & Tah. Bargah, District Bargah (Odisa)

4. Shivprasad Yadav, S/o Bachau Yadav, aged 25 years, R/o Village Sahijankhurd, P.S. & Tah. Robertsganj, District Sonbhadra (U.P.)
5. Shyamanand, S/o Ramprasad, R/o. Village- Sahijankala, P.S. & Tah. Robertsganj, District Sonbhadra (U.P.)
6. Branch Manager, the New India Assurance Company Limited, Branch-Office-Bramha Road, Ambikapur, District Surguja (C.G.)

… Respondents

- Mr. Dashrath Gupta, Advocate, for the Appellant-National Insurance Company Limited.
- Mr. A.N. Pandey, Advocate, for the Respondents-Claimants.
- Mr. Samir Singh, Advocate, for the Respondent-The New India Assurance Company Limited.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

30/08/2017

1. These are the two appeals under Section 173 of the Motor Vehicles Act, 1988, arising out of two separate awards passed by the Additional Motor Accident Claims Tribunal, Ramanujganj, District Balrampur-Ramanujganj, in Claim Case No. 22/2013 and Claim Case No. 24/2013, decided on 5.7.2014, respectively.

2. Vide the impugned awards, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, has assessing contributory negligence on the driver of the two vehicles involved in the accident awarded a compensation of Rs. 15,32,000/- in Claim Case No. 22/2013 and Rs. 7,40,000/- in Claim Case No. 24/2013, with interest thereon at the rate of 9% per annum from the date of award.

3. The Claimants in MAC No. 1113/2014 are the legal representatives of deceased-Bhagwan Sah, who was the owner of Toyota Qualis car No. CG07/1059. The driver of the said Toyota Qualis Car was the deceased-Guna Mehar whose legal representatives are the Claimants in MAC No. 1114/2014. The driver-Guna Mehar while driving the Toyota Qualis car hit against a stationary Truck No. UP64-H/3537 which was owned by Respondent-Shyamanand, driven by Respondent-Shivprasad and insured with Respondent-The New India Assurance Company Limited. The allegation is that the said Truck in contravention of traffic rules had been parked in the centre of the road without giving an indication or indicator and without putting its lights on, to show that it was parked and thus causing the accident.

4. The Tribunal considering the factual aspects of the case reached to the conclusion that there is an element of contributory negligence on the part of the driver of the Toyota Qualis car being driven by deceased-driver Guna Mehar in which the deceased-owner Bhagwan Sah was also travelling. Thus, the percentage of negligence on either side was saddled at the ratio of 50:50. As a consequence, the Claimants were ordered to be entitled for compensation of which liability has been fastened upon the Insurance Companies of the two vehicles involved in the instant accident with equal share.

5. It is this award which has been challenged by the Insurance Company of the Toyota Qualis car owned by deceased-Bhagwan Sah and driven by deceased- Guna Mehar.

6. Contention of the learned Counsel for the Appellant-Insurance Company is that firstly the conclusion drawn by the Tribunal to the extent of there being a contributory negligence is only on the basis of assumption and presumption without there being any evidence in this regard to establish the contributory negligence. He further submits that the owner of the Toyota Qualis car also died in the accident and the owner cannot be presumed to be a third party so far as his own vehicle is concerned and thus the Appellant-Insurance Company cannot be forced to pay the compensation against a policy which has been taken for only the third party, indemnifying the claim raised by the deceased-owner himself.

7. Learned Counsel for the Claimants however submits that the appeals being devoid of merit deserves to be rejected. He, however, submits that so far as the Claimants are concerned they are only concerned with the compensation part and that they are not concerned as to who is saddled with the responsibility of payment of compensation. However, he submits that there is no evidence on record to show that there has been any contributory negligence on the part of the driver of the Toyota Qualis car.

8. On the other hand, learned Counsel for the Respondent-New India Assurance Company opposing the appeals of the Appellant-Insurance Company submits that the driver of the Toyota Qualis car, accepting the version of the Claimants, had hit the Truck from behind which by itself would show that if the driver of the Toyota Qualis car would had been a bit more cautious, the accident could have been avoided and thus there appears to be a contributory negligence. He thus prayed for the rejection of the appeals.

9. Having considered the rival contentions put forth on each side and on perusal of the record, true it is that the only finding of contributory negligence is reflected from the finding recorded in paragraph 14 of the impugned awards. However, the record would show that there is no evidence to show that there was any sort of a negligence on the part of the driver of the Toyota Qualis car. The only assumption is based on the fact that the driver of the Toyota Qualis car appears to have been driving the car for the whole night. This again is also a finding on presumption as there is no evidence on record to show that there was a continuous driving by the deceased-driver Guna Mehar of the Toyota Qualis car. It could also be a case where the possibility cannot be ruled out of the driver having parked at some place and must have taken rest. In the absence of evidence, the finding is purely based on assumption alone. What also cannot be lost sight of, is the fact, that the owner and driver of the Truck both have not deposed before the Court below that their vehicle was parked on the road and the accident occurred because of the negligence of the driver of the Toyota Qualis car. Under such circumstances, the finding of the Tribunal to the extent of there being a contributory negligence deserves to be and is accordingly set aside.

10. What is also relevant to take note of is, that the Insurance Company of the Truck has not filed any appeal thereby they have accepted the negligence on the part of the driver of the Truck.

11. It is thus ordered that the entire liability of payment of compensation ought to had been and is ordered to be upon the Respondent-New India Assurance Company Limited instead of 50% of it being borne by the Appellant-National Insurance Company Limited. The impugned awards stand modified to the extent that the liability of payment of compensation shall be upon the Respondent-New India Assurance Company Limited in both the cases.

12. In the result, both the appeals are allowed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/