

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1229 of 2017**

Chola Mandalam Insurance Company Limited (Insurance Company) 2nd Floor, Dair House, 2, N. S. C. Bose Road, Chennai, 600001, at present above Axis Bank, Akashwani Road, Jagadalpur 494001 at present 2nd Floor, Simran Tower, Vidhan Sabha Road, Opp, L I C Office, Police Station Pandri, Raipur, Chhattisgarh (Insurer of Vehicle No. Scorpio No. C G 17 GA 5300)

---- Appellant**Versus**

1. Shekh Ajgar Ali S/o Shekh Yusuf, aged about 46 years, R/o Rumi Nagar, Thana Sukma, Tahsil Sukma, District Sukma, Chhattisgarh
2. Shekh Nijam, S/o Shekh Ajgar Ali, aged about 22 years, R/o Rumi Nagar, Thana Sukma, Tahsil Sukma, District Sukma, Chhattisgarh
3. Ku. Shekh Suhana, D/o Shekh Ajgar Ali, aged about 15 years, Respondent No. 3 is minor and hence representing through her father Shekh Ajgar Ali, S/o Yusuf Ali R/o Rumi Nagar, Thana Sukma, Tahsil Sukma, District Sukma, Chhattisgarh.
4. Sanjay Sarkar S/o Narayan Sarkar, aged about 34 years, R/o Rangaraj Ward, Kumharras, Thana, Tahsil and District Sukma Chhattisgarh. (Driver of vehicle Scorpio No. CG 17 GA 5300)
5. Amrendra Bahaddur Singh S/o Bhagwan Baksha Singh, aged about 55 years, R/o Mastanpara, Sukma, Thana and District Sukma Chhattisgarh. (Owner of Vehicle Scorpio No. CG 17 GA 5300)

---- Respondents

For Appellant : Shri Rohitashav Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****04/10/2017**

Heard on I.A. No. 01/2017 for condonation of delay in filing appeal.

2. For the reasons assigned in the said application and finding them to be satisfactory, I.A. No.01 is allowed and the delay of 16 days in filing the appeal stands condoned.

3. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 08.05.2017 passed by the Additional Motor Accident Claims Tribunal, Dantewada (CG) in Claim Case No. 36/2015. Vide the impugned award, the Tribunal in a death case under Section 166 of MV Act has awarded compensation of Rs.6,51,840/- with interest @ 9% per annum from the date of application.

4. The challenge by the Insurance Company to the award is the ground of delayed FIR being made. According to the counsel for the appellant, the accident in the instant case took place on 19.01.2014 whereas the FIR had been lodged after about three months time though the actual date could not be submitted by the appellant. The second ground is for considering the application filed under Order 41 Rule 27 of CPC with which counsel for the appellant wants to rely upon a document dated 16.05.2017 i.e. a report from St. Josheph's General Hospital Guntur (A.P.) whereby the hospital has referred the injuries sustained by the victim Smt. Shaik Serejun to have occurred on account of fall from stairs. Likewise, it also reflects that she was discharged after treatment from the said hospital. The report also shows that certain bills which had been sent for verification were found to be fake and fabricated.

5. So far as the first ground of delayed FIR is concerned, this Court is of the opinion that the Tribunal has rightly considered the evidences which have been led by the claimants explaining the delay caused which occurred on account of the treatment which was being rendered to the deceased immediately after the accident. No strong evidence has been led by the Insurance Company to rebut or controvert this submission made by the claimants. Thus, the first ground

raised by the Insurance Company does not have any force and the same stands negated.

6. So far as the second ground for taking document of St. Josheph's General Hospital Guntur (A.P.) as a piece of evidence by application under Order 41 Rule 27 CPC is concerned, the same also cannot be accepted for the reason that the said investigation appears to have been got conducted after the award was passed by the Tribunal. The record shows that the claim application was filed on 29.06.2015. It also reflects that the Insurance Company had entered appearance before the Tribunal and contested the case on merits. The award was passed after about 2 years of time on 08.05.2017 and during that time, the appellant had sufficient opportunity of getting the matter examined by their investigating team. The Insurance Company having not availed the opportunity at the right time, now relying certain documents got prepared subsequent to the award, is not sufficient to entertain the application under Order 41 Rule 27 of CPC and the same accordingly stands rejected.

7. In view of the two grounds being negated, the appeal of the Insurance Company fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE