

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No.1552 of 2017

Insurance Company - Future General Insurance Company Ltd., (Actual Name Of The Appellant Future Generali India Ins. Co. Ltd. Shop No. 3, 2nd Floor, Maruti Business Park, Near ghuppal Petrol Pump, Raipur Tahsil & District Raipur Chhattisgarh (Insurer Of Vehicle No. C G 04 J C 8948).

---Appellant

Versus

1. Rakesh Kumar Tekwani S/o Late Shri Chandanmal Tekwani, Aged About 26 Years R/o Nutan Chowk, Ratanpur, P. S. Ratanpur Tahsil Ratanpur District Bilaspur Chhattisgarh (Claimant)
2. Chintamani Gadwal S/o Murlidhar Gadwal, R/o Kanak Wire Products, Behind Ganesh Temple, Sector-2, Shivanand Nagar Banasrai, District Raipur P. S. City Kotwali, Raipur Chhattisgarh (Owner Of Vehicle No. C G 04 J C 8948)
3. Sunil Kumar Yadav S/o Hiralal Yadav, Aged About 30 Years R/o Mau Aaimaa Allahabad Uttar Pradesh Through Owner Chintamani Gadwal, S/o Murlidhar Gadwal, R/o Kanak Wire Products, Behind Ganesh Temple, Sector-2, Shivanand Nagar Banasrai, District Raipur P. S. City Kotwali, Raipur Chhattisgarh (Driver Of Vehicle No. C G 04 J C 8948)

---Respondents

For appellant/Insurance Company : Shri Rohitashva Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/11/2017

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 17/03/2017 passed by the learned Motor Accident Claims Tribunal, Bilaspur (C.G.) in Motor Accident Claim Case No.615/2014.
2. Vide the said impugned award, the Tribunal in an injury case under Section 166 of the Motor Vehicles Act has awarded the compensation of

Rs.4,40,000/- along with interest @ 9% per annum from the date of application.

3. The ground of challenge by the Insurance Company is that, there is no evidence so far as the accident to have occurred with the offending vehicle. It was also contended by the counsel for the Insurance Company, that an F.I.R. in the instant case was also lodged after more than 1 and 1/2 month. All these things creates a great element of doubt. He further submits, that on the Criminal Case which was instituted at the instance of the complainant, ultimately resulted in the closure of the case, as the classification of the vehicle referred to was different and thus prayed for the setting aside of the award and for dismissal of the claim application. He further submits, that the claimant in the instant case have also registered a complaint case against the driver and owner of the offending vehicle and no final adjudication has been made in the said complaint case.

4. However, perusal of record show, that the claimant in the instant case have adduced the evidence before the Tribunal and his evidence was supported by the evidence of one Ashok Dhiwar-PW/2.

5. Further from the record which have come before the Court it reflects, that the injured in the instant case was got grievous injuries from the said accident and that he had to be hospitalized and that he was shifted from one hospital to another and in the process considerable time was spent for his treatment and therefore there was a delay in lodging of the F.I.R.

6. Further from the evidence which have come on record what reflects is that, the vehicle number and the owner name mentioned in the F.I.R. and that in the present claim application are same whereas the only difference was that while lodging of the F.I.R. the class of the vehicle was referred as a Truck and that the vehicle infact was a Mini Goods Carrying Vehicle.

7. The Insurance Company has led an evidence of the Police Officer who had registered the F.I.R. at the instance of the claimant and had submitted the closure report. Apart from the said witness, there is no other evidence led by the Insurance Company to substantiate any of the contentions which the Insurance Company had raised particularly in respect of the license etc.

8. Perusal of the record also show, that the fact that the claimant has filed a claim case against the driver and owner further strengthens the claim of the claimant and merely because the class of the vehicle being mentioned differently by itself cannot be construed to be a strong ground for rejection of the claim application. It is settled position of law that the claim application under the Motor Vehicle Act is decided on the basis of preponderance probabilities and that it does not require proof beyond all reasonable doubt required for establishing the accident.

9. Thus, this court does not find any strong case made out by the counsel for the appellant calling for an interference with the impugned award.

10. The appeal thus deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge