NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 660 OF 2015

The Oriental Insurance Company Limited, Branch Office Manendragarh Road, Tahsil & District- Surguja, Chhattisgarh

… Appellant

Versus

1. Siyaram Sai, S/o Modi Sai, Aged About 46 Years,
2. Durga Bai W/o Siyaram Sai, Aged About 43 Years,
   Both caste- Kanwar, R/o Village Kurdeg, P.S. & Tahsil - Bagicha, District - Jashpur, Chhattisgarh
3. Riyazzudin S/o John Mohammad, Aged About 46 Years, occupation- Agriculturist and Tractor Owner, R/o Village Lumgaon, P.S. - Batauli, Tahsil & District - Surguja - Chhattisgarh
4. Ramvilas Paikra S/o Ramnath Sai, Aged About 25 Years, Occupation- Driver, R/o Village Maini, P.S. & Tahsil- Bagicha, District - Jshpur, Chhattisgarh
5. Yaseen Khan S/o Yakub Khan, R/o Barejpara Ambikapur, District- Surguja, Chhattisgarh
6. Branch Manager, Zila Sahakari Bhoomi Vikas Bank Maryadit, Branch Office Lundra, District- Surguja, Chhattisgarh

… Respondents

MISC. APPEAL (C) NO. 661 OF 2015

The Oriental Insurance Company Limited, Branch Office Manendragarh Road, Tahsil & District- Surguja, Chhattisgarh

… Appellant

Versus

1. Rajnath S/o Rupu, Aged About 57 Years,
2. Ludgo Bai W/o Rajnath Ram, Aged About 50 Years,
3. Somari Bai W/o Late Santra, Aged About 25 Years,
4. Minor Badrinath S/o Late Santra Aged About 6 Years,
5. Minor Badrinath S/o Late Santra, Aged About 10 Years,
6. Minor Jamuna S/o Late Santra Aged About 10 Years,
   Respondent No. 4, 5 & 6 are minors, through natural guardian mother Somari Bai, W/o Late Santra, All Caste- Kanwar, R/o Village Maini, P.S. & Tahsil Bagicha, District Jashpur Chhattisgarh
7. Ramvilas Paikra S/o Ramnath Sai, Aged About 25 Years, Occupation- Driver, R/o Village Maini, P.S. & Tahsil Bagicha, District Jashpur Chhattisgarh
8. Riyazzudin S/o John Mohammad, Aged About 46 Years, Occupation- Agriculturist and Tractor Owner, R/o Village Lumgaon, P.S. Batauli, Tahsil & District Surguja Chhattisgarh
9. Yaseen Khan S/o Yakub Khan, R/o Barejpara Ambikapur, District Surguja Chhattisgarh
10. Branch Manager, Zila Sahakari Bhoomi Vikas Bank Maryadit, Branch Office Lundra, District Surguja Chhattisgarh

… Respondents

For Appellant-Insurance Company : Mr. Raj Awasthi, Advocate.
For Respondent-Claimants : Mr. Rishikant Mahobia, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/08/2017

1. These are the two appeals under Section 173 of the Motor Vehicles Act, 1988, filed by the Appellant-Insurance Company, assailing the award dated 1.10.2012 passed by Motor Accident Claims Tribunal, Jashpur, in Motor Accident Claim Case No. 31 of 2010 and Claim Case No. 32 of 2010.

2. Vide the impugned award, the Tribunal in a proceeding under Section 166 of the Motor Vehicles Act, 1988, has awarded a compensation of Rs. 4,23,500/- and Rs. 2,07,500/- to the Claimants in Motor Accident Claim Case Nos. 31 of 2010 and 32 of 2010 respectively. The liability for payment of compensation was fastened upon the owner, driver and insurer of the offending vehicle i.e. Tractor-Trolley No. MP27-B/2931-2932, with interest thereon at the rate of 6% per annum from the date of filing of the claim case. A further penal order was also passed that in the event if the compensation is not paid within a period of one month then the interest shall be calculated at the rate of 9% upon the compensation.

3. It is this award which has been challenged by the Insurance Company in the present two appeals as far as the liability part is concerned.

4. Learned Counsel for the Appellant-Insurance Company submits that it is a case where the Insurance Company in fact has not received any premium of the insurance policy which is alleged to have been issued by the Appellant-Insurance Company. According to the Counsel for the Insurance Company, one Yaseen Khan, an ex-agent of the Appellant-Insurance Company had in fact received the money on behalf of the insured and had issued a cover note policy, but the premium of which was not deposited with the Appellant-Insurance Company. It has been further contended that the Insurance Company has led an evidence before the Tribunal stating that the agency with the said Yaseen Khan has also stood cancelled and appropriate criminal case has also been initiated against him for the fraud that he had played with the company. That since the premium amount was not received by the Company no policy as such was issued with which the liability can be accepted by the Insurance Company. It is further contended on behalf of the Insurance Company that the entire proceeding before the Tribunal is only on the basis of a photocopy of a cover note, which has not been duly proved to the effect that it was a genuinely valid insurance policy. It has been lastly contended by the Insurance Company that this being the factual matrix of the case, the matter may at least be remitted back to the Tribunal for granting an opportunity to the Insurance Company so that it can establish that no liability falls upon the Insurance Company.

5. Learned Counsel for the Claimants however opposes the appeals and submits that the accident in the instant case is of October, 2002 and the claim cases were filed in the year 2003 and 2004 respectively and till date except for the no fault liability and the mandatory deposit which the Insurance Company had made at the time of the filing of the appeals, the claimants have not received the benefits of the award and thus he prayed for the rejection of the appeals.

6. Having considered the facts and circumstances of the case, what is striking the conscious of this Court is that the claim was filed as early as in the year 2003 and 2004 and the impugned award has been passed on October, 2012, that is, for about more than 8-9 years the claim cases were pending before the Tribunal. This period is sufficiently long period for the

Insurance Company to have taken all necessary steps ensuring proper evidence to be led before the Tribunal. What is also pertinent to mention is that the witness of the Insurance Company himself admits that they had cancelled the agency of the said Yaseen Khan and appropriate criminal case has also been lodged against him, yet the Insurance Company failed to disclose any plausible explanation as to why in spite of all this they did not intimate the insured of the fact that for the premium, money he has paid or cover note which has been issued to him no money has been received by the Insurance Company thereby asking the insured to make good the premium of the policy, so that proper policy could be issued. In the absence of any such steps being taken by the Insurance Company and no proper steps having been taken for leading substantive evidence before the Tribunal, at this stage, the plea of remittance of the matter to the Tribunal is not justified or reasonable.

7. Further, what is also reflected is that the owner of the offending vehicle as such cannot be said to be at fault. Admittedly, he had paid the premium to an authorised agent (at one point of time) of the Insurance Company and the said agent had duly issued a cover note also to the owner of the offending vehicle and in these circumstances, the owner was under bonafide belief that he has been duly issued with the insurance policy without any knowledge of the development so far as the cancellation of the agency of the said Yaseen Khan and also non-payment of the premium by Yaseen Khan to the Insurance Company. Thus, for the ignorance of fact of the owner he cannot be fastened with the liability of payment of compensation particularly when he has got a copy of cover note issued on behalf of the Insurance Company.

8. In view of the aforesaid reasons, this Court does not find any strong case made out calling for interference with the impugned award. The two appeals thus are liable to be and are accordingly dismissed being devoid of merits.

Sd/-
(P. Sam Koshy)
Judge

/sharad/