NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 874 of 2016

Shri Ram General Insurance Company Ltd. E.8, EPIP, RIICO Industrial Area, Sitapura, Jaipur (Rajasthan) 302002, Branch Manager.......(Insurer Of Bus M. P. 50 E 0015).

---- Appellant

Versus

1. Sohan Ram S/o Jagarnath Sahu, Aged About 55 Years
2. Suganti Bai, W/o Sohan Ram, Aged About 50 Years
3. Kailash Kumari, W/o Nathu Ram Aged About 23 Years
4. Ku. Pratima, D/o Nathu Ram, Aged About 5 Years Minor,
5. Pankaj Kumar S/o Nathu Ram, Aged About 3 Years
6. Ku. Privanka, D/o Nathu Ram Aged About 2 Years
7. Prince Kumar S/o Nathu Ram, Aged About 06 Months

Appellants No.4 to 7 are Minor, Through Natural Mother Kailash Kumari W/o Late Nathu Ram

All R/o Gram Tolga Thana And Tahsil Khargawa District Koria, Chhattisgarh.

8. Manish Mishra S/o Shri Ram Narayan Mishra, R/o Koria Kolari, Tahsil Baikunthpur, District Koria, Chhattisgarh..........(Owner Of Bus M. P. 50 E 0015)
9. Dharmendra Kumar Paswan, S/o Satendra Paswan, Aged About 35 Years Navinagar, Near Railway Station Thana Navinagar, District Aurangabad, Bihar) Hall Mukam Gram Barbaspur Thana Ramanuj Nagar, District Sarguja, Chhattisgarh.........(Driver Of Bus M. P. 50 E 0015).

---- Respondents

For Appellant	:	Shri Deepak Gupta, Advocate.
For Respondents No.1to7		Shri Anil Gulati, Advocate.
For respondent No.8	:	Shri Praveen Das, Advocate.
For respondent No.9	:	None.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

05/07/2017

1. For the reasons assigned in the application and finding them to be satisfactory, IA No.1 is allowed and delay in filing the appeal is

condoned.

2. The present appeal has been filed against the award dated 04.03.2016 passed by the Ist Additional Motor Accident Claims Tribunal, Manendragarh, Distt. Korea (in short, the Tribunal) in Claim Case No.91 of 2014.
3. Brief facts of the case is that deceased Nathuram met with an accidental death on 02.05.2010 when he was hit by the Bus which was being driven by respondent No.9 and owned by respondent No.8. The claimants had filed claim application for compensation. After the evidence were recorded and the pleadings were complete, the Tribunal reached to the conclusion that the claimants are entitled for compensation to the tune of Rs. 5,84,150/- along with interest @ 9 percent per annum from the date of claim application.
4. The challenge to the award by the appellant is on the solitary ground of liability. According to the appellant, the liability cannot be fastened upon the insurance company on account of there being a clear breach of insurance policy as at the relevant point of time the Driver of the Bus was not having valid and effective driving license. According to him, it is a case where the owner as well as the Driver have not led any evidence before the Tribunal to establish that there was no breach of policy conditions with which the liability can be fastened upon the insurance company. Thus, prayed that the award impugned be modified to the extent that insurance company may be discharged from its liability.
5. Counsel for the claimants however opposing the appeal submits that

it is a case where the ground which the insurance company is raising has not been substantiated or proved by leading proper evidence before the Tribunal. It is also the contention of the claimants that during the course of evidence the criminal case in respect of said accident pertaining to respondent No.9-Driver was produced before the Tribunal wherein it clearly reflects that the Driver had not been proceeded or prosecuted for not having license at the time of accident. This itself is the sufficient indication that the Driver was having valid driving license at the time of accident.

6. The same argument has been adopted by the counsel for the respondent No.8 as well.

7. Having considered the rival contentions put forth on either side and on perusal of record, what is undisputed is the fact that on 02.05.2010 an accident did take place while the deceased was driving the motorcycle and was hit by the Bus owned by respondent No.8 and driven by respondent No.9. The claim application was filed and in the claim they had proved their case so far as age and the wage of the deceased is concerned. Further, from the record it also reflects that the insurance company also has led evidence of one of his officer, who, in his cross examination, has admitted the fact that records of the criminal case initiated against the driver of the Bus was produced before the Tribunal. Further, it is not in dispute that in the said criminal case the driver has not been prosecuted for not having a license at the time of accident.

8. Thus, considering the aforesaid factual matrix of the case, this court

is of the opinion that the Tribunal has not committed any error in fastening the liability upon the appellant-insurance company to pay compensation to the claimants. This finding also cannot be said to be a perverse finding or a finding contrary to the evidence on record.

9. Thus, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder