NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 286 of 2003

1. Dalganjan S/o Sukhlal Rajwar, aged about 48 years, Caste-Rajwar, R/o village Naya Karkoli, P.S. & Tehsil Pratappur, District Surguja (C.G.) (Owner).
2. Sukhu @ Sukhan Ram S/o Rama, aged about 27 years, Caste-Rajwar, R/o village Batra, Police Chowki Karanji, P.S.Jainagar, Tehsil Surajpur, District Surguja (C.G.) (Driver).

---Appellants

Versus

1. Shivmangal S/o Genda Panika, aged about 45 years.
2. Sampatiya Bai W/o Shivmangal, aged about 40 years.
3. Suresh Kumar S/o Shivmangal Panika, aged about 25 years.

   All are R/o village Barpara, P.S. & Tehsil Pratappur, District Surguja (C.G.) (Claimants).
4. United India Insurance Company Limited, Branch Manager, Ambikapur, District Surguja (C.G.) (Insurer).

---Respondents

For appellants : Shri D.N.Prajapati, Advocate.
For respondent No.4/Insurance: Shri Anand Kumar Gupta, Advocate.
Company.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/02/2018

1. Present is an appeal filed by the owner under Section 173 of the Motor Vehicles Act assailing the award dated 10/03/2003 passed by the learned Sixth Additional Motor Accident Claims Tribunal (F.T.C.), Surajpur, District Surguja (C.G.) in Motor Accident Claim Case No. 11/2001.

2. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.1,82,500/- with interest @ 9% per annum from the date of application.

3. While passing the impugned award, the Tribunal has exonerated the Insurance Company and have fastened the liability of payment of compensation upon the owner.

4. The counsel for the appellant/owner submits that, the appellant herein had obtained a cover note for the offending vehicle on 23/03/1999 and for which the policy was subsequently issued which was valid from 25/03/1999 to 24/03/2000. He further submits that, since the appellant had already paid premium to the Insurance Company on 23/03/1999 as is proved from the cover note which was produced before the Tribunal, the Insurance Company could not be exonerated of its liability and thus prayed for setting aside of the order to the extent of shifting the liability upon the Insurance Company which has been fastened upon the present appellant/owner.

5. Per contra, the counsel for the Insurance Company opposing the appeal submits that, the cover note does not seem to be a genuine document as the carbon copy which was maintained by the Insurance Company shows different date of the issuance of cover note. He further submits that, the carbon copy of the cover note which is in possession of the Insurance Company shows the date of issuance of cover note to be 25/03/1999 and not 23/03/1999. Thus, for accident that took place

before the issuance of cover note on 25/03/1999, the Insurance Company cannot be fastened with the liability of payment of compensation and thus prayed for rejection of the appeal.

6. Perusal of record would show that, the original of the cover note so also its carbon copy has been brought on record. The original copy produced before the Court does not have any overwriting so far as the validity of the policy is concerned and their the date is shown as 23/03/1999 to 22/03/2000, whereas the carbon copy which is maintained in the office of the Insurance Company, their appears to be a slight overwriting so far as the date 23/03/1999 is concerned, it appears to have been overwritten as 25/03/1999. Further, the carbon copy has an extra endorsement of the date of issuance of policy and the time of its issuance which is not reflected in the original which has brought on record.

7. Given the facts and circumstances of the case, it appears that the original cover note which was issued to the appellant and which is in their possession shows that the cover note was infact issued on 23/03/1999. The date of accident in the instant case also is 23/03/1999 i.e. the date on which the cover note was issued. Once when the cover note has been issued indemnifying the owner, even if the accident took place on the same date, the Insurance Company would be liable to indemnify the owner.

8. Accordingly, this Court is convinced of the fact that the owner had obtained the cover note on 23/03/1999.

9. Thus, the finding of the Tribunal in exonerating the Insurance Company does not seem to be proper, legal and justified and the same deserves to be and is accordingly modified to the extent that, the liability of payment of compensation shall be jointly and severally be upon the owner, driver and the Insurance Company and the responsibility of payment of compensation shall be that upon the owner. Any amount which has been paid by the owner, the same shall be refunded to him upon the amount being deposited by the Insurance Company.

10. The appeal thus stands allowed to the aforesaid extent and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit