NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 596 of 2012

Bajaj Allianz General Insurance Co. Ltd. Bhopal, at present Vidhan Sabha Road, Shivmohan Bhawan, Pandri Raipur (CG).

---- Appellant

Versus

1. Mrs. Sunita W/o late Santlal, aged about 23 years
2. Prakash S/o late Santlal, aged about 3 years through mother Mrs. Sunita.
3. Mrs. Fulbasiya W/o Dhansu, aged about 65 years,
4. Dhansu S/o Bhulo, aged about 70 years,

All are R/o Village Pahadpara (Bhandarpara) Thana and Tehsil Baikunthpur, Distt. Koria (CG).

5. Chandraparakash S/o Hansraj R/o Village Salka, Bhandrapara, Thana And Tah. Baikunthpur, Dist. Koria C.G.
6. Buddhsen Patel S/o Shri Ramkishore Patel, R/o Vill Gada, Tah, Hanuman, Dist. Rewa M.P. At Present Kachhripara, Baiukunthpur C.G.
7. Awadhsharan Patel S/o Ramniwas Patel, R/o Odgi, Thana And Tah, Baikunthpur, Dist. Koria C.G.

---- Respondents

For Appellant	:	Shri Bhaskar Pyasi, Advocate.
For Claimants	:	Shri Anil Gulati, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

09.03.2018.

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurance company against the award dated 05.12.2011 passed by the Motor Accident Claims Tribunal, Koria (in short, the Tribunal) in Claim Case No.20/2010. Vide the said impugned award, the Tribunal has awarded a compensation of Rs.4,57,000/- with interest @ 7.5 percent per annum from the date of application.
2. The liability of payment of compensation has been fastened upon the present appellant, the alleged insurer of the offending vehicle.

3. The contention of the appellant is that it is a case of no policy at all. Further contention is that the driver of the offending vehicle did not have a valid license on the date of accident. He submits that the owner was proceeded exparte in the instant case. The driver though was represented through a lawyer, but has not produced sufficient material to show that the vehicle was duly insured with the appellant and therefore, it has to be presumed that the vehicle was not insured. Rather, it was a case of no policy and thus prayed for setting aside of the award. The connection was also that Ex. P/9 is only a proposal form and unless the premium is paid with the insurance company, the policy would not be issued and if there was a policy issued, the same could have been produced by the owner or the driver before the Tribunal. Having not done so, the liability should not have been automatically fastened upon the appellant.
4. A perusal of record would show that the claimants in the instant case had neither entered before the Tribunal to establish the accident and the resultant death of the deceased. It was the insurance company which had taken a specific plea before the Tribunal that the vehicle was not insured with them and that the driver of the offending vehicle was not having a valid license. However, the insurance company in respect of their pleadings or to substantiate their contentions which they have raised in their plea, have not led any evidence whatsoever.
5. In the absence of any evidence adduced by the insurance company, it cannot be said that the insurance company had discharged its burden of proving the fact that the vehicle was not insured with the

appellant at all. Under the circumstances, since the insurance company themselves have not led any evidence to discharge its burden before the Tribunal that the vehicle was not insured with them particularly when there was a proposal form duly produced before the Tribunal, this court does not find any strong case made out by the appellant calling for interference with the impugned award.

6. The appeal thus being devoid of merit deserves to be and is hereby dismissed.

7. Interim order passed by this court shall stand merged with this final order. It shall be the responsibility of the appellant-insurance company to deposit the entire award amount at the earliest.

Sd/-
(P.Sam Koshy)
Judge

inder