NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 633 of 2012

Bajaj Allianz General Insurance Company Limited, through Branch Manager, In front of Rajkumar College, at present Shiv Mohan Bhawan, Vidhan Sabha Road, Pandri, Raipur (C.G.).

---Appellant

Versus

1. Mrs. Manju Bai alias Karuna Bai W/o Late Amar Singh Rathod, age 24 years.
2. Suraj Singh S/o Late Amar Singh Rathod, aged about 4 years (Minor).
3. Kumari Sakshi Bai D/o Late Amar Singh Rathod, aged about 1 year (Minor).
4. Saurabh Singh S/o Late Amar Singh Rathod, aged about 6 months (Minor).
5. Shubham Singh S/o Late Amar Singh, aged about 6 months (Minor).

   All minors through respondent No.1 – mother Mrs. Manju Bai.

   All are R/o Sadakpara, Janjgir, Thana Janjgir, District Janjgir – Champa.
6. Narayan S/o Late Bhuru Prasad, aged about 70 years.
7. Thandaram S/o Narayan Prasad, aged about 55 years.
8. Sahodara Bai W/o Narayan Prasad, aged about 65 years.
9. Jai Singh S/o Thandaram Rathod, aged 25 years.
10. Ajay Singh S/o Late Thandaram Rathod, aged 12 years (Minor) through father respondent No.7 Mr. Thandaram.

    Respondents No. 6 to 10 are R/o village Saragaon, thana Saragoan, District Janjgir-Champa (C.G.) (Claimants).
11. Rupesh Kumar S/o Sanat Kumar Sahu, aged 22 years, R/o Pisaud Thana Janjgir, District Janjgir-Champa (C.G.) (Driver).
12. Dhanraj Sahu S/o Ghasiram Sahu, aged 25 years, R/o Pisaud Thana Janjgir, District Janjgir-Champa (C.G.) (Owner).

---Respondents

For appellant/Insurance Company	:	Shri Rohitashva Singh, Advocate
For respondents No.11 & 12	:	Shri Akhtar Hussain, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/02/2018

1. Present is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 30/01/2012 passed by the learned Chief Motor Accident Claims Tribunal, Janjgir-Champa (C.G.) in Motor Accident Claim Case No. 78/2010.

2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.6,68,520/- with interest @ 7% per annum from the date of application.

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

4. The solitary ground of challenge raised by the counsel for the appellant/Insurance Company is that, in spite of proper evidence being led before the Tribunal by the Insurance Company to establish that, the driver of the offending vehicle on the date of accident was having a fake license, the same was not properly appreciated by the Tribunal. Therefore the finding of affixing the liability on the Insurance Company deserves to be set aside. He further refers to the evidence of NAW/3 – Suresh Kumar Pareta, an officer of the R.T.O. who had brought before the Tribunal all the records pertaining to the relevant period establishing the fact that, no such license was issued from the said R.T.O. He had also deposed before the Tribunal that, the signature on the said license were also not of his or his subordinate officer. On the said facts, the counsel for the appellant has challenged the finding of

the Tribunal which had fastened the liability on the Insurance Company only on the ground that, the driver of the offending vehicle Rupesh Kumar had deposed before the Tribunal that, he had obtained the license from an agent and that the license prima-facie looked like a genuine document and therefore there was no fault on part of the owner.

5. Per contra, the counsel for the owner and driver opposing the appeal submits that, there is no fault on part of the owner-cum-driver and the findings of the Tribunal appears to be fair and reasonable and thus prayed for rejection of the appeal.

6. Perusal of the record would show that, there was sufficient force in the argument made by the counsel for the Insurance Company before the Tribunal. The prominent witness examined on behalf of the Insurance Company was the R.T.O. himself who had entered appearance before the Tribunal and deposed that, no such license was issued from his office. He also denied his or his subordinate officer's signature on the said license.

7. Given the facts and circumstances, it was the responsibility upon the owner-cum-driver to disprove the contention of the Insurance Company. Except for the oral submission of the license being prepared through an agent which otherwise is not permissible under the Act, there does not seem to be any cogent evidence on part of the owner-cum-driver to disprove the contention of the Insurance Company.

8. Under the circumstances, the finding of the Tribunal is not sustainable and therefore this Court is of the view that, the liability fastened upon the Insurance Company is erroneous.

9. However, considering the fact that the Insurance Company as per the order of this Court had to deposit 50% of the awarded amount in the year 2013 and also considering the age and number of claimants, this Court is of the opinion that it is a fit case where the doctrine of 'pay and recovery' can be applied and accordingly it is ordered that, the Insurance Company shall honour and deposit the entire amount awarded before the Tribunal with liberty to recover the same from the owner-cum-driver by initiating appropriate recovery proceedings.

10. The appeal thus stands allowed in part and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit