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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.3261 of 2006

National Insurance Co. Ltd. Through Assistant Manager, National Insurance Company Limited, B-1, Taha Complex, 1st Floor, Ring Road, Priyadarshini Nagar, Bilaspur (CG)

---- Petitioner

Versus

1. Jitendra Kumar Jain, S/o Shri Dungarmal Jain, aged about 23 yers, R/o Jail Road, Baikunthpur, Tahsil Baikunthpur, District Korea
2. Singhrakhs Toppo, S/o Shri Chorhata Toppo, aged about 35 years, R/o Mission Baikunthpur, Thana & Tahsil, Baikunthpur, District Korea
3. Righunath Sirdar, S/o Shri Kheru Ram Sirdar, aged about 52 years, R/o Khadgawan, Thana Khadgawan, Tahsil Manendragarh, Distict Korea (CG)

---- Respondents

For Petitioner:	Shri Goutam Khetrapal, Advocate.
For Respondents:	None appears though served.

Single Bench:Hon'ble Shri Sanjay Agrawal, J
Order On Board

24.04.2018

1. This Petition has been filed by the Petitioner/National Insurance Company Ltd. under Article 226/227 of the Constitution of India questioning the award dated 29.08.2001 passed by the Additional Motor Accident Claims Tribunal, Manendragarh, District Korea (for short 'the Claims Tribunal') in Claims Case No.23/2001, by which claimant Righunath's claim has been allowed in part and the Petitioner has been directed to pay him a sum of Rs.7,086/- within a period of two months, else the same shall carry interest at the rate of 15% per annum from the date of award till its realization.

2. The undisputed facts of the case are that on 29.10.1999, the

claimant-Righunath was coming by his motorcycle bearing registration No.MP 27 D/6326 along with his friend Shankar Singh from Bardargaon to Khadgawan and as soon as he reached near the village Andhiwar, his vehicle was dashed vehemently by the offending vehicle-Jeep bearing its registration No.MP 27 B/3281, which was being driven in a rash and negligent manner by its driver – Singrarus Toppo, Respondent No.2 herein, owned by Respondent No.1 herein – Jitendra Kumar Jain, insured with the Petitioner herein - Insurance Company.

3. On account of the aforesaid accident, claim enumerated under Section 166 of the Motor Vehicles Act, 1988 has been made by claimant – Righunath by submitting, *inter alia,* that on account of the alleged accident, he sustained injuries due to which, two fingers of his right leg got fractured and has claimed total compensation to the tune of Rs.1,84,910/-.

4. The aforesaid claim has been contested by the Respondents. Respondents Nos.1 & 2 have contested the claim on the ground that the vehicle in question i.e. the jeep was not being driven in a rash and negligent manner by its driver and in fact, the claimant himself was responsible for the alleged accident. The claim therefore, deserves to be dismissed. Petitioner-Insurance Company has contested the claim on the ground that no premium amount was deposited prior to the date of accident and the so called Development Officer namely Shri BL Khes was not competent to recover the said amount on behalf of the Insurance Company, therefore, the Insurance Company cannot be held liable. It is pleaded further that the insurance policy was issued covering the risk of the offending vehicle with effect from 16.11.1999 only when the premium amount was collected by the Insurance Company on 16.11.1999. Since

the policy has been issued with effect from 16.11.1999, i.e., much after the occurrence of the alleged accident on 29.10.1999, therefore, under such circumstances, the Insurance Company cannot be held liable.

5. After considering the evidence led by the parties, the Claims Tribunal has come to the conclusion that the alleged accident has occurred on 29.10.1999 due to the rash and negligent driving of Respondent No.2 – Singrarus Toppo, the driver of the offending vehicle "Jeep". It held further that the premium amount was collected by the Petitioner/Insurance Company on 22.10.1999 by issuing a "Deposit Challan" in its printed form, therefore, it cannot be held that the vehicle in question was not insured with the Petitioner/Insurance Company. In consequence, the liability has been fastened upon the Petitioner/Insurance Company.

6. Being aggrieved, Petitioner – Insurance Company has filed this Petition. Shri Goutam Khetrapal, learned Counsel for the Petitioner submits that the premium amount was collected by the Development Officer Shri BL Khes on 22.10.1999, however, he was not authorized to collect the same as he has been suspended by the Insurance Company on 2.12.1999. He submits further that the Insurance policy has been issued much after the occurrence of the alleged incident i.e. on 16.11.1999 when the premium amount was collected by the Insurance Company, therefore, under such circumstances, the Insurance Company cannot be held liable in relation to the alleged accident occurred on 29.10.1999.

7. I have heard learned Counsel for the Petitioner and perused the entire record carefully.

8. The main contention raised by the Petitioner/Insurance Company is

that since the accident took place on 29.10.1999 and at that particular time, the premium amount was not paid to the Petitioner/Insurance Company and the so called Development Officer Mr. BL. Khes was not the authorized Officer to collect the same therefore, the Petitioner/Insurance Company cannot be held liable, is noted to be rejected as from a bare perusal of the record, it is evident that the premium amount was already collected by the Petitioner/Insurance Company on 22.10.1999 by issuing a “Deposit Challan” (Ex.N.A-1) in its printed form. Therefore, it cannot be held that the Petitioner/Insurance Company is not liable to indemnify the insured. As far as the suspension of said Development Officer Mr. B.L Khes on 02.12.1999 is concerned, the same is also noted to be rejected not only for want of specific pleading being raised in this regard but also for non-filing of the said order. Thus, from any angle, it is difficult to hold that the Petitioner/Insurance Company could be exonerated from its liability.

9. In view of the foregoing discussions, I do not find any substance in this Petition. The Petition, is accordingly dismissed. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE

Priya