NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 199 of 2012

Reliance General Insurance Company Limited, Through its legal Manager, Reliance General Insurance Company Limited, 4th Floor, 412-413, Ravi Bhawan, Near Jaistambh Chowk, Raipur (C.G.).

---Appellant

Versus

1. Smt. Durga Bai Sonkar W/o Late Sant Ram, aged about 20 years.
2. Mohan Sonkar S/o Late Sant Ram, aged about 2 years.
3. Piyush Sonkar S/o Late Sant Ram, aged about 2 months.

   Respondents No. 2 & 3 being minor, represented through mother respondent No.1.
4. Punit Ram Sonkar S/o Late Paltu Sonkar, aged about 45 years.
5. Smt. Lalita Sonkar W/o Shri Punit Ram, aged about 43 years.

   All are R/o Mandirpara, Ward No.63, Bhatagaon, District Raipur (C.G.) (Claimants).
6. Nilam Alias Nilambar Yadav S/o Basant Yadav, aged about 45 years, R/o Keshri Bagicha, Bhatagaon, District Raipur (C.G.) (Driver).
7. Shivshankar Sonkar S/o Shri Girdharis Sonkar, R/o Bhatagaon, P.S.Puranibasti, Tahsil & District Raipur (C.G.) (Owner).

---Respondents

For appellant/Insurance Company	:	Shri Sourabh Sharma, Advocate.
For claimants	:	Shri Shikhar Sharma, Advocate.
For owner	:	Shri R.K.Pali on behalf of Shri P.P.Sahu, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/02/2018

1. Present is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 08/11/2011 passed by the learned Second Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Motor Accident Claim Case No. 101/2011.

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.4,30,000/- with interest @ 6% per annum from the date of application.

3. While passing the said impugned award, the Tribunal has fastened the liability upon the Insurance Company.

4. The contention of the counsel for the appellant/Insurance Company is that, the liability which has been fastened upon the Insurance Company is by relying upon a fake cover note produced before the Tribunal. He specifically submits that, the Insurance Company in the instant case has led an evidence to establish the fact that, the cover note was not issued by the Insurance Company and the said document is a fake document. He further submits that, he has got it verified from the branch from where it was alleged to have been issued and has received instructions that, it has never been issued from the said branch. He further contends that, even the original of the cover note was not produced before the Tribunal and what was produced before the Tribunal is a photocopy of the cover note with a notary's seal over it to give it a picture of genuine document.

5. In rebuttal of the evidence led by the Insurance Company, the owner and driver have not adduced any evidence whatsoever. Not much also has been extracted from the cross-examination of the witness from the Insurance Company.

6. The counsel for the appellant thus prayed for the award to be suitably modified to the extent that, the Insurance Company be exonerated of its

liability and same be shifted upon the owner and driver of the offending vehicle.

7. The counsel for the respondents both for the claimants as well as for the owner however opposing the appeal submits that, the Insurance Company has not discharged its burden sufficiently. They submits that, the Insurance Company has not produced any document in respect of any verification or enquiry which was conducted in respect of the cover note. The Insurance Company also did not lead evidence of the Bhilai branch from where the alleged cover note was said to have been issued. Thus, the finding of the Tribunal does not warrant any interference and prayed for rejection of the appeal.

8. Having heard the contentions put forth on either side and on perusal of record, it would be relevant at this juncture to refer to the judgment of the Hon'ble Supreme Court in the case of **Anil Rishi v. Gurbaksh Singh [2006 AIR SCW 2394]** wherein in paragraph 19, it has been held as under:-

> **"19. There is another aspect of the matter which should be borne in mind. A distinction exists between a burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is which party is to begin. Burden of proof is used in three wasy : (I) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter evidence; and**

> **(iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule is Section 101 is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same."**

9. Given the aforesaid legal preposition, if we look into the facts of the present case what clearly reflect is that, the stand of the Insurance Company in their Written Statement as well as in the deposition of their witness was that, the said cover note was never issued from the office of the appellant and that it is a fake document.

10. Thus, the burden so far as the Insurance Company seems to have been discharged and thereafter the onus stood transferred on the owner to show that, the contention and statement put forth by the Insurance Company was not correct and the owner and driver was liable to produce cogent evidence to disprove the contention of the Insurance Company.

11. What is pertinent to take note is the fact that, the owner and driver were duly represented before the Tribunal. They were contesting the case on merits. They had cross examined the witness of the Insurance Company. In spite of all these, the owner and driver did not lead any evidence in support of their contention. This act on the part of the owner and driver forces this Court to draw an adverse inference against the owner and driver. Once when there was a specific averment by the Insurance Company of the document produced before the Tribunal being a fake document and not

being the original document, but only a photocopy, thereafter the duty was casted upon the owner and driver to disprove the submission of the Insurance Company which the owner and driver have failed miserably.

12. Under the given facts and circumstances of the case, this Court finds sufficient force on the argument made by the counsel for the Insurance Company in holding that, the Insurance Company has sufficiently proved its case.

13. Under the circumstances, the finding of the Tribunal is not sustainable and the same deserve to be and is accordingly modified to the extent that, the Insurance Company is exonerated of its liability and the liability of payment of compensation stands shifted upon the respondents No. 6 & 7 i.e. driver and owner respectively.

14. The claimants shall be at liberty to get the amount recovered by initiating appropriate recovery proceedings against the owner and driver of the offending vehicle.

15. Whatever amount which has been deposited before the Tribunal, the same may be disbursed to the claimants with liberty to the Insurance Company to recover the same from owner and driver of the offending vehicle.

16. The appeal stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit