NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 553 of 2012

National Insurance Company Limited, through: its Divisional Manager, Divisional Office, B-1 Taha Complex, Ring Road-1, Priyadarshini Nagar, Bilaspur, District Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Inderasia Ws/o Kunjal, Aged about 26 years,
2. Sukwaria, W/o. Jaylal, Aged about 65 years,

   Both are R/o. Village Raghunath Nagar, Mohalla- Pandopara, P.S. Ramkola, Tah Wadraffnagar, District Surguja Chhattisgarh
3. Vishnath S/o Manfer, Aged about 60 years, R/o Village Raghunath Nagar, P.S. Ramkola, Tah. Wadrafnagar, District Surguja Chhattisgarh

---- Respondents

For Appellant	:	Mr. Dashrath Gupta, Advocate
For Respondent No.1 & 2	:	Mr. D.N. Prajapati, Advocate along with Ms. Rabia Khan, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/02/2018

1. The present is an appeal by the Insurance Company under Section 173 of Motor Vehicles Act challenging the award dated 29.02.2012, passed by the 1st Additional Motor Accident Claims Tribunal, Surajpur, Chhattisgarh, in Claim Case No. 164/1999.

2. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.3,75,000/- with a lump sum interest of Rs.30,000/- and penal interest of 12% in case if the award is not deposited within two months from the date of award. While passing the award, the liability of payment of compensation has been fastened upon the Insurance Company. It is this award, which is under challenge in the present appeal.

3. The contention of the counsel for the appellant is that the vehicle involved in the accident was not insured on the date of accident. He submits that the date of accident was 31.05.1999 around 9:30 AM and that the policy issued was on 01.06.1999 i.e. the next day of the accident and the policy came into effect from 3:39 PM i.e. afternoon of 01.06.1999 for a period of one year. He submits that there was no evidence whatsoever to establish that the vehicle was duly insured on the date of accident. He submits that a fake cover note was alleged to have been used to show that there was a policy on the date of accident, but the Insurance Company has sufficiently led the evidence to establish that no such cover note was ever issued in respect of vehicle involved in the accident and that the cover note alleged to have been issued also does not disclose any details and it also appears to be suspicious for the reason that the deposit challan itself was issued on 31.05.1999 i.e. the date of accident, which has not been substantiated by the Owner.

4. It was further contended by the Insurance Company that the Owner as such has not been able to bring anything in rebuttal to the evidence of the Insurance Company, which by itself establishes that there was no effective insurance on the date of accident and the liability of the Insurance Company should therefore be shifted upon the Owner and Driver of the offending vehicle.

5. Mr. D.N. Prajapati appearing along with Ms. Rabia Khan appearing for the Claimants submits that the entire amount has already been deposited before the Tribunal and the same has also been disbursed and as such literally the appeal of the appellant- Insurance Company has become infructuous. He further submits that the finding of the

Tribunal would show that there was a cover note issued in respect of the vehicle on 31.05.1999, by which the liability of payment of compensation has been rightly fastened upon the Insurance Company and prayed for the rejection of the appeal.

6. Having heard the contentions put forth on either side and considering the evidences which have come on record, the Insurance policy which was issued in the instant case has been brought on record, which shows that the policy was made effective from 3:39 PM of 01.06.1999 and was effective till 31.05.2000, this shows that prior to this there was no insurance policy or atleast the Owner of the vehicle has not produced any such policy which could show that he had a valid insurance on the date of accident. Even if, it is assumed that the Owner had paid premium for insurance on the afternoon of 31.05.1999, even then he cannot escape the liability of payment of compensation as the accident in the instant case occurred at around 9:20 AM i.e. even before the office of the Insurance Company had opened on the said date. Thus this Court has no hesitation in reaching to the conclusion that the Insurance Company has been erroneously fastened with the liability of payment of compensation.

7. However in the peculiar facts and circumstances of the case as has been stated by the counsel for the Claimants Mr. D.N. Prajapati that the entire amount has already been deposited with interest @6% as per the order of this Court and has also been disbursed the only relief which can be granted to the Insurance Company is that of applying the doctrine of ‘pay and recovery’. Accordingly, the appeal of the appellant stands allowed in part. Whatever amount that has

already been deposited shall if not disbursed, can be disbursed to the Claimants and the Insurance Company in turn shall have the liberty of recovering the same from the Owner of the vehicle.

8. The appeal of the Insurance Company thus stands allowed in part.

Sd/-
(P. Sam Koshy)
Judge

Ved