NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 599 of 2014

Bajaj Allianz General Insurance Company Limited Branch Manager, Shiv Bhawan, Vidhan Sabha Road, Pandri, Raipur, Tah. And Distt. Raipur C.G., Chhattisgarh **---- Appellant/Non-applicant No.3**

Versus

1. Johanlal Patel And Ors. S/o Late Gawaru Ram Patel Aged About 55 Years R/o Mararkashibahra, Post- Charoda Bandh, P.S. And Tah. Mahasamund, Distt. Mahasamund C.G.

2. Smt. Daya Bai W/o Johan Lal Patel Aged About 53 Years R/o Mararkashibahra, Post- Charoda Bandh, P.S. And Tah. Mahasamund, Distt. Mahasamund C.G. (claimants)

3. Asgar Ansari @ M.D. Ali Asgar Ansari S/o Mahmud Ansari Aged About 22 Years R/o Gurdi, P.S. Gadhwa, Distt. Gadhwa Jharkhand, At Present R/o Khan Hotel Deepika, P.S. Deepika, Distt. Korba C.G., Driver of offending vehicle Truck No. C.G./12/C/1304

4. Akhilesh Vaishnav S/o Ramsnehi Vaishnav Aged About 25 Years R/o Budbud, P.S. Pali, Distt. Korba C.G., (Owner of the offending vehicle Truck No. C.G. 12-C/1304)

5. Divisional Manager S/o The New India Insu.Co.Ltd., Madina Building, Jail Road, Raipur, Tah. and Distt. Raipur C.G., (Insurer of offending motor cycle Passion Plus Chesis No. M.B.L.H.A.10E.L. 8 G.L. 16535 and Engine No. H.A.-10 E.B. 8 G.L. 51717) Cover Note No. 939673 for the period of 06.01.2009 to 05.01.2010. --- **Respondents**

For Appellant	:Shri Sachin Singh Rajput with Shri Sangeet Kumar Kushwaha, Advocate
For Respondents	:None appears

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

05.04.2018

1. This appeal has been preferred by the non-applicant No.3/Bajaj Allianz General Insurance Company Limited under Section 173 of the Motor Vehicles Act,

1988 (hereinafter referred to as 'the Act of 1988') by questioning the propriety of the award dated 25.02.2014 passed by the learned Motor Accidents Claims Tribunal, Mahasamund, Chhattisgarh in Claim Case No. 157/2009, by which, the Claims Tribunal has awarded a total sum of Rs. 4,13,000/- to the claimants with interest @ 6% per annum from the date of claim of petition till its realisation on account of the death of their son, namely, Chandrahas Patel.

2. Brief facts of the case are that on 28.03.2009 deceased Chandrahas Patel, aged 22 years old was going on his motor cycle to R.C.M. Market at Mahasamund for his business affairs and, at the relevant time, the offending vehicle, i.e., 'Truck' bearing its registration No. C.G. 12/C/1304, being driven by its driver rashly and negligently, hit the motorcycle of the deceased. As a result of which, he expired on account of grievous injuries sustained by him in the accident.

3. On account of alleged accident, the respondents No. 1 & 2, being legal representatives of the deceased Chandrahas Patel, instituted a claim enumerated under Section 166 of the Act of 1988 whereby they sought total compensation to the tune of Rs.17,38,000/- by submitting, inter alia, that the deceased was working as a distributor in R.C.M. business and used to earn Rs. 5,000/- per month.

4. The aforesaid claim was contested by the appellant/non-applicant No.3 by saying that the vehicle in question was not involved in the alleged accident, and therefore, no liability as such could be fastened upon it. It is contested further on the ground that the driver of the offending vehicle was not holding the valid and effective driving licence, and therefore, on this count also, the appellant/insurance company cannot be held liable to indemnify the owner who was proceeded ex-parte before the Claims Tribunal

5. After considering the evidence led by the parties, the Claims Tribunal has held that the vehicle in question, i.e., the Truck bearing its registration No. C.G. 12/C/1304 was involved in the alleged accident occurred on 28.03.2009. It held

further that the driver of the offending vehicle was holding the valid and effective driving licence at the time of accident. The Claims Tribunal has held further that the deceased used to earn Rs.4,000/- per month, yearly Rs.48,000/- per annum and since he was unmarried, therefore, while deducting half of his income, the total dependency has been assessed to the tune of Rs.24,000/- per annum and ultimately by applying multiplier of 12 to the annual dependency of rs.24,000/-, the Claims Tribunal has assessed total loss of dependency to the tune of Rs.2,88,000/-. This apart, the Claims Tribunal also awarded a sum of Rs. 1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses and accordingly total compensation to the tune of Rs.4,13,000/- was thus awarded to the claimants with 6% interest per annum from the date of claim petition till its realisation.

6. Being aggrieved, the appellant/non-applicant No.3 has preferred this appeal. Shri S.S. Rajput, learned counsel for the appellant submits that the award impugned as passed by the Claims Tribunal is apparently contrary to law as the same has been passed without appreciating the evidence in its proper perspective available on record. He submits further while drawing attention of this Court to certain documentary evidence, such as, First Information Report that since the report was lodged against an unknown person, therefore, the burden of proof was heavily upon the claimants to establish the fact that the offending vehicle, i.e., the truck was involved in the alleged accident occurred on 28.03.2009. In absence of any cogent and reliable evidence, the Claims Tribunal ought not to have held that the offending vehicle was involved in the alleged accident. He submits further that the driver of the offending vehicle was not holding the valid and effective driving licence at the time of accident, therefore, the Claims Tribunal, under such circumstances, ought to have exonerated the appellant/insurance company from its liability.

7. I have heard learned counsel for the appellant and perused the entire record

carefully.

8. Undisputedly, the accident took place on 28.03.2009 when the deceased Chandrahas Patel was going to R.C.M. Bazar at Mahasamund on his motorcycle. The contention of learned counsel for the appellant that the vehicle in question is not involved in the alleged accident, and therefore, no liability as such could be fastened upon the appellant/insurance company is noted to be rejected as from a bare perusal of the evidence adduced by the parties, it is evident that the vehicle in question was involved in the said accident. Therefore, the Claims Tribunal has not at all committed any illegality in holding that the vehicle in question was involved in the said accident. The finding so recorded in this regard is, therefore, liable to be and is hereby affirmed. As far as the second contention advanced by Shri Rajput that the driver of the offending vehicle was not holding the valid and effective driving licence at the time of accident, is also noted to be rejected as the burden was heavily upon the appellant/insurance company to establish the said fact. However, no evidence in this regard was led by the appellant/insurance company so as to hold that the driver of the offending vehicle was not holding the valid and effective driving licence. In such circumstances, the finding as recorded by the Claims Tribunal in this regard also deserves to be and is hereby affirmed.

9. In view of the foregoing discussions, I do not find any substance in this appeal. The appeal is accordingly dismissed. No order as to costs.

Sd/-

(**Sanjay Agrawal**)
Judge

Anjani