

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 05/09/2018

Judgment delivered on : 22/11/2018

MAC No. 169 of 2013

- The United India Insurance Comp. Ltd Thru- Branch Office, Durg, Distt. Durg C.G.

---- Appellant

Versus

1. Smt. Sukhwantin Bai W/o Om Prakash @ Prakash Ram Nishad Aged About 30 Years
2. Hemant Kumar, Aged About 14 Years
3. Dikesh Kumar, Aged About 10 Years
4. Kumar Purnimal Aged About 10 Years

Son and daughter of late Om Prakash alias Prakash Ram Nishad. All are minor under the guardianship of mother Sukhwantin Bai.

All are resident of Sakin Ward No.II, Camp-I, Dallirajhara, Tah. Dallirajhara, Distt. Durg (CG), All are by caste Kewat.

5. Krishanram S/o Laxman Singh R/o Borgao, Post And Tah. Durg, Distt. Durg C.G.
6. Mohammad Rashid S/o Mohammad Rasul R/o Kelabadi, Durg, Thaha And Tah. Durg, And Present R/o H.No. 135, Kelabadi, Durg, Distt. Durg C.G.
7. Rukmani Sahu W/o Purushottam Ram Sahu Aged About 58 Years R/o Subhash Chowk, Dallirajhara, Tah. Dondi, Distt. Durg C.G.
8. National Insu.Co.Ltd. Branch Office- Kamti Line, Rajnandgaon, Distt. Rajnandgaon C.G.

---- Respondents

For Appellant	:	Smt. Chitra Shrivastava, Adv.
For Respondent Nos.1 to 4	:	Shri Arvind Ku. Dubey, Adv.
For Respondent Nos. 5 to 6	:	Shri Punit Ruparel, Adv.
For Respondents No. 7 & 8	:	None though served.

MAC No. 78 of 2013

- The United India Insurance Comp. Ltd Through- Branch Office, Micro Office, Durg C.G.

---- Appellant

Versus

1. Lallu Choudhari S/o Japan Choudhari Aged About 52 Years
2. Prabhavati W/o Lallu Choudhari Aged About 50 Years
3. Pratap Choudhari S/o Lallu Choudhari Aged About 25 Years

Caste-Kewat, All are resident of Subhash Chowk, Dallirajhara, Thana-Rajhara, Tah-Doundi, Distt. Durg (CG)

4. Krishnaram Sahu S/o Laxman Singh Sahu Aged About 41 Years R/o Gram Borgahan, Post And Thana- Arjunda, Tah. Gundardehi, Distt. Durg C.G.
5. Mohammad Rashid S/o Mohammad Rasul R/o Kelabadi, Durg, Distt. Durg C.G. At Present R/o H.No. 135, Kelabadi, Durg, Distt. Durg C.G.- 491001
6. Rukmani Sahu W/o Purushottamram Sahu R/o Subhash Chowk, Dallirajhara, Tah. Doundi, Distt. Durg C.G.
7. National Insurance Co. Ltd. Branch Office- Kamthi Line, Rajnandgaon C.G.

---- Respondents

For Appellant	:	Smt. Chitra Shrivastava, Adv.
For Respondent Nos.1 to 3	:	None though served.
For Respondent Nos. 4 & 5	:	Shri Punit Ruparel, Adv.
For Respondents No. 6 & 7	:	None though served.

MAC No. 827 of 2013

- Mohammad Rashid S/o Mohammad Rasul R/o Ansh Travels Mini Bus Office, Kelabadi, Durg, Civil And Revenue Distt. Durg C.G.

---- Appellant

Versus

1. Smt. Rajbai Wd/o Late Sadruram Rawate Aged About 55 Years, caste Halba,
2. Ramesh Kumar S/o Late Sadruram Rawate Aged About 38 Years, caste Halba,

Both R/o Village Adjaal, Thana Balod, Tahsil Balod, Dist. Durg (Now Balod) (CG)

3. Krishnaram Sahu S/o Laxman Singh Sahu Aged About 41 Years R/o Borgahan, Post And Thana- Arjunda, Tah. Gundardehi, Distt. Durg C.G.
4. United India Insurance Company Ltd. Thru- Branch Manager, Station Road, In Front Of Chawhan Automobile, Tara Complex, Micro Branch, Durg, Tah. And Distt. Durg C.G.

---- Respondents

For Appellant	:	Shri Punit Ruparel, Adv.
For Respondent Nos.1 & 2	:	Shri Vedant Bhelonde, Adv. on behalf of Shri PR Patankar, Adv.
For Respondent No. 3	:	None though served.
For Respondent No. 4	:	Smt. Chitra Shrivastava, Adv.

Hon'ble Shri Gautam Chourdiya, J

C A V Order

As all these appeals arise out of same accident, they are being disposed of by this common order.

02. As per averments made in the claim petitions, on 20.2.2011 Sarruram Rawte along with other persons was going in Maruti Van No. CG 07 M-3315 from Parsada to Adjaal and on the way his vehicle was dashed by bus bearing registration No. CG 04 ZA 0688 which was being driven in a rash and negligent manner. As a result thereof, Sarruram Rawte, Omprakash and Raju @ Ranjan Choudhari died and their dependents filed separate claim petitions before the Tribunal for compensation i.e. Claim Case Nos.308/11, 122/11 & 168/11 respectively.

03. The Additional Motor Accident Claims Tribunal, Balod, Distt. Durg decided the aforesaid claim cases and passed separate awards. While deciding Claim Case No.308/11, the Tribunal vide award dated 1.3.2013 fastened the liability on the owner of the offending vehicle and exonerated the insurance company whereas in Claim Cases No.122/11 & 168/11 vide awards dated 6.11.2012 & 6.10.2012 respectively, the Tribunal fastened liability on the insurance company. Therefore, the owner has filed appeal i.e. MAC No.827/13 and the United India Insurance Company has filed appeals i.e. MAC Nos. 169/2013 & 78/2013 challenging the respective awards.

04. Heard learned counsel for the respective parties and perused their pleadings as also the evidence available on record.

05. From the record it is seen that the Tribunal while deciding claim case No.308/11, exonerated the insurance company of its liability and held the owner liable for paying compensation on the ground that as per evidence of NAW-2 Ramchandra Kunjam, AG-II in RTO, Raipur on the date of incident i.e. 20.2.2011 the offending vehicle was not having valid permit and this evidence remained unchallenged, and further, the owner of the vehicle also did not adduce any evidence to show that he was having valid permit for plying the vehicle. However, the same Tribunal while deciding the other claim cases, fastened liability on the insurance company of satisfying the awards.

06. It appears that the Tribunal on the basis of seizure memo Ex.D/3 came to the conclusion that permit seized by the police was of the

offending vehicle bearing registration No. CG 04 ZA 0688 whereas as per evidence of NAW-1 Abdul Kalim, the permit so seized does not pertain to the offending vehicle but it pertains to vehicle bearing registration No.CG 04 ZA 0154. This part of his evidence remains unrebutted in cross-examination. Further, NAW-2 Ramchandra Kunjam has specifically stated in his evidence that the document of Ex.D/2 i.e. permit is not valid as per their record and on the date of accident i.e. 20.2.2011, the vehicle bearing No. CG 04 ZA 0688 was not having valid permit.

07. MAC No.78/13 has been filed by the insurance company mainly on the ground that it has not been granted opportunity of adducing evidence by the Tribunal and as such the award of the Tribunal is bad in law. This appeal arises out of award dated 6.10.2012 passed in Claim Case No.168/11. From the order sheet dated 28.9.2012 of this claim case, it is evident that on that date evidence of applicant witness No.3 Chamar Singh was recorded and due to absence of non-applicants, their right to adduce evidence was closed. Thereafter, non-applicant No.3/insurance company moved an application for adducing evidence, however, the same was rejected and the case was fixed for passing of award on 3.10.2012. Thus, it is apparent that the insurance company was not provided proper opportunity of adducing evidence.

08. MAC No.827/13 has been filed by the owner. In his appeal in para-4 of the Grounds, the owner has also admitted the fact that the Tribunal did not afford opportunity of adducing evidence to the insurance company despite application being made by the insurance company in this regard. According to the owner, the award passed by the Tribunal is without proper appreciation of evidence and without giving proper opportunity of adducing evidence to the parties.

09. Learned counsel for the parties, including the counsel for the claimants, jointly submit that the present case needs to be remitted to the Tribunal for deciding the same afresh after giving due opportunity to the parties of leading evidence in support of their case.

10. For the aforesaid reasons, this Court is of the opinion that the

Tribunal was not justified in denying opportunity of adducing evidence to the insurance company and recording contradictory findings on the same set of facts and evidence, therefore, all the three impugned awards are liable to be set aside and are hereby set aside. The matter needs to be remanded to the Tribunal for decision afresh. Hence in the interest of justice, the matter is remitted to the Tribunal with a direction to decide the claim cases afresh after giving due opportunity of hearing to the parties, as expeditiously as possible. The parties shall also be permitted to amend their pleadings, if so required, and adduce evidence thereon. Parties to appear before the concerned Tribunal on 14th December, 2018.

11. If any amount of compensation awarded by the Tribunal has been deposited by any of the parties, the same shall be adjusted in the compensation to be computed afresh by the Tribunal.

12. Registry to send the record to the concerned Tribunal forthwith.

13. With the aforesaid observations, all the appeals stand disposed of. No order as to costs.

Sd/

(Gautam Chourdiya)

Judge