

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 550 of 2016**

- Bajaj Allianz General Insurance Company Limited Through Divisional Manager, Mova Raipur, At Present Shivmohan Bhawan, Vidhan Sabha Road, Pandri, Civil And Revenue District Raipur, ChhattisgarhInsurer Of Motor Cycle No. C.G.-04-D Q-2044,

---- Appellant**Versus**

1. Mahmood Ali S/o Manovar Ali, Aged About 60 Years R/o Village Risda, Police Station And Tehsil Balodabazar, District- Balodabazar-Bhatapara, Chhattisgarh,
2. Aashmina B W/o Mahmood Ali, Aged About 57 Years R/o Village Risda, Police Station And Tehsil Balodabazar, District- Balodabazar-Bhatapara, ChhattisgarhClaimants,
3. Sitaram Yadav (Dead) Through Lrs. Nil
3 - (A). Indravati Yadav W/o Late Seetaram Yadav Aged About 36 Years
4. Shakunnat B W/o Dada Ali, Aged About 33 Years R/o Village Risda, Police Station And Tahsil Baloda Bazaar, District Balodabazaar-Bhatapara, Chhattisgarh,
5. Abida Ali S/o Dada Ali, Aged About 19 Years R/o Village Risda, Police Station And Tahsil Baloda Bazaar, District Balodabazaar-Bhatapara, Chhattisgarh,
6. Aabid Ali S/o Dada Ali, Aged About 14 Years Minor, Through Mother And Natural Guardian Res. No.4 Shakunnat B. R/o Village Risda, Police Station And Tahsil Baloda Bazaar, District Balodabazaar-Bhatapara, Chhattisgarh,
7. Aashif Ali S/o Dada Ali, Aged About 12 Years Minor, Through Mother And Natural Guardian Res. No.4 Shakunnat B. R/o Village Risda, Police Station And Tahsil Baloda Bazaar, District Balodabazaar-Bhatapara, Chhattisgarh,

---- Respondents

For Appellant	:Shri Rohitashwa Singh, Advocate.
For Respondents 1 & 2	:None appears
For Respondent No.3A	:Shri Abhishek Pandey, Advocate
For Respondent No.4 to 7	:Shri Vivek Shrivastava, Advocate

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

27.09.2018

1. This Miscellaneous Appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the M.V.Act) by Non-Applicant No.2/Insurer Bajaj Allianz General Insurance Company Limited questioning the award dated 17.09.2015 passed by the Motor Accidents Claims Tribunal, Balodabazar, District Balodabazar (C.G.) in Claim Case No. 03/2014, by which, the learned Claims Tribunal while allowing the claim in part, has awarded total amount of compensation to the tune of Rs.3,69,500/- with 7% interest per annum from the date of filing of claim petition till its realisation while fastening the liability upon the appellant/insurance company.

2. Briefly stated the facts of the case are that a claim enumerated under Section 163-A of the M.V.Act has been made by the parents of the deceased Dada Ali, who expired on 28.03.2012 in the motor accident. According to the claim petition, the deceased Dada Ali was coming along with his friend Ishwar Sahu from Balodabazar to Risda while driving the offending vehicle (motorcycle) bearing registration No. C.G.-04/DQ/2044), which was owned by Sitaram Yadav, respondent No.3 herein, insured with the appellant/insurance company and when he reached near the Risda Road, a truck came from opposite side throwing its high beam lights on the eyes of the deceased Dada ali, as a result of which, he lost his control over the motorcycle, which hit the rock and died instantaneously. It is pleaded in the claim petition that the deceased was a driver by profession and used to earn Rs.3000/- per month and thus, the claimants have claimed total amount of compensation to the tune of Rs.11,50,000/- on various heads.

3. The respondent No.3, owner of the vehicle in question, has contested the claim on the ground that the deceased Dada Ali was driving the alleged vehicle after consuming the liquor and he himself was negligent in relation to the alleged accident occurred on 28.03.2012 at 9.30 PM. While, the appellant/insurance company has contested the case mainly on the ground that the deceased, who was admittedly driving the offending vehicle at the relevant time, cannot come within the purview of third party and as such, the insurance company, at the most, would be liable to pay only a sum of Rs.1,00,000/-.

4. After considering the evidence led by the parties, the Claims Tribunal, vide its impugned award, has come to the conclusion that the alleged accident occurred on 28.03.2012 at 9.30 PM, in which, the deceased died due to driving of the alleged motorcycle and held further that the deceased would be a third party and the insurer has failed to establish the fact that he was not a third party and that by assessing his monthly income to the tune of Rs.3,000/-, awarded a total amount of compensation to the tune of Rs.3,69,500/- (Rupees three lakhs sixty nine thousand and five hundred only) with interest @ 7% per annum from the date of filing of the claim petition till its realisation.

5. Being aggrieved, the appellant/insurance company has preferred this appeal. Shri Rohitashwa Singh, learned counsel for the appellant submits that the deceased Dada Ali was admittedly driving the alleged motorcycle at the relevant time, therefore, it cannot be said that he was a third party, as held by the learned Claims Tribunal and as such, erred in fastening the liability upon the insurance company while awarding the said compensation to the claimants as well as to the respondents No. 4 to 7, who are parents, widow and minor children of the deceased.

6. On the other hand, Shri Abhishek Pandey and Shri Vivek Shrivastava, learned counsel for the respective respondents while supporting the award impugned submit that the burden was heavily upon the insurance company that the deceased was not a third party, however, failed to establish the said fact. They, therefore, submit that the award impugned, as passed by the learned Claims Tribunal, does not require to be interfered.

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

8. The only question which arose for determination in this appeal is, as to whether the deceased Dada Ali, who was admittedly driving the offending vehicle at the relevant time, was a third party or not?

9. The burden to establish the fact that the deceased was not a third party was upon the insurer. However, the appellant/insurance company has failed to produce any cogent and reliable evidence in order to establish the said fact. From perusal of the statement of owner Sitaram Yadav, examined as Non-Applicant's witness No.1, would, however, show very specifically that the vehicle in question was not borrowed by the deceased from him. This material piece of evidence could not have been rebutted by the appellant. All the witnesses have not stated anywhere that the deceased Dada Ali has borrowed the vehicle in question from its real owner Sitaram Yadav. As such, it cannot be held that the deceased was not a third party, as contended by Shri Rohitashwa Singh, learned counsel for the appellant. Besides, I do not find any specific defence plea in this aspect as well in the written statement of the insurer. Consequently, finding of the learned Claims Tribunal holding that the deceased was a third party deserves to be

and is hereby affirmed.

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

Sd/-
(Sanjay Agrawal)
Judge

Anjani