

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 222 of 2018

Branch Manager, Chola mandlam MS General Insurance Company,
Second Floor Simran Tower, Opposite Life Insurance Corporation
Pandri, P.S. Pandri, District Raipur (C.G.) (Insurer).

---Appellant

Versus

1. Kannilal Xalxo S/o Devsharan, aged about 24 years.
2. Priyanka D/o Kannilal, aged about 5 years.
3. Ganesh Kumar S/o Kannilal, aged about 3 years.
Respondents No. 2 & 3 are minor represented through their father Kannilal Xalxo.
All are R/o village Patna, Sarnapara, Tahsil Ramanujnagar, District Surajpur (C.G.).
4. Suresh Kumar Xalxo, S/o Bhaiyalal Xalxo, aged about 30 years, R/o village Kot, Tahsil Ramanujnagar, P.S. & District Surajpur (C.G.).
5. Devsharan Xalxo S/o Somar Xalxo, aged about 50 years, R/o village Kot, Tahsil Ramanujnagar, P.S. and District Surajpur (C.G.) (Claimants).

---Respondents

For appellant/Insurance Company : Shri Abhishek Sinha, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/02/2018

1. Present is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 28/10/2017 passed by the learned Motor Accident Claims Tribunal, Surajpur (C.G.) in Motor Accident Claim Case No. 143/2016.

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.7,23,000/- with interest @ 9% per annum from the date of application.
3. While passing the impugned award, the Tribunal has fastened the liability of payment of compensation upon the appellant/Insurance Company.
4. The facts of the case in brief is that, the deceased - Mano Bai, wife of the respondent No.1 - Kannilal Xalxo while travelling on the Autorikshaw bearing registration No. CG-15-CW-3313 met with an accident and succumbed to the injuries on 08/05/2016. The said Autorikshaw was owned by the respondent No.5 - Devsharan Xalxo and driven by the respondent No.4 - Suresh Kumar Xalxo. The present appellant had insured the said vehicle by issuance of a package policy valid at the time of the accident.
5. There are two grounds raised by the counsel for the Insurance Company challenging the impugned award. First is that, the Autorikshaw at the relevant point of time did not have a valid permit for operation as is required under the provision of Section 66 of the Motor Vehicles Act. The second ground raised by the counsel for the appellant is that, the claim application even otherwise would not be maintainable for the reason that, the recipient and the injured was infact the same person in as much as the recipient is the son of the insured - respondent No.5 and therefore the same should not have been entertained by the Tribunal. He further submits that, there is no rebuttal on part of the owner by itself it has been presumed that he did not had a permit on the date of accident.

6. The said ground could not be acceptable for the reason that, the plea of there being no permit was raised by the Insurance Company and it was the duty casted upon the Insurance Company to prove this aspect by leading cogent evidence.

7. Perusal of record would show that, the claimant No.1 - Kannilal Xalxo has examined himself along with Smt.Koushalya, an eye witness who was also travelling along the deceased on the date of the accident in the same vehicle. Further what is also reflected is that, the owner of the vehicle - Devsharan has also been examined who has admitted the accident and the negligence on part of the driver.

8. The Insurance Company has led an evidence of one Rishabh Pandey, an officer of the Insurance Company who has in his deposition stated that, the owner of the vehicle at the relevant point of time did not have a valid permit.

9. Given the facts and circumstances of the case what infact has to be ascertained is whether the Insurance Company has been able to establish before the Tribunal by leading cogent evidence proving the fact that, the respondent No.5 infact did not have the permit to operate the Autorikshaw? The only witness which has been examined is the officer of the Insurance Company who has only made an oral submission. So far as breach of policy condition is concerned, the Insurance Company has not examined its investigators if any, who must have been investigated the aspect whether the vehicle at the relevant point of time had a permit or not?

10. Likewise, the Insurance Company has also not been able to examine an officer from the concerned Transport Office who could have also depose before the Tribunal that the respondent No.5 did not have a valid permit on the date of accident to operate the said Autorikshaw.

11. Under the given circumstances, it was the burden upon the Insurance Company to have conclusively proved before the Tribunal that, the vehicle did not have a permit on the date of accident.

12. Except for an oral submission made by the officer of the Insurance Company, there does not appear to be any cogent evidence with which it could even be presumed that there was no permit. The Insurance Company has also not been able to establish before this Court as to whether there has been any sufficient query put to the respondent No.5 in his cross-examination so far as permit is concerned.

13. Given the aforesaid facts and circumstances of the case, the contention of the Insurance Company of there being no permit is not sustainable in the present appeal.

14. As regards the second ground of challenge that the claim application was not maintainable for the reason that, the recipient and the injured being the same in as much as there is a relationship of son and father, the same again cannot be sustained for the reason that, so far as the claim case under Section 166 is concerned, if it has been established before the Tribunal that, the driver and owner of the vehicle are different persons and the vehicle is duly insured, only because the claimant happens to be the son of the owner

of the vehicle by itself would not dis-entitle him from claiming any compensation under the provision of Motor Vehicles Act, particularly when the accident and the death are not in dispute.

15. Given the aforesaid facts and circumstances of the case, this Court does not find any strong case worth admitting the appeal.

16. The appeal thus being devoid of merits deserve to be and is accordingly rejected.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit