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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 337 of 2018

Bajaj Allianz General Insurance Company Limited, Through Branch Manager, Branch Office – Shivmohan Bhawan, Vidhansabha Road, Pandri, Raipur, District Raipur (C.G.) (Insurer).

---Appellant

Versus

1. Smt. Umeshwari Kashyap W/o Late Shaniram Kashyap, age 23 years.
2. Ku.Sangita Kashyap D/o Motelal Kashyap, aged about 13 years.
3. Parmeshwar Kashyap S/o Motelal Kashyap, aged about 11 years.
4. Motelal Kashyap S/o Late Tijjram Kashyap, aged 45 years.
5. Smt. Amla Bai W/o Motelal Kashyap, age 43 years.

   Respondents No. 2 & 3 are minors and hence representing through their father Motelal Kashyap.

   All are R/o Village Bijour, PO. S.E.C.L., Thana Sarkanda, Tehsil and District Bilaspur (C.G.) (Claimants).
6. Anand Kumar Agrawal S/o Nandkishor Agrawal, aged 43 years, R/o village and post Bamhnidih, Tehsil and Thana Bamhnidih, District Janjgir-Champa (C.G.) (Owner).

---Respondents

For appellant/Insurance Company : Shri Bhaskar Payashi, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26/02/2018

1. Present is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 27/04/2017 passed by the learned Fourth Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in Motor Accident Claim Case No. 107/2016.

2. Vide the impugned award, the Tribunal in a death case under Section 163-A of the Motor Vehicles Act has awarded a compensation of

Rs.5,46,000/- with interest @ 8.5% per annum from the date of application.

3. The counsel for the Insurance Company has challenged the impugned award on two grounds. Firstly, the Tribunal has not taken into consideration the contention of the Insurance Company that the accident occurred because of the involvement of two vehicles and that the other vehicle and its owner and Insurance Company have not been made a party. The second ground is that, the policy which was issued by the present appellant reveal that, the previous policy which the owner had produced was issued in favour of some other person, not to the respondent No.6 herein and the vehicle also was a different vehicle. Therefore, the contention of the counsel for the Insurance Company is that, the policy has been obtained by suppression of material facts and by misleading the Insurance Company and thus under the provision of Section 149-2, the policy has to be deemed as a void policy and for which the Insurance Company cannot be held liable to pay the compensation.

4. Perusal of record would show that, the claim application was infact a claim application under Section 163-A of the Motor Vehicles Act.

5. So far as the claim under Section 163-A is concerned, the claimants had a option to seeking the compensation from either of the vehicles involved in the accident and if the claimants has preferred an application

against the owner of the vehicle which he was driving, it cannot be said to be in any manner either erroneous or not maintainable.

6. So far as the second ground is concerned, what reveal is the fact that, the date of accident in the instant case is 03/05/2015. The policy was got verified by the Insurance Company after about more than one year from the date of accident i.e. on 27/07/2016. Thus, what clearly reveal is that, till the date of accident, the policy was never got verified by the Insurance Company and thus on the date of accident, the policy was infact a valid policy.

7. Under the given circumstances, the ground which has now been taken by the Insurance Company may not be sustainable in the light of the fact that, till the date of accident, the policy was never declared to be void nor had the Insurance Company cared to get the policy verified nor had it cancelled the policy before the date of accident.

8. Therefore, this Court does not find any strong case made out by the counsel for the appellant calling for an interference with the impugned award.

9. The appeal thus fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit