NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1715 of 2017

Tata AIG General Insurance Company Ltd. Indore (M.P.) Through Its Authorised Officer Tata AIG General Insurance Company Ltd. Indore (M.P.).

---- Appellant

Versus

1. Jagrani Tirky W/o Anand Tirky, Aged About 39 Years
2. Aman Tirky S/o Late Anand Tirky, Aged About 15 Years, Minor Through His Natural Guardian Mother Smt. Jagrani Tirky
3. Thevodor Tirky S/o Thuru Tirky, Aged About 80 Years
   All are R/o Village Gotganwa, Tehsil Pratappur, Disrict Sarguja, Chhattisgarh.
4. Idea Cellular Ltd. 139/140 Electronics Complex Pardeshupura Indore (M.P.).
5. Rajindar Singh S/o Balsai Singh, Aged About 37 Years Caste Gond, R/o Village Bhagwanpur, P.S. Chalgali, District Balrampur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Ghanshyam Patel, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

02.01.2018

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurance company assailing the award dated 25.09.2017 passed by the Additional Motor Accident Claims Tribunal Pratappur, Distt. Surajpur (in short, the Tribunal) in Claim Case No. 10/2017.
2. Learned counsel for the appellant submits that the award is bad in law for the reason that the insurance company in the instant case has not been awarded sufficient time to adduce evidence in support of their contentions. It was also the contention of the appellant that the

deceased in the instant case was a gratuitous passenger as the vehicle involved in the accident was a pick-up van i.e. commercial vehicle and therefore, there appears to be a clear breach of policy conditions. He further submits that FIR in the instant case also was lodged after more than 33 days and all of which have to be proved and established by the insurance company in support of their stand that they have taken before the Tribunal.

3. According to the appellant, it is a case where the evidence of the applicant was for the first time fixed on 12.09.2017 and on which date the witnesses were not present and the matter got adjourned for 19.09.2017 on which time two witnesses were examined and the matter stood adjourned for 22.09.2017 for the remaining evidence of the parties. On 22.09.2017, the remaining two witnesses on behalf of the claimants were also examined, the evidence on behalf of the owner was also recorded on the same day and thereafter the insurance company had sought time by moving an application under Order 16 Rule 6 CPC for calling the investigating officer who had investigated the case on behalf of the insurance company. However, the same was rejected on the same day and the impugned award was passed on 25.09.2017. As such according to the appellant, sufficient time has not been granted to the insurance company to lead evidence and prayed for the remission of the matter for leading appropriate evidence.

4. Counsel for the appellant further undertakes that given a date by this court, the insurance company shall keep all its witnesses present on

the next date of hearing before the Tribunal and shall not put any lame excuses for the non presence of witnesses on the date given by this court.

5. Considering the total facts and circumstances of the case more particularly the dates as has been reflected from the submissions made by the counsel for the appellant, it clearly reflects that the insurance company as such was not granted any opportunity to lead evidence. That the remaining witness of the applicant as well as owner were completed only on 22.09.2017 and in all fairness the Tribunal should have granted a reasonable time to the insurance company to adduce evidence before the Tribunal to substantiate its contentions.
6. The present is a case where the claim application was instituted in the year 2017 itself. It is not a case where the claim application was old pending case and where there was more urgency for an early disposal of the case.
7. Given the facts of the case, this court is of the opinion that ends of justice would meet if the appellant-insurance company is granted another opportunity to lead evidence to substantiate their contentions.
8. Accordingly, the impugned award dated 25.09.2017 stands set aside and the matter is remitted back to the Tribunal with liberty being granted to the insurance company to lead evidence. Let the appellant-insurance company collect all its witnesses and keep them present before the Tribunal on the next date of hearing i.e. on

06.02.2018 on which date the Tribunal shall after recording evidence pass fresh award based on the evidence adduced by the insurance company.

9. Needless to mention that no further time under any circumstances shall be provided to the insurance company to lead evidence. It shall be the responsibility of the insurance company to collect all necessary witnesses and inform them to remain present before the Tribunal on 06.02.2018.

10. Accordingly, the appeal stands allowed and disposed of.

Sd/-
(P.Sam Koshy)
Judge

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