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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1069 of 2014

The Oriental Insurance Company Limited Through Divisional Office, Madina Building, Jail Road, Raipur District Raipur (C.G.)

(Insurer of truck bearing registration No. C.G. 17-ZC/0108) Police No. 192001/31/2012/3225, Validity 24.10.2011 to 23.10.2012.

---- Appellant/
Non-applicant No.2

Versus

1. Smt. Fatma Begam Wd/o. Ikbal Khan, aged about 20 years,
2. Toufik Raza S/o. Late Ikbal Khan, aged about 8 months (Minor), through natural guardian mother, Smt. Fatma Begam.

Both R/o. Village Basna, P.S. and Tahsil Basna, District Mahasamund (C.G.)

----Claimants/Respondents

3. Ramashanker Yadav S/o. Shri Kamal Yadav, R/o. Village House No. 110, Ganesh Mandir Ghera, Jagdalpur, District Bastar (C.G.) (Owner of truck bearing registration No. C.G.17-ZC/0108)

Non-applicant No.1 /Respondent

For Appellant : Mr. Pankaj Agrawal, Advocate.
For Respondent Nos. 1 to 2: None
For Respondent No 3 : None

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement

09.03.2018

1. This appeal arises out of impugned award dated 17-07-2014 passed by the Motor Accident Claims Tribunal (for short, “the

Tribunal"), Mahasamund, in Claim Case No. 56 of 2013 awarding a compensation of Rs. 6,34,000/- in favour of respondents No. 1 to 2/claimants for death of Mohammad Ikbal Khan in a motor accident.

2. Facts of the case, in brief, are that deceased Mohammad Ikbal Khan was driving a truck bearing registration No. C.G.17-ZC/0108, which was dashed by unknown vehicle causing instant death of Mohammad Ikbal Khan. The compensation was claimed under Section 163-A of the Motor Vehicle Act 1988. The vehicle was insured for driver and owner. Yearly income of the deceased was stated to be Rs. 40,000/-.

3. Learned counsel appearing for the appellant submits that there was no driving licence to the driver Mohammad Ikbal Khan and it is a case of collusion between two vehicles, therefore, claim under Section 163-A of the Motor Vehicles Act is not maintainable. He further submits that the premium was paid for owner but the Tribunal has misinterpreted the word owner and driver.

4. I have heard learned counsel for the appellant and perused the impugned award.

5. Claim is filed on the basis of no fault liability, therefore, claimants were not required to prove negligence on the part of the driver of offending vehicle. In the present case, driver of the offending vehicle is unknown, therefore, they cannot be made party. Motor Vehicle Act 1988, commands for claim under no fault liability and in filing claim under that provisions is well within the scope of the Act and claimants cannot be faulted with.

6. The Insurance Company is under obligation to prove fault on the part of insured who is owner of the vehicle. The Insurance Company examined Rajeev Singh, who is the administrative officer of the company. He admitted that the driver is included in sitting capacity of the vehicle and premium of Rs. 100/- is paid for owner/driver of the vehicle. He further deposed that he is not aware of the fact that as to whether the driver was having driving licence on the date of incident or not. It is not the version of the witness that the driver was not having valid driving licence.

7. In **National Insurance Company Limited vs. Swaran Singh and others,reported in (2004(3) SCC 297**, it is held by the Hon'ble Apex Court as under:

> "(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.
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> (ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163 A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof where for would be on them".

8. As the insurance company failed to prove the negligence on the part of the owner, it cannot avoid liability towards third party and the finding of the Tribunal is not liable to be interfered with on this count.

9. Looking to the age of the deceased who was aged about 32 years, multiplier of 17 was applied that comes to Rs.4,59,000/- and awarded on conventional head on the basis of guidelines/principles adopted in the case of **Sarla Verma vs. Delhi Transport Corporation and another (2009) 6 SCC 121**. The amount assessed by the Tribunal cannot be termed on higher side.

10. In a motor accident claim case, what is important is that the compensation to be awarded by the Courts/Tribunals should be just and proper compensation in the facts and circumstances of the case. It should neither be a meagre amount of compensation nor a Bonanza. There is no substance in the arguments advanced on behalf of the appellant.

11. Accordingly, the appeal is liable to and is hereby dismissed.

Sd/-
(**Ram Prasanna Sharma**)
JUDGE

Santosh