

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1154 of 2012

- Bajaj Allianz General Insurance Comapny Ltd. Ge Plaza Airport Road, Yarwada, Pune-411006, Thru- B.M. Bajaj All.Gen.Ins.Co.Ltd. Shiv Mohan Bhawan, 1st Floor, Vidhansabha Road, Pandri, Raipur C.G, Chhattisgarh

---- Appellant

Versus

1. Noorjanh Khatun, W/o Late Abdul Aziz Aged About 40 Years
2. Rashida Khatun W/o Late Abdul Halim Aged About 71 Years
3. Mohd. Parvej Aalam S/o Late Abdul Aziz Aged About 23 Years
4. Mohd. Javed Aalam S/o Late Abdul Aziz Aged About 17 Years Minor
5. Mohd. Shabir Aalam S/o Late Abdul Aziz Aged About 13 Years Minor
6. Anwari Khatun D/o Late Abdul Aziz Aged About 15 Years Minor
7. Najya Khatun D/o Late Abdul Aziz Aged About 11 Years Minor
8. Mohd. Shakir S/o Late Abdul Aziz Aged About 9 Years Minor
9. Mohd. Jhangir S/o Late Abdul Aziz Aged About 7 Years Minor
Respondents- 4 to 9 Thru- Mother- Smt. Noorjanh Khatun, Respondent- 1
All R/o Surajpur, Navapara, P.S. And Teh. Surajpur, Distt. Surajpur C.G
10. Pradeep Kumar Patel S/o Jawahar Lal Patel Aged About 40 Years
Vanganwa, Funga, P.S. Annoppur, Distt. Anoopur M.P
11. Lal Singh S/o Shri Ram Singh Aged About 24 Years Rajmohno Shadol,
Distt. Shadol M.P

---- Respondents

For Appellant	: Shri Ghanshyam Patel, Advocate
For Respondents 1 to 9	: Shri Puneet Ruparel, Advocate
For Respondent- 10	: Ms Meena Shastri, Advocate
For Respondent- 11	: None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

10.07.2018

1. The instant appeal has been preferred by the appellant/Insurance Company challenging the impugned award dated 27.08.2012 passed by the First Additional Motor Accident Claims Tribunal, Surajpur (for short, 'the Tribunal'), in Claim Case- 38 of 2009, whereby and whereunder the learned

Tribunal awarded total compensation of Rs.4,50,000/- in favour of respondents 1 to 9/claimants and fastened the liability for payment of compensation on the appellant/Insurance Company.

2. Brief facts of the case are, on 12.06.2009, Dilip Singh along with two pillion riders (his wife Smt Rajni Singh and deceased-Abdul Aziz) were travelling on a motor cycle bearing No.MP-A-50-6181 and were returning to their village Punga from Shahdol. When they reached near village Punga, at that relevant time, one ill-fated vehicle, Tata-407 bearing No.MP-18-H-1422 dashed the motor cycle due to which Abdul Aziz died as he was also one of the occupant on the motor cycle. On account of the death of Abdul Aziz, the claimants have filed claim application claiming Rs.27 lakhs as total compensation.

3. Learned counsel for respondent- 10, who is owner of Tata-407 has pleaded that the deceased was working as an employee in the shop. The accident occurred due to the negligence of driver of the motor cycle and not due to the driver of the Matador. She also pleaded that the Matador was insured with the appellant/Company- Bajaj Allianz General Insurance Company Limited (for short, 'the Insurance Company') and on the date of the accident, the driver of the vehicle was having a valid driving licence with him and on account of this, learned counsel for respondent- 10 pleaded for dismissal of the claim.

4. Learned counsel for the appellant /Insurance Company has submitted that they have filed reply and pleaded that the accident occurred due to the negligence of the driver of the motor cycle and has further taken a ground with

regard to violation of the conditions of the Insurance Policy, as on the date of the accident, there was no valid fitness and permit to use Tata-407 in public place and that respondent- 10 was not having a valid and effective driving licence with him on the said date.

5. Learned claims Tribunal on the basis of the pleadings and evidence available on record, allowed the claim application in part and awarded total compensation of Rs.4,50,000/- in favour of the claimants, respondents- 1 to 9 along with interest @ 9 % per annum from the date of the application. It is this award which is under challenge before this Court.

6. Learned counsel appearing for the appellant submits that for plying the transport vehicle in public place, valid permit and fitness certificate is required in accordance with the provisions of Section 66 of the Motor Vehicles Act, 1988 (for short, 'the Act'). Respondent- 10 submitted the document NA-2 (Ex.2A and 3A) before the Police in Criminal Case, which are the fitness certificate and permit of the vehicle with an endorsement of the Regional Transport Officer, Shahdol, MP. On verification, the Regional Transport Officer, Shadol, MP has denied the issuance of those documents and stated that the said documents have not been issued by their Office. He further submitted that Puneet Rathore who was legal Manager of the appellant/Insurance Company appeared as NAW- 2 and his statement was recorded before the Tribunal on 25.08.2012. Documents Ex.2A and 3A were produced and exhibited by him. Due to mistake, on the said date the counsel appearing before the Tribunal has declared to close the evidence on their behalf. Learned counsel for the appellant further submits that immediately on the next date of hearing, an application was moved by the appellant before the

Tribunal with a prayer that they want to get the Regional Transport Officer, Shahdol examined as witness to prove the documents- fitness certificate and permit of the offending vehicle Matador, that have already been exhibited before the Tribunal. The learned Tribunal arbitrarily and illegally dismissed their application and fixed the case for argument on the same day. Learned counsel submitted that the final award was passed by the Tribunal within two days and therefore, they have no opportunity to challenge the order with regard to rejection of their application for leading further evidence or for calling the Regional Transport Officer as their witness to prove the documents. They have been deprived of opportunity to prove their case before the Tribunal.

7. Per contra, learned counsel for respondents- 1 to 9, the claimants have supported the award and stated that the Tribunal has passed the impugned award strictly in accordance with law and opportunity was granted to the appellant/Insurance Company to produce their witness and they have chosen to examine only one witness and opted for closing their right to examine any further witness in their favour.

8. Learned counsel for respondent- 10 vehemently opposed the argument of the appellant/Insurance Company and has stated that as the application under Section 170 of the Act filed by the appellant has been dismissed and therefore, they could not have filed their appeal before this Court. Further she submitted that there is no violation of any contractual terms as the Insurance Policy does not have any specific clause that the conditions of the Insurance Policy would be violated for want of valid permit or fitness certificate. She further submitted that Ex.2A and 3A are photocopies that have been certified by the Regional Transport Officer, Shahdol. They are not original documents.

9. I have heard learned counsel for the parties. Perused the record. Undisputedly, during the course of investigation of the Criminal Case, copies of Insurance Policy, temporary permit and registration certificate were seized by the Investigating Agency, ie by the Police Station, Surajpur. Though the appellant/Insurance Company has taken specific plea in their return that on the date of accident, the said vehicle was being plied without any valid registration, fitness certificate, valid licence and valid permit and there was violation of conditions of the Insurance Policy; even then, respondent- 10, owner-cum-driver of the vehicle (as held by the Tribunal) has not produced any document with regard to valid fitness certificate, valid permit before the Tribunal to controvert the plea raised by the appellant. The Insurance Company has sent the copies of fitness certificate and permit bearing seal of the Regional Transport Officer, Shahdol, MP for its verification to the said Office and the documents were sent back with an endorsement of the same Officer that those documents have not been issued from their Office, which was also placed on record by the Insurance Company as Ex.2A and 3A. The appellant due to mistake was not able to prove the endorsement made by the Regional Transport Officer, Shahdol, MP by calling the said Officer as witness. Immediately after realising the mistake committed by the appellants, they moved an application on the very next date of hearing, before the Claims Tribunal making a prayer that they may be given an opportunity to examine another witness, ie the Regional Transport Officer, Shahdol to prove the verification report of Ex. 2A and 3A issued from the Office of the Regional Transport Officer, Shahdol, MP. Looking to the entire facts it is apparent that though there is mistake on part of the appellants, but they cannot be said to

be negligent as they have taken steps immediately on the next date before proceeding any further by the Tribunal.

10. It was the duty of the Tribunal to provide fair opportunity to all the parties to prove their case and then only, award/order to be passed by the competent Claims Tribunal in accordance with law.

11. The Tribunal cannot act in an arbitrary manner. Considering the provisions of Section 149 of the Act it is apparent that the Insurance Companies are having some fixed defences available under the Act and if the companies were deprived to prove their case even after producing materials and documents on record, will deprive them of right of fair opportunity to prove the case which is not permissible under law. Considering the provisions under Section 149 of the Act, the Tribunal ought to have allowed the application and should have granted opportunity to the Insurance Company to prove the documents which were already placed on record and goes to the root of the case with regard to fastening the liability.

12. Considering the submissions made on behalf of respondent- 10 with regard to the rejection of the application filed under Section 170 of the Act, learned counsel for the appellant submitted that he is not challenging the quantum of the award in the instant appeal, but restricted their prayer only to the grounds available under Section 149 (2) of the Act. Other submissions made by learned counsel for the respondents that the Policy does not bear specific clause that the Insurance Company will not liable for payment of compensation if the vehicle is plied without any valid permit and fitness certificate, which is not sustainable in view of specific Clause mentioned in the

Insurance Policy and in view of the provisions mentioned in Section 66 of the Act.

13. In view of the above, the award passed by the learned claims Tribunal is set aside and the case is remanded back to the Court of the First Additional Motor Accident Claims Tribunal, Surajpur, only to call and examine the Officer concerned to prove the documents Ex. 2A and 3A in question and thereafter, if respondent- 10 wants to lead any evidence with regard to fitness certificate and permit of the vehicle, he may also be granted opportunity of leading such evidence and thereafter to pass fresh award in accordance with law. As all the parties are represented today, it is directed that they may remain present before the Tribunal on **5th September, 2018**.

14. Looking to the fact that compensation was awarded on account of death of Abdul Aziz, who was son of respondent- 2, husband of respondent- 1 and father of respondents- 3 to 9, learned Claims Tribunal is directed to make all endeavour to decide the matter within a period of three months from the date of appearance of the parties before the Tribunal.

15. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE