

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No.1739 of 2017

The National Insurance Company Limited, Through its Divisional Manager having office at Akash Ganga Premises, Supela Bhilai, Tehsil & District Durg (C.G.).

---Appellant

Versus

1. Ghanaram Sahu S/o Purushottam Sahu, aged about 50 years, R/o Near Panchamukhi Hanuman Temple, Shashtri Chowk, Camp-1, Bhilai, Tehsil and District Durg (C.G.).
2. Lokesh Kumar S/o Lekhram, aged about 28 years, R/o C/o Kedar Sao, Near New Hanuman Temple, Lal Bahadur Aata Chakki, Shashtri Chowk, Camp - 1, Bhilai, Tehsil and District Durg (C.G.).
3. Kedar Sao S/o Bam Sao, aged about 50 years, R/o Near New Hanuman Temple, Lal Bahadur Aata Chakki, Shashtri Chowk, Camp - 1, Bhilai, Tehsil and District Durg (C.G.).

---Respondents

For appellant	:	Shri Vinod Deshmukh along with Shri Abhishek Vinod Deshmukh, Advocate.
For respondent No.1	:	Shri P.R.Patanker, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/01/2018

1. Present is an appeal by the Insurance Company under Section 30 of the Workman Compensation Act, 1923 assailing the award dated 05/10/2017 passed by the learned Commissioner, Employees Compensation Act, Labour Court, Durg (C.G.) in case No. 09/E.C.Act/2016(Fatal).
2. Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.6,68,130/- with interest @ 12% per annum from the date of application.

3. The claimant in the instant case have also filed a cross appeal. Since, Rule 41 of Workman Compensation Act, 1944 envisages certain specific provisions of the C.P.C. which would be applicable under the Employees Compensation Act and where the provision of order 41 Rule 22 has not been mentioned, the cross appeal as such preferred by the claimant would not be maintainable.

4. The counsel for the claimant at this juncture does not pressed on the said cross appeal and seeks liberty to prefer a separate appeal for redressal of his grievance. The prayer of the claimant is allowed.

5. So far as the appeal by the Insurance Company is concerned, the Insurance Company has questioned firstly the liability which has been imposed upon the Insurance Company on the ground that, the accident did not arise out of and in the course of employment as is required under Section 3 of the Employees Compensation Act. It was further contended by the counsel for the Insurance Company that, the vehicle involved in the accident did not have proper fitness certificate which was mandatorily required under the Motor Vehicles Act and this should be construed as a breach of policy condition and the Insurance Company should had been exonerated of its liability and the liability in turn should had been shifted upon the owner of the vehicle. He further relied upon the decision of the Hon'ble Supreme court in the case of **Mamtaj Bi Bapusab Nadaf & Ors. Vs. United India Insurance Company & Ors. [(2010} 10 SCC 536]** to contest the fact that, the vehicle was in a stationery condition and

the accident therefore did not occur arising out of and in the course of employment. He further relied upon the decision of the Supreme Court in the case of **Narinder Singh Vs. New India Assurance Company Limited & Ors. [(2014) 9 SCC 324]** to bank upon the argument that, the vehicle in the absence of any proper fitness certificate would be impermissible to be used on the road which is also a mandatory requirement under Section 56 of the Motor Vehicles Act and therefore the Insurance Company should have been exonerated of its liability as there is a clear breach of policy condition.

6. As regards the first judgment of the Supreme Court which has been relied upon by the counsel for the appellant i.e. *Mamtaj Bi Bapusab Nadaf* (Supra), the said judgment is distinguishable on facts itself for the reason that, in the said case, the accident occurred when the deceased person was out of the vehicle at the time of the accident whereas in the present appeal, the deceased was sitting in the vehicle when the accident occurred.

7. Another aspect which cannot be brushed aside is the fact that, the deceased in the instant case Sagar Sahu was a helper engaged in the Truck owned by the respondent No.3 and that his place of work and duty was on the Truck itself and when the accident occurred, the deceased was on the Truck which squarely falls within the ambit of requirement under Section 3 of the Employees Compensation Act.

8. So far as the challenge to the vehicle not having proper fitness certificate is concerned, if we look into the evidence of witness on behalf of

the Insurance Company, it clearly reflects that the witness B.P.Gupta, the administrative officer of the Insurance Company in his evidence has clearly accepted the fact that, the vehicle was duly insured with the Insurance Company and that the accident occurred during the validity of the policy. Further he has also admitted that an extra premium of Rs.100/- was also charged covering the risk of two of the employees under Workmen Compensation Act. Further he has also stated that, the vehicle was having a valid permit and the driver i.e. respondent No.2-Lokesh Kumar also had a valid license to drive the vehicle.

9. Given the aforesaid evidence of the witness from the Insurance Company, merely because the owner of the vehicle has not produced the fitness certificate before the Court by itself would not absolve the Insurance Company of its liability.

10. Moreover, the plea of the vehicle not having the fitness certificate is not one of the ground which has been envisaged under Section 149 of the Motor Vehicles Act which the Insurance Company could take.

11. This view of the Court also stands fortified by the decision of this Court in MAC No. 1229/2012 decided on 08/04/2013 in the case of **Divisional Manager, The Oriental Insurance Company Ltd. Vs. Smt.Rupa Dahariya & Ors.**

12. Further the Supreme Court in the case of **Rekha Jain Vs. National Insurance Co.Ltd.** [{2013} AIR SCW 4597] in paragraph 30 have held as under:

30. If we permit the insurer to take any other defence other than those specified in sub-section (2) of Section 149, it would mean we are adding more defences to the insurer in the statute which is neither found in the Act nor was intended to be included.

16. For the aforesaid reasons, we are of the view that the statutory defences which are available to the insurer to contest a claim are confined to what are provided in sub-section (2) of Section 149 of the 1988 Act and not more and for that reason if an insurer is to file an appeal, the challenge in the appeal would continue to only those grounds.

13. In view of the aforesaid authoritative decision of the Supreme Court, this Court does not find any strong case made out by the counsel for the appellant/Insurance Company calling for an interference with the impugned award both on the liability as well as on quantum part.

14. The appeal thus not having any substantial question of law as is required under Section 30 of the Workmen Compensation Act fails and is accordingly dismissed.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE