NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 798 of 2011

TATA AIG General Insurance Co. Ltd. Branch Office Kolkata (WB) through its Manager, Claim, TATA AIG General Insurance Co. Ltd. Branch Office, Kolkata (WB).

---- Appellant

Versus

1. Mu. Sabina W/o late Mohar Sai, aged about 32 years.
2. Minor Kumari Vinita D/o late Mohar Sai, aged about 13 years.
3. Minor Kumari Kanta D/o late Mohar Sai ,age about 10 years.
4. Minor Ajay Kumar S/o late Mohar Sai, aged about 7 years.
5. Minor Kumari Antrita D/o late Mohar Sai, aged about 3 years.
6. Moso S/.o late Malu Uraon, aged 70 years.
7. Smt. Rujhni W/o Moso, aged 65 years,.
   Respondents No.2 to 5 through legal guardian mother Mu. Sabina, All R/o village Kumansiya, PS Sitapur, Distt. Surguja (CG).
8. Mohd. Imran Khan, S/o Mohd. Mamn Khan, aged 21 years, Caste Musalman, R/o Himpidi, Nala Road, Ranchi, PS Himpidi, Distt. Ranchi (Jharkhand)
9. Gouri Shankar Prasad S/o Mathura Prasad, R/o Chandiya BCCL Colony Q. No. 214, Dumda, Bokaro (Jharkhand).

---- Respondents

For Appellant : Shri Ghanshyam Patel, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

16.01.2018

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurer against the award dated 25.02.2011 passed by the Additional Motor Accident Claims Tribunal, Jashpur (in short, the Tribunal) in Claim Case No.15/2008. Vide the said impugned award, the Tribunal has awarded a compensation of Rs.4,23,300/- to the claimants along with interest @ 6 percent per annum from the date of application.
2. Learned counsel for the appellant submits that the insurance

company in the instant case has been wrongly fastened with the liability of payment of compensation for the reason that the policy which was issued by the appellant-insurance company had been cancelled vide Ex. D/3 which was issued to the owner of the vehicle on 19.12.2007 itself when the cheque which was issued for the issuance of policy stood dishonored. The validity of the policy which was cancelled was from 08.12.2007 to 07.12.2008. The accident is said to have occurred on 01.02.2008. He refers to Ex. D/3 as also Ex. D/4 which is a Register maintained in the office of insurance company showing dispatch of the intimation of cancellation of policy to the owner of the vehicle i.e. Ex.D/3.

3. From the records it also reflects that the owner had meanwhile obtained another policy from the IFFCO Tokio General Insurance Company Ltd. for the same vehicle for the period starting from 12.04.2008 to 11.04.2009 i.e. after cancellation of insurance policy by the present appellant.

4. Inspite of proper service being made upon the claimants, there is no representation on their behalf. The respondent owner and driver also inspite of best efforts being made by the appellant through paper publication, they did not enter appearance and as such there is no objection to the contentions put forth by the counsel for the appellant-insurance company.

5. Given the facts and circumstances of the case, particularly taking note of documents Ex. D/3 & D/4, this court has no hesitation that the findings of the Tribunal so far as holding the appellant-insurance

company liable for payment of compensation to the claimants is highly erroneous as the aspect of cancellation of the policy stands proved and established by the witness examined on behalf of the insurance company i.e. Ajit Kumar Sharma.

6. Accordingly, the appeal is allowed and the liability of payment of compensation stands shifted from the present appellant-insurance company to that on the respondent No.9-the owner of the vehicle.
7. It is informed by the appellant that 50 percent of the award amount has already been deposited before the Tribunal. Accordingly, whatever amount deposited, the same shall be disbursed to the claimants and the liberty would be there for the appellant to recover the same from the respondent No.9 by initiating appropriate recovery proceeding. The claimants shall also have liberty of initiating appropriate recovery proceeding against the respondent No.9 for claiming the balance awarded amount of 50 percent.
8. The appeal thus stands allowed and disposed of.

Sd/-
(P.Sam Koshy)
Judge

inder