

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 01 of 2018

Bajaj Allianz General Insurance Company Limited, Through Branch Manager, Shivmohan Bhawan, Vidhansabha Road, Pandri, Raipur, Tahsil and District Raipur (C.G.) (Insurer).

---Appellant

Versus

1. Amit Bada S/o Ram Prasad, aged about 25 years, Caste - Uraon, Occupation - Agriculturist and Coolie in P.D.S., R/o village - Kunkuri, Sundar Nagar, Post Kunkuri, Thana - Kunkuri, District Jashpur (C.G.) (Claimant).
2. Atul Kujur S/o Dominique Kujur, aged about 28 years, Caste - Uraon, R/o village Bnaiya, Thana & Tahsil Sitapur, District Surguja (C.G.) (Driver).

---Respondents

MAC No. 28 of 2018

Bajaj Allianz General Insurance Company Limited, Through Branch Manager, Shivmohan Bhawan, Vidhansabha Road, Pandri, Raipur, Tahsil and District Raipur (C.G.) (Insurer).

---Appellant

Versus

1. Ramu S/o Late Ghongha, aged about 50 years, Caste - Uraon, Occupation - Agriculture.
2. Amrita W/o Ramu, aged about 46 years, Caste - Uraon, Occupation - Agriculture.
3. Anil S/o Ramu, aged about 21 years, Caste - Uraon, Occupation - Agriculture.
All are R/o village Bakripara, Soor, Thana and Tahsil Sitapur, District Surguja (C.G.) (Claimants).

4. Atul Kujur S/o Dominique Kujur, aged about 28 years, Caste - Uraon, R/o village Bnaiya, Thana & Tahsil Sitapur, District Surguja (C.G.) (Driver).

---Respondents

MAC No. 25 of 2018

Bajaj Allianz General Insurance Company Limited, Through Branch Manager, Shivmohan Bhawan, Vidhansabha Road, Pandri, Raipur, Tahsil and District Raipur (C.G.) (Insurer).

---Appellant

Versus

1. Dhansai S/o Late Patera, aged about 48 years.
2. Chuma Bai W/o Dhansai, aged about 45 years.

3. Priyata Wd/o Late Ashish Beck, aged about 23 years.
4. Sushant S/o Late Ashish Beck, aged about 2 years , Minor represented through natural guardian, mother respondent No.3.
All are by Caste - Uraon, Occupation - Agriculture and R/o village Bakripara, Soor, Thana & Tahsil Sitapur, District Surguja (C.G.) (Claimants).
5. Atul Kujur S/o Domnique Kujur, aged about 28 years, Caste - Uraon, R/o village Bnaiya, Thana & Tahsil Sitapur, District Surguja (C.G.) (Driver).

---Respondents

MAC No. 02 of 2018

Bajaj Allianz General Insurance Company Limited, Through Branch Manager, Shivmohan Bhawan, Vidhansabha Road, Pandri, Raipur, Tahsil and District Raipur (C.G.) (Insurer).

---Appellant

Versus

1. Chuna Bai Wd/o Late Paras, aged about 45 years.
2. Sumar Sai S/o Late Paras, aged about 24 years.
Both are by Caste - Uraon, Occupation - Agriculture and R/o village Bakripara, Soor, Thana & Tahsil Sitapur, District Surguja (C.G.) (Claimants).
3. Atul Kujur S/o Domnique Kujur, aged about 28 years, Caste - Uraon, R/o village Bnaiya, Thana & Tahsil Sitapur, District Surguja (C.G.) (Driver).

---Respondents

For the appellant/Insurance Company : Shri S.S.Rajput, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/01/2018

1. These are the four appeals filed by the Insurance Company under Section 173 of the Motor Vehicles Act arisen out of a common award dated 27/09/2016 passed by the learned Motor Accident Claims Tribunal, Ambikapur, District Surguja (C.G.) in Motor Accident Claim Cases No. 86/2016, 87/2016, 88/2016 & 89/2016.

2. Vide the said impugned awards, the Tribunal has awarded a compensation of Rs.26,000/-, Rs.7,79,000/-, Rs.12,43,500/- & Rs.5,36,000/- in claim cases No.88/2017, 86/2017, 87/2017 & 89/2017 respectively with interest @ 7% per annum from the date of award. It was further ordered by the Tribunal that, in the event if the amount is not deposited within a period of 30 days from the date of award, the amount shall carry penal interest at the rate of 9% per annum.

3. The contention of the counsel for the Insurance Company is that, there are certain serious violations of the Motor Vehicles Act and Rules on part of the deceased persons which contributed to the accident and therefore the Insurance Company should not have been saddled with the liability of payment of compensation. He further submits that, from perusal of record it appears that, all the four persons i.e. the three deceased persons and one injured person were travelling on the same Motorcycle at the time of the accident. Thus, there is an apparent breach of Motor Vehicles Act and Rules which would establish the contributory negligence on their part. It was also pointed out by the counsel for the appellant that, the doctor found smell of liquor from the body of the deceased persons which would further establish that, the deceased persons were in the influence of alcohol at the time of the accident which might have also been the factor contributing the accident and thus prayed for setting aside of the award or atleast the award of compensation be reduced by attributing contributory negligence.

4. Perusal of record would show that, the Insurance Company has not led sufficient evidence to establish either of the grounds which have been raised by the counsel for the Insurance Company in the present appeal by leading any

cogent evidence establishing the alleged violations of the provisions of the Motor Vehicles Act and Rules.

5. However what is apparent from the record is that, the Tribunal has without any explanation imposed penal interest upon the Insurance Company that is in the event if the awarded amount is not deposited by the Insurance Company within a period of 30 days from the date of award. This order of the Tribunal seems to be harsh and is contrary to the settled position of law and is also in contravention to the judgment of the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Keshav Bahadur & Ors.** [2004 2 SCC 370].

6. In view of the aforesaid facts and circumstances of the case, this Court is of the opinion that no strong case has been made out by the counsel for the Insurance Company calling for an interference with the impugned awards. However, so far as applicability of the penal interest is concerned, in the light of the judgment of the Supreme Court in the case of Keshav Bahadur (Supra), this Court is of the opinion that the said was totally unwarranted in the given facts and circumstances of the case. Accordingly, the said portion of the award stands set aside/quashed.

7. With the aforesaid modification, the appeals stands disposed off.

Sd/-

(P. Sam Koshy)
JUDGE