

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 632 of 2012

Bajaj Allianz General Insurance Company Limited, through – Branch Manager, Shiv Mohan Bhawan, Vidhan Sabha Road, Pandri, Raipur, Chhattisgarh.

---- Appellant

Versus

1. Mrs. Sarita Mishra W/o Late Harish Chandra Mishra Aged about 33 years.
2. Shivam Mishra S/o Late Harish Chandra Mishra Aged about 13 years (Minor).
3. Ku. Sonal Mishra D/o Late Harish Chandra Mishra Aged about 10 years (Minor).
4. Shivanad Mishra S/o Late Harish Chandra Mishra, Aged about 8 years (Minor).
5. Mrs. Sudha Mishra W/o Late Lalji Mishra Aged about 57 years.
All minor through Respondent No.1 mother Mrs. Sarita Mishra, All Residence of C/o. House of Rikhiram Yadav, Deepupara, Tarbahar, Thana Tarbahar, Bilaspur. (Claimants).
6. Sanjay Markam S/o Suklu Markam, aged about 26 years, R/o Bade Kameli, Machapara, Thana Bhansi, Dantewada, Chhattisgarh. (Driver).
7. Suklu Markam S/o Hiuma Bhuria, aged -not known, R/o Bade Kameli, Machapara, Thana Bhansi, Dantewada, Chhattisgarh. (Owner).

--- Respondents

For Appellant	:	Shri Rohitashva Singh, Advocate.
For Respondent Nos.1 to 5	:	Shri Pragalbha Sharma on behalf of Ms. Ruchi Nagar, Advocate.
For Respondent Nos. 6 & 7	:	Shri P K Tulsiyan, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

08/03/2019

1. By the instant appeal, appellant/Insurance Company is challenging legality and validity of impugned award dated 03.03.2012 passed by learned 5th Additional Motor Accident Claims Tribunal, Bilaspur, C.G (in short 'the Tribunal') in Claim Case No.31/2011, whereby the Tribunal has partly allowed claim application of claimants/respondents No.1 to 5 and awarded a total compensation of Rs.4,63,000/- under all heads, in a death case.
2. Brief facts necessary for disposal of this appeal are that on 26.11.2008 while deceased Harish Chandra Mishra was going towards Dantewada on his Motorcycle bearing registration No.CG17/K/0464, on the way one Mahindra

Scorpio bearing registration No. CG18/D/0723 (hereinafter shall be referred to as “the offending vehicle”), which was coming from the opposite direction and being driven by respondent No.6-Sanjay Markam, dashed against his motorcycle due to which he fell down and sustained grievous injuries which resulted into his instantaneous death. Claimants/ respondents No.1 to 5, who are family members of deceased, have filed a claim application under Section 166 of the Motor Vehicles Act, 1988 (for short ‘the Act of 1988’), claiming compensation to the tune of Rs.17,55,000/- on the ground that they were dependent on the income of deceased and on account of death of deceased, a loss of income had occasioned to them, therefore they are entitled to compensation as claimed by them.

3. Respondent Nos. 6 & 7, who are driver and owner of the offending vehicle, had not filed their reply to the claim application and remained ex-parte before the Tribunal.
4. Appellant/Insurance Company submitted its reply to claim application and denied all the averments made in claim application including involvement of offending vehicle in the accident. It was pleaded that First Information Report (FIR) was lodged against unknown vehicle and accident took place in Dantewada but the claim has been filed before the Tribunal at Bilaspur. Respondent No.6, driver of offending vehicle, was acquitted by the Judicial Magistrate, Jagdalpur from all criminal charges. The Insurance Company denied its liability on the ground that there was breach of condition of insurance policy as the driver was not having valid and effective driving license to drive offending vehicle.
5. Learned Claims Tribunal after considering the pleadings and evidence of respective parties, partly allowed claim application vide impugned award and awarded a total sum of Rs.4,63,000/- as compensation.

6. Learned counsel appearing for appellant/Insurance Company submits that there is no eye-witness to the accident. FIR was lodged against unknown vehicle after a lapse of long time in which offending vehicle was not shown as the vehicle involved in accident. He further argued that driver of offending vehicle was acquitted of the charges by the competent Court and therefore insurance company moved an application under Order XVI Rule 1 of C.P.C for examination of Shri Vidyanand, Sub-Inspector & Investigating Officer of Crime No.96/2008 as a witness on its behalf, but the said application was rejected by the Tribunal.
7. Per contra learned counsel appearing for respondent Nos.1 to 5 supported the impugned award and stated that claim application has been filed before the Tribunal on the basis of charge-sheet which was submitted by the concerned police station specifically mentioning about involvement of the offending vehicle in accident in question. He further argued that as appellant/Insurance Company has not challenged the order rejecting its application filed under Order XVI Rule 1 of the C.P.C before higher Court, therefore, now they are estopped from raising a plea that they have not been provided proper opportunity to adduce evidence.
8. Learned counsel for respondents No.6 & 7 also supports the impugned award.
9. I have heard learned counsel for the parties and perused the record.
10. From perusal of FIR (Ex. P-2) registered under Crime No.96/2008 it is clear that report had been lodged against unknown vehicle and number or type of the vehicle has not been mentioned in it. As per material available on record, details of vehicle has only been mentioned in Ex.P-1, which is the final report prepared and filed by the concerned police station.
11. Smt. Sarita Mishra, wife of deceased, is the only witness examined on behalf of claimants as AW-1 and she admitted in Para-7 of her cross-examination that she is not aware about the place of incident and also about the direction in

which her deceased husband was riding motorcycle. She further admitted that FIR was lodged by her in Bilaspur and that she is not an eye-witness to the accident. No other witness was examined on behalf of the claimants.

12. Perusal of the material & evidence brought on record by the claimants makes it clear that AW-1 ie claimant No.1. is not an eye-witness to the accident and she had lodged FIR against unknown vehicle.

13. Appellant/Insurance Company has taken a specific plea that in FIR offending vehicle has been shown as 'unknown' and as such the vehicle in question was not involved in the accident and to prove said plea, insurance company had moved an application for summoning Shri Vidyanand, Sub-Inspector, Police Station-Kodenar, Dantewada, who investigated Crime No.96/2008 and submitted final report showing involvement of offending vehicle in accident, however, said application has been rejected by the Tribunal by holding that certified copies of documents of any criminal case are admissible in evidence and therefore there is no need of examination of investigating officer, who is not an eyewitness of the accident.

14. Taking into consideration the facts and circumstance of present case, this Court is of the opinion that the Tribunal has committed serious illegality in rejecting application of insurance company for summoning witness ie Investigating Officer of Crime No.96/08, who found the offending vehicle, which was insured with appellant-insurance company at the relevant point of time, to be involved in the accident in question. The said witness could be one of the important witnesses to prove the ground taken by insurance company with respect to non-involvement of offending vehicle in the accident. Even otherwise, Section 168 of the Act of 1988 provides that the Tribunal shall hold an inquiry into the claim. Section 169 of the Act of 1988 provides that in holding the inquiry under Section 168, the Tribunal may follow such summary procedure as it thinks fit. Rule 226 of the Motor Vehicles Rules, 1994

specifically provides for obtaining of information and documents necessary for awarding compensation. Thus, for the purpose of adjudicating and awarding claim, it is the duty of the Tribunal to obtain whatever information and documents, which may be found necessary, from the police, medical and other authorities. In case at hand, as the Tribunal failed to provide proper opportunity to appellant /insurance company to defend its case, by non summoning the witness who is a government servant and Investigating Officer. In the facts and circumstances of case where defence of non-involvement of vehicle has been specifically pleaded the learned Claims Tribunal ought to have allowed the application for summoning the Investigating Officer of criminal case as witness to proof as to how he connected involvement of offending vehicle in accident. Therefore, the impugned award passed by the Tribunal is liable to be set aside and the matter is to be remanded back to the Tribunal to record statement of witness as mentioned in the application filed by insurance company under Order XVI Rule 1 of the C.P.C and to decide the claim application afresh.

15. Accordingly, the appeal is allowed and the case is remitted back to the Tribunal with a direction to take decision afresh after affording opportunity to appellant Insurance Company to examine Shri Vidyanand Sub-Inspector & Investigating Officer of Crime No.96/2008 of PS- Kodenar, Dantewada, at present South Bastar. The Tribunal shall also permit said witness to be cross-examined by the claimants, owner & driver of offending vehicle, if they so wish. Considering the fact that accident occurred in the year 2008, the Tribunal shall make an endeavor to dispose off the claim petition at earliest.
16. Keeping in mind the suffering of the claimant for last seven years, it is made clear that it will be the duty of insurance company to provide correct address of the witness and also to serve him *dasti* along-with other modes of service. If insurance company fails to serve notice on the witness it wants to examine

within reasonable time then the Tribunal will be free to proceed in accordance with law.

17. The parties are directed to appear before the Tribunal on 17.05.2019.

18. Registry to send the records of Claim Case No.31/2011 to concerned Tribunal forthwith.

Sd /-

(Parth Prateem Sahu)

Judge