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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 651 of 2015

- Manager Future Generali India Insurance Company Limited, Shop No. 3 Maruti Business Park, 2nd Floor, Duppad Petrol Pump, Raipur, Police Station Azad Chowk, G.E. Road, Civil and Revenue District Raipur (C.G.)

---- Insurer/Appellant/Non-applicant No.3

Versus

1. Jawahir S/o Narayan, Aged about 40 years
2. Sangeeta D/o Jawahir, aged about 20 years
3. Sonu S/o Jawahir, aged about 18 years

   (Claimants)

   All Residence of Bangali Chowk, Police Station Ambikapur, District Sarguja Civil and Revenue District Sarguja (C.G.)

4. Sunil Kumar Prajapati S/o Jaduram, aged about 26 years, R/o Village Saskalo Police Station Darima, District Sarguja, Civil and Revenue District Sarguja (C.G.)

   (Driver)

5. Mohd. Shahab Warish S/o Samsudoha, Aged about 43 years, R/o Mohalla Rasulpur, Thana & Tahsil Ambikapur, Civil and Revenue, District Sarguja (C.G.)

   (Owner)

---- Respondents

For Appellant	:	Shri Rohitashava Singh, Advocate
For Respondents No. 1 to 3	:	Shri Vijay Kumar Sahu, Advocate
For Respondents No. 4 & 5	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

28.06.2019

Heard this appeal along with I.A. No. 3/2015, an application under Order 41 Rule 27 of CPC.

1. Being aggrieved with the award dated 10.03.2015 passed in Claim Case No. 16 of 2014 by the Motor Accident Claims Tribunal, Sarguja (Ambikapur), C.G., the Appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the liability fastened upon it.

2. The Claimants/Respondents No.1 to 3, unfortunate husband & children of deceased- Sumitra Bai, claimed compensation of Rs.21,10,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of Sumitra Bai in the motor accident.

3. Facts of the case, in brief, are that on 23.12.2013, in the evening deceased-Sumitra Bai was going to her home on foot after the work of labour. When she reached Boripara near Ring-Road, Ambikapur, non-applicant No.1, driver of the offending vehicle- Truck bearing registration No. CG-12/C/2823, owned by non-applicant No.2 and insured with non-applicant No. 3, driving the said vehicle in a rash and negligent manner, dashed Sumitra Bai. As a result thereof, head of Sumitra Bai was crushed and she died on spot.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.6,11,000/- in favour of the Claimants/Respondents No.1 to 3 with interest @ 6% from the date of filing of the application till realization and has fastened the liability upon the non-applicants jointly and severally to pay compensation.

5. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

6. Learned counsel for the Appellant/Insurance Company submits that before Tribunal, no any evidence was adduced by the Insurance Company regarding driving licence because the driving license was not obtained and verified by the Insurance Company. He further submits that after the award was passed on 10.03.2015 by the Tribunal, the Insurance Company has verified the driving licence from the concerned RTO and was obtained on 23.03.2015 from the RTO. Therefore, the Insurance Company has filed I.A. No.3/2015 application for producing document (Annexure-A/3) under Order 41 Rule 27 of CPC and has prayed that it may be taken record.

7. No objection was raised by counsel for Respondents 1 to 3 to the prayer of the Appellant for taking driving licence on record.

8. On due consideration and for the reasons mentioned in the application (I.A. No.3/2015), it is allowed and the document is taken on record.

9. Learned counsel for the Appellant/Insurance Company further submits that since non-applicant No.1, driver of the offending vehicle, was not having valid and effective driving licence to drive heavy goods vehicle at the time of accident i.e. on 23.12.2013, the Tribunal has wrongly fastened liability upon the Insurance Company. Looking to the facts and circumstances of the case, driving licence has been produced before this Court, this matter may be remanded to the Tribunal.

10. Learned counsel for Respondents 1 to 3 submits that before Tribunal, driving licence was produced by the driver of the offending vehicle namely Sunil Kumar Prajapati and no any verification was made by the Insurance Company. As per document produced before Tribunal, learner's licence for heavy goods vehicle is valid from 17.10.2013 to 16.04.2014. Thereafter, as per Annexure-A/3, driving licence of Sunil Kumar Prajapati, produced before this Court by the Appellant for heavy goods vehicle/transport was issued on 02.01.2014 and valid till 01.01.2017. Therefore, at the time of accident, driver of the offending vehicle had a valid and effective driving licence to drive the same and the Insurance Company has not adduced any evidence regarding breach of policy condition and the Tribunal has rightly fastened liability upon the Insurance Company.

11. Heard learned counsel for the parties and perused the material available on record.

12. It is not disputed by both the parties that no any evidence was adduced regarding breach of policy condition before the Tribunal. Application for compensation was filed on 27.01.2014 and thereafter, counsel on behalf of the Insurance Company/non-applicant No.3 appeared on 28.07.2014 and filed his power and the award was passed on 10.03.2015. But no any evidence adduced by the counsel for the Insurance Company till 09.03.2015 and the insurance counsel requested to close the case and did not incline to give any evidence. Thereafter, at the request of counsel for the Insurance Company, the case was closed and award was passed on 10.03.2015. No effort has been made by the Insurance Company to prove its pleadings and after the award was passed by the Tribunal, one document i.e. driving licence (Annexure-A/3) has been filed under Order 41 Rule 27 CPC (I.A. No. 3/2015) before this Court in the appeal, but no reason mentioned as to that why driving licence was not produced before the Tribunal. It was possible for the Appellant to obtain that document when the written statement was filed and opportunity was also given to the Appellant. As per record, one driving licence was also filed by the Claimants before the Tribunal which was issued in favour of non-applicant No.1 – Sunil Kumar Prajapati bearing Learner's Licence Number-CG15/00127772013 and is valid from 17.10.2013 to 16.04.2014 for heavy goods vehicle and that driving licence has not been verified by the Insurance Company and no any evidence adduced regarding that document. In view of the above, there is no breach of provisions of Rule 3 of the Central Motor Vehicles Rules, 1989. Therefore, the Insurance Company has failed to prove this fact regarding breach of policy conditions. During validity period of the learner's licence, on 02.01.2014 permanent licence for transport vehicle was issued in favour of non-applicant No.1 having validity till 01.01.2017 vide Annexure-A/3 filed by the Appellant. In these circumstances, this Court finds no illegality in the finding recorded by the Tribunal fastening the liability on non-applicant No. 3 for indemnifying non-applicant No.2 in respect of the claim raised by the Claimants.

13. In the result, the appeal being without any substance is liable to be dismissed and is accordingly dismissed.

14. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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