NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 711 of 2014

- M/s Power Pack Industries Shop No. 48, R.S.S. Market, Power House, Bhilai, Tahsil and District Durg C.G.

---- Appellant

Versus

1. Smt. Satyavati Pan W/o Late Bhimraj Pan Aged About 30 Years.
2. Shiwani Pan D/o Late Bhimraj Pan Aged About 11 Years
3. Soniya Pan D/o Late Bhimraj Pan Aged About 10 Years.
4. Simran Pan D/o Late Bhimraj Pan Aged About 6 Years
5. Ishwar Pan S/o Late Bhimraj Pan Aged About 3 Years
6. Smt. Shakuntala Pan W/o Late Kumar Pan Aged About 48 Years

   Appellant No.2 to 5 are minor hence impleaded through their natural guardian mother appellant No.1- Mother Smt. Satyavati Pan, W/o Late Bhimraj Pan, aged about 30 years.

   All R/o Near 37/State Quarter No. 7/A, Jhopdi, Sector-10, Bhilai, P.S. Bhatti, Tahsil and District Durg C.G.

7. National Insurance Company Limited, Manager, National Insurance Company Limited, Branch No.01, Bhutani Complex, G.E. Road, Power House Bhilai, Tah. And Distt. Durg C.G., District : Durg, Chhattisgarh

---- Respondents

For Appellant	:	Mr. Amiyakant Tiwari, Advocate
For Respondent No.1 to 6	:	Ms. Kiran Singh, Advocate on behalf of Shri Uttam Pandey, Advocate
For Respondent No.7	:	Mr. G.V.K. Rao, Advocate

Order On Board By Hon'ble Mr. Justice Parth Prateem Sahu

12/4/2019

1. Appellant-owner has filed this appeal challenging award dated 15.4.2014 passed by learned 6th Additional Motor Accident Claims Tribunal, Durg (for short 'the Claims Tribunal') in Claim Case No.72/2013 whereby the Claims Tribunal has partly allowed claim application of respondents No.1 to 6

herein, awarded a total compensation of Rs.10,57,000/- in a death case and held appellant herein liable to satisfy the award.

2. Brief facts relevant for disposal of this appeal are that on 10.7.2011 at about 11.55 a.m. Bhimraj Pan (since deceased) along with his friend Dipak Tandi was going on motorcycle bearing registration No.CG07/F/1250. Dipak Tandi was driving motorcycle whereas Bhimraj Pan was travelling as pillion rider. When they reached near Central Avenue Road, the motorcycle hit against electric pole installed on divider of road as a result of which both of them sustained grievous injuries. They were taken to Chandulal Chandrakar Hospital where Bhimraj Pan died during the course of treatment on 10.7.2011. Accident was reported to concerned police station based on which offence under Section 304A of the Indian Penal Code was registered. Claimants/ respondents No.1 to 6 herein, who are widow, children & mother of deceased respectively, have filed claim application against appellant and respondent No.7 herein for compensation of Rs.52,50,000/- on the death of Bhimraj Pan.

3. Non-applicant No.1/appellant herein filed reply to claim application and admitted ownership of motorcycle in question. It was pleaded that claimants are not entitled for any amount of compensation and if they are held entitled for any compensation then the same would be payable by insurance company because at the relevant point of time offending motorcycle was insured with it and there was no breach of any of the conditions of insurance policy.

4. Non-applicant No.2 / respondent No.7 - Insurance Company also filed its separate reply and admitted that at the time of accident, motorcycle in question was insured with it. It was pleaded that accident occurred due to

negligence on the part of deceased himself. Since no other vehicle was involved in the accident, claim application of claimants itself was not maintainable. Driver of motorcycle was not having valid and effective driving license and therefore the same was not produced before the police during the course of investigation nor before the Claims Tribunal along with reply to claim application which shows that motorcycle-in-question was driven by said Dipak Tandi in violation of terms and conditions of insurance policy.

5. After appreciation of pleadings and evidence available on record, the Claims Tribunal partly allowed claim application vide impugned award, assessed compensation of Rs.10,57,000/- for the reasons mentioned therein and due to breach of terms and conditions of insurance policy i.e. non-possession of valid driving license by rider of offending motorcycle, held the appellant herein liable to pay entire amount of compensation to the claimants.

6. The sole ground of challenge raised by learned counsel for appellant is that offending motorcycle was given to deceased Bhimraj, who was working with appellant as Driver and having a valid driving license, and it is the deceased who without permission or knowledge of appellant, in transit, gave motorcycle to Dipak Tandi to drive, who was not having driving license. He further argued that as it was not within knowledge of appellant that motorcycle owned by them was handed over by their licensed driver to some other person, who was not having driving license, therefore, the insurance company cannot escape from its liability to pay amount of compensation or insurance company cannot be discharged from its liability under the insurance policy. Reliance is placed on the judgments in the matters of Shri Kashiram Yadav & another vs. Oriental

Fire & Gen. Insurance Co. & ors reported in AIR 1989 SC 2000; Sohan Lal Passi v. P. Sesh Reddy & ors reported in AIR 1996 SC 2627 & Skandia Insurance Company Limited v. Kokilaben Chandravadan reported in (1987) 2 SCC 654.

7. Per contra, learned counsel appearing for respondent Insurance Company opposed submission made by learned counsel for appellant and submitted that appellant failed to prove the fact that deceased was working with him as Driver by placing documentary evidence on record in this regard. They also failed to prove before the Claims Tribunal that they have instructed deceased Bhimraj Pan not to handover motorcycle to anyone, even accepting their case that they have handed over motorcycle to deceased Bhimraj. He further argued that fact remains that at the time of accident said Dipak Tandi, who was not having driving license, was driving motorcycle, which amounts to breach of conditions of insurance policy and therefore the Claims Tribunal has rightly exonerated insurance company.

8. Learned counsel appearing on behalf of claimants/respondents No.1 to 6 supported the impugned award.

9. I have heard learned counsel for the parties and perused the record.

10. Indisputably, the offending motorcycle is owned by appellant herein and accident took place while Dipak Tandi, who was not having driving license, was driving said motorcycle. In the entire reply to claim application filed by appellant herein there is no whisper that while giving motorcycle to deceased Bhimraj, he was duly instructed not to give custody of offending motorcycle to anyone. It has only been pleaded that motorcycle was borrowed by deceased Bhimraj from the appellant for his own personal

work. Judgments relied upon by learned counsel for appellant i.e. (1987) 2 SCC 654 provides that the insurer cannot escape from its obligation to indemnify insurer when some mishap occurs by some mischance when insured has done everything within his control by engaging licensed driver and handing over vehicle to licensed driver with express or implied mandate to drive himself. Reliance placed by learned counsel for appellant on the judgment of Hon'ble Supreme Court in Sohan Lal Passi (supra) is misplaced and distinguishable on facts. In the above cited judgment, the vehicle was handed over to paid driver engaged for driving particular vehicle from which accident occurred, whereas facts of present are altogether different.

Even otherwise, said ground raised by learned counsel for appellant is not sustainable for the reason that in reply to claim application appellant has specifically pleaded that deceased had borrowed vehicle from him with a condition that he will return it in evening. He has not pleaded anything that he handed over vehicle to deceased as its driver or deceased was instructed not to hand over Hero Honda Motorcycle (two wheeler) to any other person. Maneet Jain (NAW-1), proprietor of appellant industry, has stated in his evidence that motorcycle was borrowed by Bhimraj. He has also not stated in specific term that Bhimraj was engaged by him as driver to drive motorcycle. Though this witness has subsequently stated that he instructed deceased not to hand over motorcycle to any other person, but this statement has been made for the first time before the Claims Tribunal and no such fact has been pleaded in reply to claim application and therefore this oral evidence cannot be treated as reliable piece of evidence. This statement made by proprietor of appellant industry appears to be an afterthought in order to avoid liability to pay compensation. Since on the date of accident, driver of offending motorcycle was not possessing valid and effective driving license, there was violation of condition of insurance policy and being so, the insurance company cannot be held liable to indemnify insured.

11. In the case at hand, the appellant failed to prove before Claims Tribunal that they have entrusted motorcycle to a licensed driver with instructions that he should not permit any unlicensed person to drive it. Application filed by appellant under Order 41 Rule 27 of CPC along with photocopy of driving license issued in the name of Bhimraj Pan is not acceptable for the reason that this application does not bear specific ground as to why this important piece of evidence was not placed before the Claims Tribunal at appropriate time especially when they have specifically pleaded in their application that deceased was engaged by them as driver and he was under their employment. Deceased was not unknown to appellant and they could have very well placed this document before Claims Tribunal as evidence but they failed to do so. Appellant has not pleaded pre-requirements of provisions of Order 41 Rule 27 of CPC and therefore application filed by appellant under Order 41 Rule 27 is rejected.

12. For the foregoing discussions, the appeal filed by the appellant being sans merit is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-