NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1091 of 2014

- Bajaj Allianz General Insurance Company Limited Vidhan Sabha Road, Pandri, P.S. Pandri, Distt. Raipur C.G.

--- Appellant

Versus

1. Sukhiram Jaiswal S/o Sonauram, Aged About 44 Years, profession agriculture
2. Saharatin Bai Jaiswal W/o Sukhiram, Aged About 41 Years, profession House Wife
3. Ramlal Jaiswal S/o Sukhiram, Aged About 17 Years Minor,
4. Ramkumar Jaiswal S/o Sukhiram, Aged About 16 Years Minor,
5. Shyamlal Jaiswal S/o Sukhiram, Aged About 14 Years Minor,
6. Panchram Jaiswal S/o Sukhiram Aged About 12 Years Minor,

   Respondent Nos. 3 to 6 are minors through their Father Sukhiram Jaiswal, R/o Village- Pirda, Thana- Malkharauda, Distt. Janjgir-Champa C.G.

7. Ashok Kumar Chandra S/o Kaushal Prasad Chandra R/o village Bhadora, Thana- Malkharauda, P.O. Pirda, Distt. Janjgir-Champa C.G.

---- Respondents

For Appellant	Shri Rohitashva Singh, Advocate.
For Respondent Nos. 1 to 6	Shri A.L. Singroul, Advocate.
For Respondent No.7	Shri H.S. Patel, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

08/05/2019

1. This appeal is by the Insurance Company/non-applicant no.2 against the award dated 04.08.2014 passed by the 1st Additional Motor Accident Claims Tribunal, Sakti, District Jangir Champa, C.G. in Claim Case No.41/2010 awarding total compensation of Rs.2,52,500/- with interest @ 6% per annum from the date of application till realization,

fastening liability on the Insurance Company i.e. appellant/non-applicant no.2 along with non-applicant no. 1 jointly and severally.

2. Respondent nos. 1 to 6 have also filed cross objection under Order 41 Rule 22 of CPC challenging quantum of compensation along with the application (I.A. No.4) for condonation of delay in filing the cross objection.

3. As per claim petition, on 17.05.2010, at around 8 'o' clock in the night, deceased Lala Ram Jaiswal, aged about 22 years, earning Rs.3000/- per month, working as Labour, was driving the Tractor bearing no.CG11-A-8996 and trolley bearing no. CG11-A-8997 owned by non-applicant No.1 and going from village Jamgahan to village Padarmudha. However, on the way one tractor coming from opposite direction and Lalaram while giving side to the said tractor lost control over his vehicle due to mechanical break down his vehicle fell in the pond. As a result of this accident, Lala Ram Jaiswal got crushed under the tractor and died. According to the claimants, vehicle driven by the deceased was insured with non-applicant No.2.

4. A claim petition was filed by the claimants i.e. parents and brother of the deceased under Section 163A of the Motor Vehicles Act for compensation to the tune of Rs.10,87,000/-. The Tribunal vide award dated 29.09.2011 considering the pleadings and the evidence of the parties awarded a total compensation of Rs.2,52,500/- with interest @ 6% per annum from the date of application till realization, fastening the liability on non-applicant No.2 along with non-applicant No.1 jointly and severally.

5. Aggrieved by the said award, non-applicant No.2/Insurance Company

filed an appeal MAC No.297 of 2012 before this court. This Court vide award dated 19.11.2012 remanded the matter to the Tribunal for deciding the issue of liability afresh after affording due opportunity of hearing and of adducing additional evidence to the parties.

6. After remand of the matter, the Tribunal vide award dated 04-08-2014 decided the issue of liability afresh and maintained its earlier finding of holding the Insurance Company/Non-applicant No.2 liable for payment of compensation.

7. Learned counsel for the appellant submits that the Tribunal has wrongly fastened the liability on the Insurance Company based on the cover note Ex.D-3 as the same was never issued by the Insurance Company and was a forged one. The said contention was raised by the Insurance Company in the earlier round of litigation in MAC No.297 of 2012 and considering the same the matter was remanded to the Tribunal for deciding the issue of liability afresh. After remand of the matter, the Insurance Company examined Shri Akhilesh Pandey, Senior Special Development Executive as NAW-3, who has categorically stated that the offending vehicle was never insured by non-applicant No.2 and the said cover note Ex.D-3 produced before the Tribunal is a forged document. He further submits that the non-applicant No.1/Owner has utterly failed to prove that any amount towards insurance of his vehicle was paid to non-applicant No.2/Insurance Company. No any cogent and reliable documentary evidence has been adduced by the non-applicant No.1 in this regard. Further, Shri Pawan Kumar Singh, Law Officer examined by the Insurance Company as NAW-2 has also stated that the offending

vehicle was not insured by non-applicant No.2 and the document of Ex.D-3 i.e. cover note is a forged document. He submits that in fact the said cover note was a missing document which was forged by non-applicant No.1/owner to escape from its liability and, therefore, the Insurance Company had made a paper publication in this regard vide Ex.D-4C that the cover note Ex.D-3 has been lost, any issue of such cover note for insuring of any motor vehicle would be illegal and unauthorized usage and that the Insurance Company would consequently not be liable on the same and for consequence thereof. According to non-applicant No.1/Ashok Kumar NAW-1/owner of the vehicle, he got his vehicle insured with non-applicant No.2 by paying premium on 02.04.2010 but no receipt of such payment has been produced by him before the Tribunal. The evidence of NAW-1 is not acceptable firstly on the ground that the date of which he claims to have deposited premium with the Insurance Company i.e. 02.04.2010 was the national holiday being Good Friday and secondly no details of the premium paid against the respective heads are mentioned in the cover note. Therefore, considering the overall oral and documentary evidence available on record, the Tribunal was not justified in fastening liability on the Insurance Company.

8. Learned counsel for the respondents support the impugned award in respect of liability.

9. Learned counsel for the claimants submits that they have filed a cross objection seeking enhancement of compensation on the ground that no future prospect has been granted to the claimants, the multiplier of 10 has wrongly been applied whereas considering the age of the deceased

as 22 years multiplier of 18 should have been applied. He further submits that the interest has also been awarded on the lower side and it should have been 9% per annum.

10. Heard both the parties on appeal as well as on cross objection and perused the material available on record.

11. It is not disputed by both the parties that 2nd April, 2010 was a national holiday being Good Friday and it is also mentioned in the calendar, therefore, the contention made by the owner that on 2nd April, 2010, he deposited premium in the Office of Insurance Company is not acceptable. Though, non-applicant No.1 owner has filed a cover note Ex.D-3 and contended that his vehicle was duly insured with non-applicant No.2 on the date of accident, however, the witnesses examined on behalf of non-applicant No.2 i.e. NAW-3 Akhilesh Pandey and NAW-2 Pawan Kumar Singh have categorically stated that no such cover note was issued by the Insurance Company, the same is forged document which was missing has been used by the owner fraudulently to escape his liability. The evidence of the witnesses examined on behalf of the Insurance Company finds due support from Ex.D-4 i.e. public notice published by the Insurance Company in the newspaper with regard to missing of certain cover notes including the cover note (Ex.D-3). In the said public notice Ex.D-4C, the Insurance Company has made it clear that any issue of pertaining to the missing cover notes for insuring of any motor vehicle would be illegal and unauthorized usage and the Insurance Company would consequently not be liable on the same and for consequence thereof. Non-applicant No.1/Owner has though contended that he paid premium to the Insurance Company but

no receipt of such payment has been filed by him before the Tribunal and he has also not explained as to why which mode the payment was made. From perusal of the cover note Ex.D-3, it is also clear that the details of the premium against the respective heads (basic (OD Premium, TPPD/Act, Owner Driver Cover, Paid Driver, passenger etc.) have not been mentioned in the cover note.

12. Thus, in the totality of facts and circumstances of the case, the oral and documentary evidence adduced by the Insurance Company, the fact that the owner has utterly failed to prove that his vehicle was insured with non-applicant No.2 on the date of accident by payment of requisite amount of premium to it, this Court is of the opinion that the Tribunal was not justified in fastening liability on the Insurance Company.

13. So far as cross objection filed by the claimants is concerned, initially an award was passed by the Tribunal on 29.09.2011 against which the Insurance Company filed an appeal i.e. MAC No.297 of 2012 whereas no appeal for enhancement of compensation was filed by the claimants. Considering the over all facts and circumstances of the case and the pleadings of the parties, the appeal filed by the Insurance Company was allowed in part and the matter was remitted back to the Tribunal vide order dated 19.11.2012 of this Court with a direction to decide the issue of liability only afresh. Therefore, considering the facts and circumstances of the case, the fact that the first award was passed by the Tribunal on 29.09.2011, no appeal against the same was filed by the claimants for enhancement and the present cross objection has been filed only after the fresh award was passed by the Tribunal after

remand of the matter, with a delay of 1033 days without showing any sufficient and reasonable cause for such an inordinate delay, this Court does not find any reason to condone the said delay in filing the cross objection by the claimants. This apart, the claimant states that he is an illiterate person, however, in his affidavit he has put his signature and not a thumb impression. Therefore, considering the totality of the case, the conduct of the claimants and the inordinate delay of 1033 days in fling the cross objection without any sufficient and reasonable cause, the application for condonation of delay in filing cross objection is liable to rejected and is, accordingly, rejected.

14. In the result, the appeal is allowed. Non-applicant No.2/Insurance Company is exonerated of its liability of paying compensation to the claimants, non-applicant No.1/owner is held liable for payment of compensation to the claimants. If the Insurance Company has deposited the amount of compensation with the Tribunal and the same has been disbursed to the claimants, Insurance Company/Non-applicant No.2 shall be at liberty to recover the same from the Non-Applicant No.1/Owner in accordance with law. The cross objection filed by the claimants being without any substance is hereby dismissed. The impugned award stands modified to the above extent. Rest of the conditions of the impugned award shall remain intact.

-Sd-
Gautam Chourdiya
Judge

Akhilesh