NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1315 of 2014

1. Smt. Kesari Bai W/o Late Shri Laxmilal Patel Aged About 24 Years
2. Ku. Bharti Patel Minor D/o Late Shri Laxmilal Patel Aged About 3 Years
3. Jitu @ Jitendra Patel S/o Late Shri Laxmilal Patel Aged About 2 months
4. Dhankunwar Bai W/o Late Shri Mohanlal Patel Aged About 50 Years

The appellants No. 2 & 3 are minor and are being Represented By The Appellant No. 01 Mother

All the above are R/o Village Raitum, PS Patewa, Tah. And Civil Distt. And Distt. Mahasamund C.G.

----Appellants

Versus

1. Prakash Chand Verma S/o Shri Doulal Verma, Aged About 37 Years R/o Village Kasekera, Ps Komakhan, Tahsil and Civil District and District Mahasamund C.G.
2. Koushal Prasad Verma S/o Shri Doulal Verma Aged About 38 Years, R/o Village Kasekera, PS Komakhan, Tahsil and Civil District and District Mahasamund C.G.
3. L & T General Insurance Company Ltd., Reg. Office at L & T House, N.M. Marg, Ballard East-Mumbai, Mumbai M.H. - 400001.

---- Respondents

For Appellants	Shri Jameel Akhtar Lohani, Advocate.
For Respondent Nos. 1 & 2	Shri Anurag Verma, Advocate.
For Respondent No.3	Shri N.K. Thakur, Advocate along with Shri Rohitashva Singh, Advocate.

MAC No. 75 of 2015

1. Prakash Chandra Verma S/o Daulal Verma Aged About 37 Years
2. Kaushal Prasad Verma S/o Daulal Verma Aged About 40 Years

Both residents of Village Kasekera, P.S. Komakhan, Tahsil and Dist Mahasamund C.G.

---Appellants

Versus

1. Smt. Kesari Bai Wd/o Late Laxmilal Patel Aged About 24 Years
2. Ku Bharti Patel D/o Late Laxmilal Patel Aged About 3 Years
3. Jeetu @ Jitendra Patel S/o Late Laxmilal Patel Aged About 2 Years

   Respondent Nos. 2 & 3 being minors through their legal guardian Smt Kesari Bai, Mother

4. Dhankunwar Wd/o Mohanlal Patel Aged About 50 Years
5. L& T General Insurance Company Ltd., Through its Registered Office L& T House, N M Marg Ballard Estate, Mumbai 400001 Maharashtra.

---- Respondents

For Appellants	Shri Anurag Verma, Advocate.
For Respondent Nos. 1 to 4	Shri Jameel Akhtar Lohani, Advocate.
For Respondents	Shri N.K. Thakur, Advocate along with Shri Rohitashva Singh, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

14/03/2019

1. As both these appeal arise out of the award dated 24.09.2014 passed by the Motor Accident Claims Tribunal, Mahasamund, C.G. in Claim Case No.11/13, whereby the Tribunal in a death case has awarded a total sum of Rs.12,93,000/- with interest at the rate of 6% per annum from the date of application till its realization, fastening the liability on the appellants/Driver and Owner, while exonerating the Insurance company on the ground of breach of policy conditions, they are being disposed of by this common judgment.
2. As per averments in the claim petition, on 30.12.2012 the deceased Late Laxmilal Patel, aged about 26 years, earning Rs.6,000/- per month, working as Munsi (Clerk) in Polish

Factory, suffered grievous injuries in the motor vehicular accident caused due to rash and negligent driving of Tractor bearing no.CG06-E-3858 attached with Trolley bearing no.CG06-E-4439 by non-applicant No.1 and during treatment he died. At the time of accident, the offending vehicle owned by non-applicant no.2 and insured with non-applicant no.3.

3. On claim petition being filed by the claimants i.e. Wife, Mother and Children of the deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.17,90,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

4. **MAC No.75 of 15**:- Learned counsel for the appellants/Driver and Owner submits that the Tribunal has wrongly exonerated the Insurance Company on the ground of breach of policy conditions observing that on the date of accident some persons were travelling in the offending vehicle against the policy conditions. He further submits that no evidence has been adduced by the Insurance Company to prove breach of policy conditions and even the Insurance Policy has not been produced before the Tribunal whereas from the oral and documentary evidence available on record, it stands proved that the vehicle in question was duly insured with non-applicant no.3/Insurance Company on the date of accident and there was no breach of policy conditions on the part of non-applicant nos. 1 & 2.

5. Learned counsel for the claimants also supports the contention made by the appellant's counsel in respect of liability. He submits that the deceased was not travelling in the offending vehicle but was riding his motorcycle when he was dashed by non-applicant no.1 and as such there being no breach of policy conditions and the deceased being third party, the Insurance Company is liable to pay compensation to the claimants.

6. **MAC No.1315 of 2014** :- Learned counsel for the appellants/claimants submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award only on the sole that the Tribunal has wrongly exonerated the Insurance Company of its liability. He supports the contention of learned counsel for the driver and owner.

7. Counsel for the respondent nos. 1 & 2 supports the contention made by the appellants/claimants counsel.

8. Counsel for the Insurance Company opposes the contention of claimants and driver and owner of the offending vehicle and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

9. So far as the issue of liability is concerned, the Insurance Company in its written statement has denied to be the insurer of the offending vehicle and contended that the offending vehicle has

falsely been involved in this case. However, as per FIR Ex.P-2 offence was registered against non-applicant no.1 driver of the offending vehicle under Sections 279, 337 and 304A of IPC and after investigation charge sheet was filed against him under the aforesaid sections. As per seizure memo Ex.P-6 RC Book of the offending vehicle, it is the insurance policy and driving licence of non-applicant nos. 1 were seized by the police. It has been mentioned in the said seizure memo that the insurance policy is valid till 23.03.2013 and it has been issued by non-applicant no.3/Insurance Company. Though, the non-applicant no.3 has specifically pleaded that it has not insured the offending vehicle but no evidence whatsoever to substantiate the said plea has been adduced by the Insurance Company. It is the well settled principle of law that mere raising of plea is not sufficient and the parties is required to substantiate the same by adducing cogent and reliable evidence. In the seizure memo particulars of the Insurance Policy were given, however, the non-applicant no.3/Insurance Company failed to produce such policy to show that the offending vehicle was being driven in violation of terms and conditions of the policy. The Tribunal has exonerated the Insurance Company on the ground that some persons were being carried in the tractor as has been admitted by the applicant in cross-examination and as such it being a breach of policy conditions, Insurance Company is not liable for paying compensation to the claimants. However, considering the facts and circumstances of the case, the nature and quality of evidence adduced by the parties, the fact that no evidence has been adduced by the Insurance Company to prove breach of policy conditions and even the Insurance Policy has not been produced before the Tribunal whereas it has been specifically pleaded by non-applicants no. 1 & 2 that the offending vehicle was duly insured with non-applicant no.3 on the date of accident and as per seizure memo also it is seen that the offending vehicle was insured with non-applicant no.3 at the relevant time, the deceased was riding the motorcycle and was a third party, this Court is of the opinion that the Tribunal was not justified in exonerating the Insurance Company of its liability and fastening the same on non-applicant nos. 1 & 2. The finding so recorded by the Tribunal is hereby set aside and non-applicant no.3 is held liable jointly and severally along with non-applicants no. 1 & 2 to pay compensation to the claimants.

10. In the result, both the appeals are allowed in part with modification in the impugned award to the above extent.

Sd/-
Gautam Chourdiya
Judge

Akhilesh