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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1235 of 2012

- Reliance General Insurance Company Ltd. Korba Branch Office, Thru- Its Legal Manager, Reliance Gen.Insu.Co.Ltd., 4th Floor, 412-413, Ravi Bhawan, Near Jaistambh Chowk, Raipur C.G., **---- Appellant**

Versus

1. Smt.Kanti Netam, W/o Late Bhushan Netam Aged About 30 Years Behind Ganga Steel, Bhathagaon, P.S. And P.O. And Tah. Bhatgaon, Distt. Raipur C.G.,

2. Malay S/o Late Bhushan Netam Aged About 4 Years Minor, Thru- Mother- Smt. Kanti Netam, R/o Behind Ganga Steel, Bhathagaon, P.S. And P.O. And Tah. Bhatgaon, Distt. Raipur C.G.,

3. Smt. Suman Netam W/o Late Fag Singh Netam Aged About 65 Years Behind Ganga Steel, Bhathagaon, P.S. And P.O. And Tah. Bhatgaon, Distt. Raipur C.G., (Claimants)

4. Sukhlal Pandey S/o Angad Ram Pandey Aged About 30 Years Nayapara Khurd, Post And P.S. Pithora, Tah. And Distt. Mahasamund C.G. (Driver)

5. Mehatar Lal Thakur S/o Late Pilaram Thakur Aged About 62 Years Pithora, Post And P.S. Pithora, Tah. And Distt. Mahasamund C.G., (Owner) **---- Respondents**

For the Appellant	:Shri Sourabh Sharma, Advocate
For Respondent No.5	:Ms. Pushpalata Khalkho, Advocate

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

02.07.2019

1. Heard on I.A.No.01, an application for condonation of delay of 33 days in filing this appeal.

2. On due consideration and for the reasons assigned therein, I am inclined to allow the same.

3. Accordingly, I.A.No.01 is allowed and the delay is accordingly condoned.

4. Heard on admission.

5. This Miscellaneous Appeal has been preferred under Section 173 of the

Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) by non-applicant No.3/insurer questioning the legality and validity of the award dated 13.08.2012 passed by the 7th Additional Motor Accidents Claims Tribunal, Raipur, in Claim Case No. 151/2011, by which, the learned Claims Tribunal, while allowing the claim petition in part, awarded total amount of compensation to the tune of Rs.10,14,184/- with interest @ 6% per annum from the date of filing of the claim petition till its realisation.

6. Briefly stated the facts of the case are that on 24.10.2009, deceased Bhushan Netam was coming to his house by his bicycle. At the relevant time, his bicycle was dashed by the offending vehicle, i.e., tractor attached with trolley bearing its registration CG-06-B-1681 and CG-06-B-1682 respectively, which was being driven rashly and negligently by its driver Sukhlal, owned by non-applicant No.2 Mehtarlal Thakur and insured with non-applicant No.3/Reliance General Insurance Company Limited (present appellant). According to the claimants, deceased Bhushan Netam was working as Shiksha Karmi Grade-II and used to earn Rs.10,728/- per month and owing to his sad demise on account of said accident, they are entitled to a total sum of Rs.19,00,000/- from the non-applicants.

7. Non-applicants No. 1 & 2 have contested the claim on the ground that since the vehicle in question was insured with non-applicant No.3, therefore, in case of any liability being fastened, the same could be indemnified by non-applicant No.3. Non-applicant No.3/insurer while contesting the claim has stated that the deceased himself was responsible for the alleged accident as he was driving his bicycle in drunken condition. It is contested further on the ground the driver of the offending vehicle was not holding the valid and effective driving licence, therefore, the vehicle in question was being used in utter violation of the terms and conditions of the insurance policy, and therefore, the insurance company cannot be held liable.

8. After considering the evidence led by the parties, the Claims Tribunal, vide its award impugned, arrived at a conclusion that the alleged accident occurred on 24.10.2009 on account of rashness and negligent driving of driver of the offending vehicle as he dashed deceased Bhushan Netam when he was returning to his house on bicycle and due to the said accident he has died on 03.11.2009 during the course of treatment. It held further that the vehicle in question was not being used in utter violation of the terms and conditions of the insurance policy as this fact could not have been established by the insurance company. As a consequence, the Claims Tribunal, while assessing the monthly income of the deceased to the tune of Rs.7,728/- and that by applying the multiplier of 16, awarded total amount of compensation to the tune of Rs.10,14,184/- with interest @ 6% per annum from the date of filing of claim petition till its realisation.

9. Being aggrieved, the appellant/insurance company has preferred this appeal. Shri Sourabh Sharma, learned counsel for the appellant submits that the award under appeal as passed by the Claims Tribunal by holding that the driver was holding the effective and valid driving licence is apparently contrary to law. He submits further that the vehicle in question was being used in utter violation of the policy, and therefore, the Claims Tribunal ought to have exonerated the insurance company from its liability. He contended further that since the first information report was lodged on 16.02.2010, therefore, it apparently shows that the vehicle in question was not at all involved in connection with the said accident. His last contention is that on the date of accident, the deceased was found to be in an intoxicated stage, and therefore, the deceased himself was responsible for the said incident.

10. I have heard learned counsel for the appellant and perused the entire record carefully.

11. A claim petition was made by the claimants on account of the accident

occurred on 24.10.2009 when the deceased was coming to his house by his bicycle and at the relevant time, he was dashed vehemently by the offending vehicle, i.e., tractor-trolley. From the perusal of the evidence, it appears that the deceased was 35 years old and used to earn Rs.7,728/- as he was discharging duties as Shiksha Karmi Grade-II in a Government School. It appears further from perusal of the record, particularly, from the statement of Abhishek Singh, who was examined as non-applicant's witness No.3 that the driver was holding the valid driving licence. It, thus, appears that the burden, which was upon the insurance company to establish the fact that the driver was not holding the valid and effective driving licence at the relevant time, could not have been established by the appellant/insurance company by way of cogent and reliable evidence. As far as the contentions of Shri Sharma that since the accident took place on 24.10.2009 and F.I.R. was lodged on 16.02.2010 and that the deceased was found to be in an intoxicated condition, therefore, the vehicle in question was not involved in the said crime and deceased himself was responsible for the alleged accident, are, however, noted to be rejected for want of any cogent and reliable evidence in this regard. In absence thereof, the Claims Tribunal has, thus, not committed any illegality in fastening the liability upon the appellant/insurance company while passing the award impugned. The findings as recorded by the Claims Tribunal are based upon due and proper appreciation of the evidence of the parties and do not call for any interference.

12. Consequently, the appeal, being devoid of merit, is hereby dismissed at admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

Anjani