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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 559 of 2016

- Arvind Singh Chandel S/o Shri Chandan Singh Chandel, Aged About 55 Years (Wrongly Mention in Order Sheet Aabind) R/o Imlibhatha, Thana and Tahsil- Mahasamund, Civil snd Revenue Distt.- Mahasamund, Chhattisgarh. (Owner Of Vehicle No. C.G.-04-E-0497)

----Appellant

Versus

1. Smt. Savitri Satnami W/o Late Shri Gopal Satnami, Aged About 42 Years
2. Jaswant S/o Late Shri Gopal Satnami, Aged About 23 Years
3. Manoj S/o Late Shri Gopal Satnami, Aged About 20 Years

   Respondent Nos. 1 to 3 are R/o Village and Post- Bhoring, Thana- Tumgaon, Civil And Revenue Distt.- Mahasamund, Chhattisgarh.
4. Nandlal Manikpuri S/o Shri Jankidas, Aged About 26 Years, R/o Village- Banseoni, Post- Sorid, Thana And Tahsil- Mahasamund, Civil And Revenue Distt.- Mahasamund, Chhattisgarh. (Driver of Vehicle No. C.G.-04-E-0497)
5. The New India Insurance Company Ltd., Branch Office Madira Building Kachahari Chowk Raipur, Civil And Revenue Distt.- Raipur, Chhattisgarh. (Insurer Of Vehicle No. C.G.-04-E-0497)

---- Respondents

For Appellant	Shri Sunil Sahu, Advocate.
For Respondent No.5	Shri Samir Singh, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

15/04/2019

1. This appeal is by the owner of the vehicle/non-applicant no.2 against the award dated 05.03.2016 passed by the Additional Motor Accident Claims Tribunal, FTC, Mahasamund, C.G. in Claim Case No. H-169/14 awarding total compensation of

Rs.3,79,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant nos.1 & 2 while exonerating Insurance Company on the ground that the offending vehicle was being plied without valid and effective fitness certificate on the date of accident.

2. As per claim petition, on 28.07.2014, deceased Gopal Satnami aged about 45 years, earning Rs.5,400/- as Labour, who was riding motorcycle died in the motor vehicular accident caused due to rash and negligent driving of mini bus bearing no. CG04-E-0497 by non-applicant no.1. At the time of accident, the offending vehicle was owned by non-applicant no.2 and duly insured with non-applicant no.3.

3. On claim petition being filed by the claimants i.e. wife and children of the deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.19,01,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

4. Learned counsel for the appellant 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 on the sole ground that only on the basis of seizure memo Ex.P-8 held that the offending vehicle was being plied without a valid fitness on the date of accident. He submits that as per true copy of fitness certificate available in the record of the Tribunal at page no.58, it is evident that the offending vehicle was having a fitness

certificate which was valid from 22nd May, 2014 till 21th May, 2015 but unfortunately the said document could not be exhibited before the Tribunal. No opportunity was granted to the claimants and owner of the vehicle to challenge the document of Ex.P-8. As per the documents available on record at page nos. 57, 58, 59, 60 and 61 (not exhibited) i.e. driving licence, certificate of fitness, Insurance policy and registration certificate were produced before the Tribunal on 23rd December, 2014. However, the Tribunal without considering the aforesaid documents, merely on the basis of seizure memo Ex.P-8 held that the offending vehicle was being run without a valid fitness certificate and thereby exonerated the Insurance Company of its liability and fastening the same on non-applicant nos. 1 & 2 which is not in accordance with law.

5. Learned counsel for the respondent no.5 opposes the contention made by the appellant's counsel and supports the impugned award.

6. As per Insurance policy available on record at page no.59 for drawing the benefit of the insurance policy, the insured has to complied with Section 3 of the Motor Vehicles Act regarding the driving licence and Section 66 of the Act in relation to permit. Admittedly, there is no breach of policy conditions on the ground of validity and effectiveness of permit or driving licence. So far as fitness is concerned, from perusal of the impugned award that the Tribunal on the basis of seizure memo Ex.P-8 pertaining to the criminal case registered against non-applicant no.1, held that the

offending vehicle was being plied without any valid and effective fitness certificate as its validity was till 22nd May, 2014, whereas the incident occurred on 28.07.2014. From perusal of the record of the Tribunal, it is seen that the non-applicants had filed certain documents i.e. driving licence of non-applicant no.1, fitness certificate, insurance policy and registration certificate pertaining to the offending vehicle which is available from page nos. 57 to 61. As per the fitness certificate available at page no.58, it is evident that the offending vehicle was having a fitness certificate which was valid till 21st May, 2015. The aforesaid documents available in the record of the Tribunal from page nos. 57 to 61 were filed on 23rd December, 2014 whereas the impugned award has been passed on 05.03.2016. It is a well settled principle of law that claim cases being in the nature of civil cases are to be decided on the basis of preponderance of probabilities and strict rule of evidence is not to be insisted upon. From perusal of the fitness certificate available at page no.58, it is *prima-facie* seen that the offending vehicle was having a valid and effective fitness certificate on the date of accident. No evidence to the contrary has been adduced by the Insurance Company. Therefore, keeping in view all these things, this Court is of the opinion that the Tribunal was not justified in exonerating Insurance Company on the basis of seizure memo Ex.P-8 which suggests that the offending vehicle was being plied in breach of policy conditions for not having a valid fitness certificate.

7. In the result, the appeal is allowed. It is held that non-applicant

no.3/Insurance Company is jointly and severally along with non-applicant nos. 1 & 2 liable to pay compensation to the claimants as awarded by the Tribunal.

8. If the Owner has deposited any amount pursuant to the impugned award, the owner shall be entitled to recover the same from the Insurance Company in accordance with law.

Sd/-
Gautam Chourdiya
Judge

Akhilesh