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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 508 of 2014

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

----Appellant

Versus

1. Mohan Mati Chouhan W/o Late Semlal Aged About 34 Years, profession House wife
2. Durpati S/o Late Semlal Chauhan Aged About 18 Years
3. Minor Sanyasi S/o Semlal Chauhan Aged About 17 Years
4. Gulab Chauhan S/o Butiya Chauhan Aged About 61 Years
5. Ramkunwar W/o Gulab Chauhan Aged About 60 Years

   Respondent No.3 minor through mother Mohan Mati Chauhan W/o Late Semlal Chauhan, All R/o village Auraimuda, P.S. Gharghoda, Tah. Gharghoda, Distt. Raigarh C.G.

6. Dinesh Sahu S/o Vidhyanand Sahu Aged About 23 Years, profession Driver, R/o Kotwa, P.S. Bagbahra, Distt. Jashpur C.G.
7. Manish Singh S/o Praduman Singh Aged About 21 Years R/o Kotwa, P.S. Bagbahra, Distt. Jashpur C.G.

---- Respondents

For Appellant	Shri Rohitashva Singh, Advocate.
For Respondent Nos. 1 to 5	Shri Abhishek Saraf, Advocate.
For Respondent No.6	Shri H.S. Patel, Advocate.
For Respondent No.7	None.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

25/04/2019

1. This appeal is by the Insurance Company/non-applicant no.3 against the award dated 10.12.2013 passed by the 1st Additional Motor Accident Claims Tribunal, Raigarh, C.G. in Claim Case

No.143/2011 awarding total compensation of Rs.4,11,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant no.3/Insurance Company.

2. As per claim petition, on 25.10.2012 deceased Sem Lal, aged about 35 years, earning Rs.4,500/- per month as Labour died in the motor vehicular accident caused due to rash and negligent driving of Bajaj Discover Motorcycle bearing engine no.JZUBTE26895 and Chassis No.MD2DSJZZTPE21346 by non-applicant no.1 as non-applicant no.1 dashed the deceased who was riding the bicycle. 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, parents and children of the deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.8,14,000/-, 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 in this case no Insurance policy was issued in favour of owner of the vehicle by Insurance Company. Non-applicant No.3 in its written statement specifically denied that any premium was taken by the Insurance Company and contended that no policy was issued in favour of the alleged motorcycle involved in the accident. No policy is produced before the Tribunal by owner and driver and, therefore, learned Tribunal wrongly fastened liability upon Insurance

Company. Though, as per Ex.P-2 i.e. seizure memo available in the record of the claims Tribunal, it is mentioned that one Insurance Policy pertaining to the offending vehicle having validity from 22.10.2010 to 21.10.2011 was seized by the police but no such policy was produced before the Tribunal by I.O. From perusal of the record of the Tribunal, it is seen that one proposal form said to be issued by the Bajaj Allianz General Insurance Company Limited was issued in respect of the offending vehicle but the same cannot be considered as an Insurance Policy. In these circumstances, the Tribunal was not justified in fastening the liability on Insurance Company.

5. Learned counsel for the respondents support the impugned award and submit that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

6. Respondent no.7 is served but none appeared for the respondent no.7 in this appeal. Owner of the vehicle remained *ex-parte* before the Tribunal.

7. Heard learned counsel for the parties and perused the material available on record.

8. From perusal of the record of the criminal case, it is seen that the offence under Sections 279, 337 and 304 of IPC was registered against non-applicant no.1 and accordingly charge sheet was filed against him. As per Ex.P-9 i.e. seizure memo available in the criminal case record, it is mentioned that policy of the offending motorcycle having validity from 22.10.2010 to 21.10.2011 was

seized by the police. As per record of the criminal case also one document i.e. Ex.P-3 seizure memo, it is mentioned that the Insurance Policy of the offending motorcycle which was valid from 22.10.2010 to 21.10.2011 was seized by the police. However, no such Insurance Policy has been produced before the Tribunal by the non-applicants Driver and owner. Non-applicant No.2/Owner has not even filed written statement before the Tribunal. Though, at page No.56 of the record of the criminal case one proposal form said to have been issued by the Bajaj Allianz General Insurance Company Limited in favour of the offending motorcycle is there but the same cannot be taken as Insurance Policy. Even otherwise, as per the aforesaid seizure memos Ex.P-3 and Ex.P-9 as well as the proposal form the validity period of the Insurance Policy is 22.10.10 to 21.10.2011 whereas the accident occurred in this case on 25.10.2012. The Insurance Company has specifically stated in its written statement that the offending vehicle was never insured by it. Therefore, considering the facts and circumstances of the case, nature and quality of evidence adduced by the parties, this Court finds force in the argument of learned counsel for the appellant/Insurance Company that on the date of accident the offending motorcycle was not insured by it. In these circumstances, the Tribunal has committed an illegality in fastening the liability upon the Insurance Company of paying compensation to the claimants.

9. In the result, the appeal is allowed. The Non-applicant

No.3/Insurance Company is absolved of its liability of paying compensation to the claimants. The impugned award stands modified to the above extent.

10. As per Order dated 04.02.2015, it was directed that on appellant's depositing the sum of Rs.2.5 lakhs recovery of the remaining part of the award shall remain stayed and the claimants shall be entitled to receive the amount on furnishing the security. If the said order has been given effect to, the appellant/Insurance Company shall be at liberty to Act in accordance with law for recovery of its amount.

11. Criminal record of the concerned Court be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
Gautam Chourdiya
Judge

Akhilesh