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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1183 of 2019

Bajaj Allianz General Insurance Company Limited G.E. Plaza, Airport Road, Yarvada, Pune (M.H.) (Non-Applicant No.3).

---- Appellant

Versus

1. Smt. Aarti Yadav W/o Late Shiv Yadav Aged About 22 Years R/o C/o Dilip Yadav, House No. 2, Gali No. 20, Awaspara, Parsada, P.S. Chakarbhata, District Bilaspur, Chhattisgarh.
2. Ku. Shivani Yadav D/o Late Shiv Yadav Aged About 2 Years Minor Represented Through Her Natural Guardian Mother Smt. Aarti Yadav, R/o C/o Dilip Yadav, House No. 2, Gali No. 20, Awaspara, Parsada, P.S. Chakarbhata, District Bilaspur, Chhattisgarh.
3. Smt. Asin Bai W/o Late Shri Kalaram Yadav Aged About 62 Years R/o Village Pendari, Thana Sakri, District Bilaspur, Chhattisgarh (Claimants)
4. Lakshmi Sahu S/o Bholaram Aged About 35 Years R/o Salheghori, Thana Lormi, District Mungeli, Chhattisgarh (Driver)
5. Khemchand Sahu S/o Janki Prasad Sahu C/o Dulariram Sahu, Aarya Colony 2, Shyam Nivas, Bilaspur, Chhattisgarh (Owner)

---- Respondents

For Appellant: : Shri Utsav Mahiswar, Advocate.

Single Bench:Hon'ble Shri Sanjay Agrawal, J

Order On Board

21.08.2019

1. Heard on I.A. No. 2/2019, an application for condonation of Default No. 1, as pointed out by the Registry.
2. It is submitted by Shri Mahiswar that by way of covering memo which was filed by him on 19.08.2019, the alleged Default No.1 has already

been cured, therefore, he does not want to press this application.

3. On due consideration and in view of the order sheet dated 24.07.2019, filed along with the covering memo, the alleged default has found to be cured. The said application is, thus, rejected as having been rendered infructuous.

4. Also heard on I.A. No. 3/2019, an application for condonation of delay of 01 day in filing this appeal.

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

6. The application is allowed and delay is accordingly condoned.

7. Also heard on admission.

8. This Miscellaneous Appeal has been preferred by Non-applicant No. 3/Bajaj Allianz General Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act of 1988'), questioning the legality and propriety of the award dated 05.03.2019 passed by the learned Sixth Additional Motor Accidents Claims Tribunal, Bilaspur (hereinafter referred to as the 'Claims Tribunal') in Motor Accident Claim Case No. 710/2017, by which, the learned Claims Tribunal, while allowing the claim in part, awarded a total amount of compensation to the tune of Rs. 11,18,320/- (Eleven Lakhs Eighteen Thousand Three Hundred twenty Only) with 7.5% per annum from the date of filing of Claim Petition till its realization while fastening the liability upon the Insurance Company. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

9. Briefly stated the facts of the case are that on 30.06.2017 deceased

Shiv Yadav was going for his work, at that particular time, the vehicle in question “Alto Car” bearing its Registration No. CG-10-AB-1236 (in short offending vehicle), owned by Non-Applicant No. 2/Khemchand Sahu, insured with Non-Applicant No. 3/Bajaj Allianz General Insurance Company Limited was coming from Takhatpur to Bilaspur which was being driven rashly and negligently by its driver, Lakshmi Sahu (Non-Applicant No. 1). Owing to alleged rashness and negligent of his driving, it dashed vehemently the deceased who sustained serious multiple injuries and expired during the course of treatment.

10. On account of the aforesaid accident, the Claimants being legal representatives of the deceased, have instituted the claim petition enumerated under Section 166 of the Act of 1988 alleging therein that the deceased, a 23 years old, was a Mason “Raj Mistri” and used to earn Rs. 10,000/- (Ten Thousand Only) per month and, therefore, total amount of compensation to the tune of Rs. 34,30,000/- (Thirty Four Lakhs Thirty Thousand Only) has been claimed under various heads.

11. The aforesaid claim was contested by Non-Applicants No. 1 and 2, the driver and owner of the vehicle in question on the ground that the alleged vehicle was not involved in relation to the alleged accident occurred on 30.06.2017. It is pleaded further that 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 the said Insurance Company.

12. While Non-Applicant No. 3/Bajaj Allianz General Insurance Company Limited contested the claim on the ground that the vehicle in question was being used in violation of the Insurance Policy, therefore, no

liability could be fastened upon it.

13. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 30.06.2017 due to rashness and negligent driving of the driver of the offending vehicle, resulting into the sad demise of deceased Shiv Yadav, who was 23 years old and used to earn Rs. 5,200/- (Five Thousand Two Hundred Only) per month and thus by applying multiplier of 18, awarded total amount of compensation to the tune of Rs. 11,18,320/- (Eleven Lakhs Eighteen Thousand Three Hundred twenty Only) with 7.5% per annum from the date of filing of Claim Petition till its realization while fastening the liability upon the Insurance Company.

14. Being aggrieved, Non-Applicant No. 3/Insurance Company has preferred this appeal. Shri Mahiswar, learned counsel for the Appellant submits that while passing the award impugned, the Claims Tribunal has committed an illegality in holding that the vehicle in question was involved in the alleged accident. According to him, the First Information Report was lodged after 44 days of the occurrence of the alleged accident which itself shows that the involvement of the alleged vehicle has wrongly been made in connection with the said accident. However, without considering these material facts, the Claims Tribunal has erred in arriving at a conclusion that it was involved in the said accident. The award impugned is, therefore, liable to be set aside.

15. I have heard learned counsel for the Appellant and perused the entire paper annexed with this memo of appeal carefully.

16. The main contention of the appellant herein is that the vehicle in question was not involved in the alleged accident, therefore, no liability

as such could be fastened upon it. In order to substantiate the said contention, the burden was heavily upon the Insurance Company to establish the said fact, however, from perusal of the record, it is evident that none of the witnesses were examined by the Non-Applicant, in this regard. In absence thereof, it is difficult to accept the alleged contention of the counsel for the Appellant. That apart, two eye witnesses, namely, Ashwini Patley (AW-2) and Santosh Kumar kai (AW-3) were examined by the Claimants in order to establish the said fact, who have stated that the vehicle in question was involved in that accident and because of his rashness and negligent driving, the alleged accident occurred and evidence of these witnesses could not have been rebutted by the Appellant.

17. Perusal of these eye witnesses vis-a-vis the documentary evidence like First Information Report and the Charge sheet alleged to have been filed by the concerned Investigating Officer against the driver of the offending vehicle in connection with the Crime No. 351 of 2017 under Section 304-A I.P.C. would show that it was registered because the vehicle in question was not only involved in the alleged accident, but it occurred due to rashness and negligent driving of its driver. Besides, the driver of the offending vehicle, namely, Lakshmi Sahu who could throw some light regarding the alleged accident has not entered into the witness box for the reasons best known to him. In such circumstances, it is difficult to hold that the vehicle in question was not involved in relation to the said accident occurred on 30.06.2017.

18. Consequently, the findings recorded by the Claims Tribunal based upon due and proper appreciation of the evidence led by the claimants,

deserve to be and are hereby affirmed.

19. In view of the foregoing discussions, I do not find any substance in this appeal. The appeal being devoid of merits, is hereby dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

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