NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 981 of 2013

1. Sushen Baghel, S/o Chandan Baghel Aged About 24 Years R/o Chhinari Kshamtapur, P.S. Makari, Distt. Kondagaon, Chhattisgarh (Driver)

2. Smt. Rajmati W/o Late Mohan Korram R/o Chhinari, P.S. Makari, Distt. Kondagaon C.G. (Owner)

---- Appellants

Versus

1. Ugrasen Baghel, S/o Late Seetaram Baghel Aged About 40 Years

2. Smt. Hem Bati W/o Ugrasen Baghel Aged About 36 Years

Both are R/o Chhinari Kshamatapur, P.S. Makari, District : Kondagaon, Chhattisgarh (Claimants)

3. National Insu.Co.Ltd. W/o Above Central Bank Of India, Post-Jagdalpur, District : Bastar(Jagdalpur), Chhattisgarh (Insurer)

---- Respondents

For Appellant	:	Shri AL Singraul, Advocate
For Respondents- 1 and 2	:	None appears though served
For Respondent- 3	:	Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

17.05.2019

1. The appellants/driver and owner have preferred this appeal under Section 173(2) of Motor Vehicle Act, 1988 challenging impugned award dated 29.07.2013 passed in claim case- 84 of 2012 by Additional Motor Accident Claims Tribunal, Kondagaon, Bastar (for short, 'Claims Tribunal') wherein learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.3,39,000/- as compensation, fastening liability on appellants.

2. Brief facts for disposal of this appeal are that on 03.04.2008 at about 8.00PM non-applicant-1/driver while driving his tractor-trolley bearing No.CG17G2277 (offending vehicle), dashed Neelkanth Baghel, who was aged about 18 years on the date of accident. In aforementioned accident, Neelkanth Baghel suffered grievous injuries on his person and succumbed to those injuries on the spot. The matter was reported to concerned Police Station and after investigation charge-sheet was filed against driver of offending vehicle. Claimants / respondents- 1 and 2 are parents of deceased-Neelkanth Baghel who claimed total amount of compensation of Rs.59,16,000/- on account of death of their son.

3. Non-applicants 1 & 2/ appellants, who are driver and owner of offending vehicle submitted reply to clam application and denied all the adverse allegations pleaded against them and further stated that non-applicant 2 is owner of offending vehicle; on the date of accident offending vehicle was insured with non-applicant 3/Insurance Company. They further pleaded that accident did not occur due to rash and negligent driving of non-applicant 1/driver and he was having valid and effective driving license to drive the ill fated tractor-trolley.

4. Non-applicant 3/Insurance company submitted its reply to claim application and pleaded that accident was not informed by owner or driver of offending vehicle to the Insurance Company and they have not supplied any relevant documents. Further it was pleaded that driver, who was driving offending vehicle on the date of accident was not possessing a valid and effective driving license and therefore there is violation of conditions of Insurance Policy. They have also challenged the amount claimed in claim application on the ground that it is on the higher side.

5. Learned Claims Tribunal on appreciation of pleadings, evidence and material available on record held that accident took place due to rash and negligent driving of offending vehicle by non-applicant 1 only; and in the motor accident, death of Neelkanth Baghel took place. Learned Claims Tribunal also recorded a finding that non-applicant 2/owner failed to prove that offending vehicle was covered under Insurance Policy. Therefore, learned Claims Tribunal exonerated Insurance Company from its liability to pay the amount of compensation and awarded a total sum of Rs.3,39,000/- to claimants fastening liability on driver and owner of offending vehicle jointly and severally.

6. Learned counsel for appellants submits that in Insurance Policy of offending vehicle, due to inadvertence of clerk of insurance company, Chassis number has been shown as B 29713 and Engine number as 685464, whereas Chassis number is 685464 and Engine number is B 29713. He further submits that Insurance Policy was exhibited as Ex.P/6. Appellant-owner was possessing all the relevant documents with regard to offending vehicle but due to ill advice of local counsel, its Registration certificate could not be placed on record before learned Claims Tribunal but he has filed the same along with application under order 41 Rule 27 r/w Section 151 CPC before this Court. Learned counsel for appellants also argued that learned Claims Tribunal recorded a finding that Insurance Policy Ex.P/6 could not be proved by owner because he failed to produce copy of registration certificate of offending vehicle wherein Engine number and Chassis number could be mentioned. In the facts and circumstances of case document placed on record along with application under order 41 Rule 27 is not sustainable.

7. Per contra, learned Counsel for Insurance Company submits that as the appellant owner could not able to produce relevant document with respect to offending vehicle which was insured by the company and therefore learned Claims Tribunal not committed any error in passing impugned award on the basis of evidence and material available before it.

8. I have heard Learned Counsel for the parties and perused record. The only question which is required to be decided by this court is that whether on the date of accident details of offending vehicle which are mentioned in Insurance Policy (Ex.P/6) and details i.e. Registration Number of tractor mentioned in FIR are one and the same.

9. On the earlier date when the matter was called up for hearing in this court, learned counsel appearing for Insurance Company was directed to verify Registration certificate of offending vehicle that was placed on record by learned counsel for appellant along with application filed under Order 41 Rule 27 r/w Section 151 of CPC as Annexure A2, issued from Regional Transport Officer i.e. Competent Registering Authority of Motor Vehicles.

10. Learned Counsel for Insurance Company on instruction submits that details of vehicle mentioned in Registration certificate and the details of vehicle mentioned in Insurance Policy are one and the same.

11. In view of aforementioned admission on instruction made by the learned counsel for respondent-3/Insurance Company, it is not in dispute that vehicle involved in the accident and details of which mentioned in the Insurance Policy are one and the same and the appellant/owner by placing Registration certificate before this court proved the fact that the vehicle involved in the accident and insured with Insurance Company are one and the same.

12. In view of aforementioned evidence and document placed on record by learned counsel for the appellants, finding recorded by learned Claims Tribunal in Para 10 of impugned award that appellant owner failed to prove the fact that tractor-trolley bearing No.CG-17 G 2277 is same vehicle of which details have been mentioned in Insurance Policy Ex.P/6 is not sustainable. Learned Claims Tribunal has exonerated Insurance Company on that count only and therefore now in view of aforementioned discussion, and above filing of Registration certificate which was also admitted to be true by learned counsel for Insurance Company, exoneration of Insurance Company from its liability by learned Claims Tribunal also is not sustainable and is hereby set aside.

13. IA- 1 of 2014, an application under Order 41 Rule 27 r/w Section 151 of CPC is allowed and additional evidence produced by appellant is taken on record. As the document placed on record as additional evidence is verified by respondent/Insurance Company and stated to be the registration certificate of same vehicle and admitted it to be true application under Order 41 Rule 27 of CPC, it is allowed.

14. For the foregoing reasons, appeal is allowed and it is held that Insurance Company is liable to satisfy the amount of compensation as awarded by learned Claims Tribunal as per the terms and conditions mentioned therein.

15. Appellant- owner is entitled to withdraw the amount deposited by him after Insurance Company deposits all the amount of compensation before learned Claims Tribunal.

16. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

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