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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 307 of 2013

1. Branch Manager, The Oriental Insurance Company Limited, Branch Office Bilaspur (C.G.) (Insurer of Vehicle No. C.G. 15 A-4324).

---- Appellant

Versus

1. Barikuddin S/o Hamiduddin age 48 years, Resident- Kurkunga, Thana Narayanpur, District- Jashpur (C.G.),
2. Smt. Mushrart Parvin W/o Barikuddin age 44 years, Village Kurkunga, Thana Narayanpur, District- Jashpur (C.G.),
3. Suraj Prasad Tigga S/o Balgar Ram, age 34 years, Resident- Devri, Thana- Batauli. (Driver of vehicle No. C.G. 15 A-4324)
4. Mohammad Quum S/o Late Haji Mohammad Quum, Resident- Kharsia Naka, Ambikapur, District- Sarguja (C.G.), (owner of vehicle No. C.G. 15 A-4324).

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate.
For Respondents No. 1, 2 & 3	:	None
For Respondent No. 4	:	Shri Sunil Tripathi, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

21.06.2019

(1) This appeal under Section 173 of the Motor Vehicle Act is by the Insurance Company against the award dated 14.12.2012, passed by Additional Motor Accident Claims Tribunal, Kunkuri in Claim Case No.19/2008 awarding total compensation of 1,60,000/- with interest @ 6% per annum from the date of application till the award passed and thereafter

@ 9% pa interest shall carry till realization, fastening liability on the non-applicants jointly and severely.

(02) As per claim petition, on 21.07.2007, deceased- Faishal Ahmad aged about 03 years was standing near his house, at that time, Non-applicant No. 1- Suraj Prasad Tigga, driver of the offending vehicle (truck) bearing registration No. CG 15-A/4324 by rash & negligent driving dashed Faishal Ahmed due to which he died on the spot. The offending vehicle is owned by non-applicant No. 2 and insured with non-applicant No. 3.

(03) On claim petition being filed by the claimants/parents of the deceased under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

(04) Learned counsel for the appellant/Insurance Company submits that the Tribunal has wrongly fastened the liability on the Insurance Company as the cover note produced before the Tribunal is not issued by the Insurance Company and it is fake. Even otherwise no premium was received by the Insurance Company from the insured and therefore, as per Section 64 V. B. of the Insurance Act the Insurance Company is not liable to pay any compensation to the claimants. He further submits that the Tribunal has not given proper opportunity to the Insurance Company to defend its case in these circumstance the impugned award is liable to be set aside in so far as it relates to fastening of liability on the Insurance Company.

(05) On the other hand, learned Counsel for the respondent No. 4/owner opposes the contention made by learned counsel for the appellant and submits that sufficient opportunity was afforded to the appellant by the Tribunal which is evident from the order-sheet of the Tribunal but the appellant failed to adduce any evidence in support of its case and vide order dated 06.11.2012 submitted that the Insurance Company does not want to lead any evidence and hence his right to adduce evidence was closed. In these circumstances, the Tribunal considering the material available on

record, the fact that the Insurance Company has neither filed written statement nor has adduced any evidence, rightly fastened liability on the Insurance Company jointly & severally alongwith Non-applicant Nos. 1 & 2

(06) I have heard learned counsel appearing for the parties and perused the record of Claims Tribunal including impugned award.

(07) It is not disputed by both the parties in this case that written statement is not field by the Insurance Company/appellant before the Tribunal and after giving several opportunities by the learned Tribunal no any evidence was adduced by the Insurance Company and the counsel for the insurance Company himself closed his right to adduce any evidence on 6.11.2012. As per Ex. P/2 i.e. seizure memo driving licence, RC book, fitness certificate, and permit of the offending vehicle were seized by the police authority during investigation and the same were produced before the Tribunal. The cover note so produced before the Tribunal was not controverted by the Insurance Company, no any evidence in rebuttal of the same was adduced by the Insurance Company and further the Insurance Company is not adduced any evidence to prove that the said cover note is fake one. Thus, in the given facts & circumstances of the case, nature and quality of the evidence, this Court is of the opinion that the learned Tribunal has rightly fastened the liability upon the Insurance Company jointly & severally alongwith Non-applicant Nos. 1 & 2.

(08) Accordingly, the miscellaneous appeal being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

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