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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1101 of 2019

Tata A.I.G. General Insurance Company Limited Through Its Legal Manager, Office No.403, 4th Floor, D B City Corporate Park, Flat No.1, Block No.9, Rajbandha Maidan, Raipur Chhattisgarh.

---- Appellant

Versus

1. Smt. Gayatri Bai Sen W/o Late Radheshyam Sen Aged About 31 Years R/o Village Chilhatti, Post Soan Loharsi, Police Station Pachpadi, Tahsil Masturi, District Bilaspur Chhattisgarh.
2. Kishore Kumar Sen S/o Late Radheshyam Sen Aged About 1 Years Minor Through Natural Guardian Mother Smt. Gayatri Bai Sen, R/o Village Chilhatti, Post Soan Loharsi, Police Station Pachpadi, Tahsil Masturi, District Bilaspur Chhattisgarh.
3. Smt. Munni Bai Bai Sen W/o Tularam Sen Aged About 62 Years R/o Village Chilhatti, Post Soan Loharsi, Police Station Pachpadi, Tahsil Masturi, District Bilaspur Chhattisgarh.
4. Tularam Sen S/o Late Parasram Sen Aged About 67 Years R/o Village Chilhatti, Post Soan Loharsi, Police Station Pachpadi, Tahsil Masturi, District Bilaspur Chhattisgarh.
5. Shalik Ram Yadav S/o Pukki @ Puhup Ram Yadav Aged About 31 Years R/o Ward No. 8, House No. 49, Near Durga Mandir, Nayapara Sirgitti, Police Station Sirgitti, Tahsil And District Bilaspur Chhattisgarh.

---- Respondents

For Appellant: : Shri Sourabh Sharma, Advocate

Single Bench:Hon'ble Shri Sanjay Agrawal, J
Order On Board

31.07.2019

1. This Miscellaneous Appeal has been preferred by Non-applicant No. 2/Tata A.I.G. General Insurance Company Limited under Section 173 of the Motor Vehicle Act, 1988(hereinafter referred to as the 'Act of 1988'), questioning the legality and propriety of the award dated 25.03.2019 passed by the Motor Accident Claims Tribunal, Bilaspur(hereinafter referred to as the 'Claims Tribunal') in Claim Case No. 589 of 2018, by which, the learned Claims Tribunal while allowing the claim in part

awarded a sum of Rs. 8,76,400/- (Eight Lakhs Seventy Six Thousand Four Hundred only) with 6% interest per annum from the date of filing of Claim Petition till its realization by fastening the liability upon the Insurance Company. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 14.12.2017 at 08.00 P.M., deceased Radhesyam Sen was returning by his motorcycle bearing its Registration No. CG-22/AB/8496 from village Pasi to his village Chilhati. At the relevant time, he was driving his vehicle consciously and as soon as he reached near the Arpa bridge at village Mangla, it was dashed vehemently by the offending vehicle, the another “Motor Cycle” bearing its registration No. CG 10 AJ 2064 which was being driven rashly and negligently by its owner-cum-driver, namely Salik Ram Yadav, Non-Applicant No. 1, insured with Non-applicant No. 2, the insurance Company. On account of the alleged accident, said Radheshyam Sen received serious injuries on his head and also on several parts of his body and was, admitted immediately into the C.H.C., hospital at Bilha, where he expired during the course of his treatment. Owing to the alleged accident, the Claimants, being legal representatives of the deceased instituted a claim petition enumerated under Section 166 of the Act of 1988 by saying that deceased, who was 32 years old, used to earn Rs.15,000/-(Fifteen Thousand only) per month by running a Saloon shop and claimed total amount of compensation to the tune of Rs. 31,30,000/-(Thirty one lakhs thirty thousand only).

3. While disputing the factum of accident, the aforesaid claim has been contested by the owner-cum-driver (Non-Applicant No.1), by submitting

inter alia, that his vehicle was not at all involved in the alleged accident and pleaded further that at the relevant time, he was holding the valid and effecting driving license. It is pleaded further by him that his vehicle was insured with Non-Applicant No. 2, therefore, in case of any liability being fastened, the same could be indemnified by the said Insurance Company. While, Non-Applicant No. 2/Insurance Company contested the claim mainly on the ground that the offending vehicle was not involved in the alleged accident which occurred on 14.12.2017 as the First Information Report was lodged for over more than 4 months of the alleged accident, i.e. on 14.04.2018 irrespective of the fact that the merg intimation of the alleged incident was recorded on 15.12.2017 without mentioning the involvement of the alleged vehicle and it shows that the alleged accident was occurred with some unknown vehicle. It is contested further on the ground that the driver of the offending vehicle was not holding the valid and effective driving license therefore, for non-compliance of the provisions prescribed under Section 134 (c) and Section 158 (6) of the Act of 1988, the vehicle in question was being driven in violation of the Insurance Policy. As such the Insurance Company cannot be held liable in relation to the accident occurred on 14.12.2017.

4. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 14.12.2017 due to rashness and negligent driving of the driver of the offending vehicle bearing its Registration No. CG 10 AJ 2064 and held further that it was not being used in violation of the insurance policy as the insurer has failed to prove that the alleged offending vehicle was being driven

by a driver without having a valid and effective driving license. In consequence, while fastening the liability upon the Insurance Company, awarded total amount of compensation to the tune of Rs. 8,76,400/- (Eight Lakhs Seventy Six Thousand Four Hundred only) with 6% interest per annum from the date of filing of Claim Petition till its realization.

5. Being Aggrieved, Non-applicant No. 2/The Insurance Company has preferred this appeal. Shri Sharma, counsel for the Non-Applicant No. 2 (Appellant) submits that the award impugned as passed by the Claims Tribunal by holding that the vehicle in question was involved in the alleged accident, is apparently contrary to law. According to him, the accident occurred on 14.12.2017, however, the First Information Report (F.I.R.) was lodged for over more than the period of 4 months, i.e. on 14.04.2018 while impleading the driver of the alleged vehicle, although the merg intimation was made on 15.12.2017 without mentioning the involvement of the same. He therefore, submits that the vehicle in question was not involved in the alleged accident occurred on 14.12.2017. He submits further that since the driver of the offending vehicle was not holding the effective and valid driving license, therefore, no liability as such could be fastened upon it.

6. In order to consider the aforesaid contention of Shri Sharma, I examined all the relevant documents placed on record. However, perusal of the record would show that though the First Information Report (F.I.R.) was lodged on 14.04.2018 in relation to the accident occurred on 14.12.2017 but the documentary evidence, like Ex.A-1 to Ex.A-10 would show that after investigating the matter, the concerned

Investigating Officer has submitted its final report while impleading the driver of the alleged offending vehicle in relation to the offence punishable under Section 304-A of I.P.C. in Crime No. 105 of 2018. Besides, a bare perusal of the statement of Vijendra Kumar Jaiswal (AW-2), the eye witness, would show that the driver of the offending vehicle has dashed the vehicle of the deceased near Arpa bridge at village Mangla by driving in rashness and negligent manner. The said statement could not have been rebutted by the Insurance Company in his cross examination. Contrarily, the Investigating officer namley, Laxmi Narayan Lohar who was examined by the insurer as NAW-1 also supported the statement of the said witness as he recorded the statement of the said witness (Vijendra Kumar Jaiswal) vide Ex.D-2 during the investigation and submitted its report (Ex. D-1) on 14.02.2019 and perusal of it would show that at the relevant time, the vehicle in question was being driven rashly and negligently by said Salik Ram Yadav who dashed the vehicle of the deceased. That apart, said Laxmi Narayan Lohar (NAW-1) also admitted the said fact very specifically at paragraph 6 of his evidence. Based upon these material facts, vis-a-vis, the said admission, it is evident that the alleged accident occurred on 14.12.2017 at 08.00 P.M. due to rash and negligent driving of the driver of the offending vehicle. The finding so recorded by the Claims Tribunal in this regard which based upon due and proper appreciation of the evidence led by the parties deserved to be and is hereby affirmed.

7. In so far as the further contention of Shri Sharma that the driver of the offending vehicle was not holding the effective and valid driving license,

therefore, the Insurance Company cannot be held liable, is however noted to be rejected as from a bare perusal of the record, it is clear that the insurer has failed to produce any cogent and reliable evidence in order to prove the said fact. As such, it cannot be held that he was not possessing the valid and effective driving license. Consequently, the Claims Tribunal has not committed any illegality in fastening the liability upon the Non-Applicant No. 2/ Insurance Company in relation to the accident occurred on 14.12.2017.

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

Sd/-

(Sanjay Agrawal)
JUDGE

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