AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 434 of 2013

- Bajaj Allainz General Insurance Company Limited, through – Branch Manager, Shivmohan Bhavan, Vidhan Sabha Road, Pandri, Raipur, Tah: & District: Raipur (C.G.).

---- Appellant

Versus

1. Smt. Pushpa Bai, W/o Vijay Kumar Tondan, aged about 24 years,

2. Pankaj Tondan, S/o Vijay Kumar Tondan, aged about 06 years (Minor)

3. Vikas Tondan, S/o Vijay Kumar Tondan, aged about 02 years (Minor)

4. Raru Das, S/o Late Siyaram Tondan, aged about 53 years,

   Respondents No. 2 to 3 Minor through their mother Respondent No. 1, Mrs. Pushpa Bai, All residence of Vill. And Post Chhapora, Thana Dharsiva, Distt. Raipur (C.G.)

5. Bandhu Ram Sahu, S/o Kanhaiyya Lala Sahu, R/o Vill. Sankri, Post Korasi, Thana Kharora, Distt. Raipur (C.G.) (**DRIVER**)

6. Mangal Singh Dhru, S/o Ramlakhan Dhru, R/o Vill. Piroda, Post Korsi, Thana Kharora, Dist. Raipur (C.G.) **(OWNER)**

---- Respondents

For Appellants	:	Shri Rohitashav Singh, Advocate
For Respondents Nos. 1 to 4	:	Shri Amiyakant Tiwari, Advocate
For Respondent Nos. 5 & 6	:	Shri Shivendu Pandya, Advocate

And

MAC No. 435 of 2013

- Bajaj Allainz General Insurance Compnay Ltd., through – Branch Manager, Shivmohan Bhavan, Vidhan Sabha Road, Pandri, Raipur, Tah: & Dist: Raipur (C.G.)

---- appellant

Versus

1. Smt. Savitri Bai, W/o Dinesh Jangde, aged about 32 years,

2. Sandip Jangde, S/o Dinesh Jangde, aged about 16 years (Minor)

3. Samir Jangde, S/o Dinesh Jangde, aged about 15 years (Minor)

4. Mitlesh, S/o Dinesh Jangde, aged about 14 (Minor)

5. Animesh Jangde, S/o Dinesh Jangde, aged about 12 years,

6. Smt. Devantin Bai, W/o Ferha Das Jangde, aged about 65 years – Respondents No. 2 to 5 Minor Through their mother Respondent No. 1 Mrs. Savitri Bai, All Residence of Vill. and Post Dondekala, Thana Dharsiva, Distt. Raipur (C.G.)

7. Bandhu Ram Sahu, S/o Kanhaiyya Lala Sahu, R/o Vill. Sankri, Post Korasi, Thana Kharora, Dist. Raipur (C.G.) **(Driver)**

8. Mongal Singh Dhru, S/o Ramlakhan Dhru, R/o Vill. Pirda, Post Korsi, Thana Kharora, Distt. Raipur (C.G.) **(Owner)**

---- Respondents

For Appellants	:	Shri Rohitashav Singh, Advocate
For Respondents Nos. 1 to 6	:	Shri Amiyakant Tiwari, Advocate
For Respondent Nos. 7 & 8	:	Shri Shivendu Pandya, Advocate

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

01.04.2019

(1) M.A.(C) Nos. 434 of 2013 & 435 of 2013 filed by the appellant/Bajaj Allianz General Insurance Co. Ltd. are heard together and are being disposed of by this judgment as both the appeals arise out of same accident and are directed against the award dated 31.01.2013 passed by 1st Additional Motor Accident Claims Tribunal, Raipur (For short, 'the Tribunal') in claim case Nos. 1/2011 & 2/2011, respectively.

(2) As per averments made in the claim petition, on 21.08.2010

deceased – Vijay Kumar Tandon along with Dinesh Jangle (pillion rider) was going in the motorcycle bearing registration No. C.G.-04 J.-4529 and when they reached near Kali Mandir, Saragaon, driver/non-applicant No.1-Bandhu Ram Sahu, while driving the offending vehicle (Metador) bearing registration No. C.G.-04J-4529 rashly & negligently, dashed the motorcycle, as a result of which, Dinesh Kumar Jangde & Vijay Kumar Tandon have sustained grievous injuries and Dinesh Kumar Jangde died on the spot whereas Vijay Kumar Tandon died during treatment.

(3) In M.A. (C) No. 434 of 2013 (claim case No.1/2011), the Tribunal has awarded a total sum of Rs. 5,17,600/- as compensation for the death of deceased Vijay Kumar Tandon in motor accident dated 21.08.2010 against Rs. 13,33,000/- claimed by unfortunate wife, sons and father of deceased by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act').

(4) In M.A. (C) No. 435 of 2013 (claim case No.2/2011), the Tribunal has awarded a total sum of Rs. 4,24,000/- as compensation for the death of deceased Dinesh Kumar Jangde (pillion rider) in motor accident dated 21.08.2010 against Rs. 12,89,000/- claimed by unfortunate wife, sons and mother of deceased by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act').

(5) In both the claims cases, the Tribunal has fastened the liability of payment of compensation upon the appellant/Insurance Company as it could not establish the violation of policy conditions.

(6) Being aggrieved & dissatisfied with the award by the Claims Tribunal fastening liability upon the appellant/Insurance Company, both the appeals under Section 173 of the Motor Vehicles Act, 1988 have been preferred.

(7) Learned counsel for the appellant/Insurance Company submits that he is assailing the award only on two grounds, firstly there is no valid permit obtained by the owner of the offending vehicle to ply the vehicle on the road as public transport whereas as per the Section 66 of the Motor Vehicle Act valid permit is necessary to ply the vehicle in the public road, even though the offending vehicle is goods vehicle; and second ground raised by the Insurance Company is that since driver of the offending vehicle did not have valid & effective driving licence to drive the offending vehicle at the time of accident and driving licence of the offending vehicle, which he has possessed, would found fake, therefore, the learned Claims Tribunal has committed in fastening liability upon the appellant/Insurance Company.

(8) Learned counsel for the claimants would support the award impugned.

(9) Learned counsel for the Non-applicant Nos. 1 & 2/driver & owner of the offending vehicle would support the impugned award passed by the learned Tribunal and submits that during investigation, permit was seized by the Investigating Officer as mentioned in claim case No. 01/2011 vide Ex. P/7 and in claim case No. 2/2011 vide Ex. P/6 and in the aforesaid seizure memo, Investigation Officer specifically stated that the permit of the offending vehicle was valid from 10.01.2009 to 09.01.2014; and licence of the driver of the offending vehicle was issued in favour of Bhandu Ram, which is valid from 24.12.2009 to 23.12.2010 vide Ex.D-4. He also submits that Insurance Company did not produce any evidence to the effect that driving licence of the driver of the offending vehicle was found fake, and if the same is fake, owner of the offending vehicle did not know about this fact.

(10) I have heard learned counsel appearing for the parties and perused the impugned award.

(11) It is not disputed that no counter appeals are filed by the owner & driver as submitted by the learned counsel for both the parties i.e. counsel for the owner & driver & counsel for the Insurance Company.

(12) A careful perusal of the record of the Claims Tribunal, it is apparent that as per Ex. P/6 (in claim case No. 02/2011) & Ex. P/7 (in claim case No. 01/2011), the permit was seized by the Investigating Officer and its validity is mentioned in the permit as from 10.01.2009 to 09.01.2014 whereas accident had occurred on 21.08.2010, therefore, the validity of permit is established by the claimants by producing documents Exs. P/6 & Ex. P/7 and, as such, no any breach of permit caused by the owner or driver of the offending vehicle in these cases.

(13) Rajesh Bhargav (NAW-1), in both the cases, examined on behalf of non-applicant No. 3/ Insurance Company appellant has stated in paragraph 5 of his cross examination that Bandhu Ram, driver of the offending vehicle did have valid and effective driving at the time of accident. He also states in his statement that Kanpur RTO has issued licence in favour of Bandhuram, and only after due verification of the aforesaid fact, RTO, Raipur has renewed his licence in the year 1989. He also states in his evidence that a careful perusal of the driving licence No. CG-04 19880001154, it reveals that driver of the offending vehicle did have valid & effective driving licence to drive the offending vehicle. Thus, it is quite clear from the aforesaid discussion, that driver of the offending vehicle did have valid and effective driving licence at the time of accident i.e. on 21.08.2010, therefore, this Court is of the opinion that the learned Claims Tribunal is absolutely justified in fastening

liability of payment of compensation upon the appellant/Insurance Company. I do not find any illegality or perversity in impugned award fastening liability of payment of compensation upon the appellant/Insurance Company.

(14) Consequently, both the appeals filed by the appellant/Bajaj Allianz General Insurance Company, being devoid of merit, are liable to be and are hereby dismissed. No cost(s).

Sd/-

(Gautam Chourdiya)
Judge

Amita