NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 325 of 2014

- The Oriental Insurance Company Ltd., Through- Divisional Manager, Divisional Office In front of Rajiv Plaza, Bus Stand, Bilaspur, Tahsil & District- Bilaspur (C.G.)

---- Appellant/Insurer

Versus

1. Smt. Rajkunwar W/o Late Shri Sumer Singh, Aged about 52 years
2. Smt. Ramkali Singh W/o Late Shri Dhansingh, Aged about 34 years
3. Raisingh Gond S/o Late Shri Sumer Singh, Aged about 32 years

   Respondent No. 1 to 3 are R/o Village Sodha, Chowki Belgahna, P.S. & Tahsil- Kota, District- Bilaspur (C.G.)
   (Claimants)

4. Rajendra Kumar Padwar S/o G.L. Padwar, R/o Qr.No.338, Police Line, P.S.- Civil Line, Tahsil & District- Jabalpur (M.P.)
   (Driver)

5. Smt. Kaushaliya Bai W/o Dwarika Prasad Rajak, R/o Village 119, Sekhba Pendra Road, Tahsil & P.S. Pendra Road, District- Bilaspur (C.G.)
   (Owner)

---- Respondents

For Appellant	:	Shri Raj Awasthi, Advocate
For Respondents 1 & 3	:	Ms. Aditi Singhvi, Advocate appears on behalf of Shri Utkal Pradhan, Advocate
For other Respondents	:	None

Hon’ble Shri Justice Gautam Chourdiya, J

Judgment on Board

03.01.2019

1. This is insurer’s appeal against the award dated 20.12.2013 passed by the Sixth Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in Claim Case No. 67 of 2013.

2. Facts of the case, in brief, are that on 28.08.2010 deceased- Sumer Singh was going by offending vehicle Tata Magic bearing registration No. CG-10/T/1426 from Keonchi to village Pattarkani being a passenger, when at about 12:30 pm vehicle reached nearby Roopdand, it turned turtle due to rash and negligent driving by its driver/Respondent No.4 and as a result thereof, Sumer Singh sustained grievous injuries and later on Sumer Singh died. Therefore, Crime No. 397/2010 was registered under Sections 279 and 304(A) IPC at Police Station Gorella against Rajendra Kumar Padwar/Respondent No.4.

3. The Claimants/Respondents No. 1 & 3 claimed compensation of Rs.21,50,000/- by filing a claim petition under Section 166 of Motor Vehicles Act, 1988 for death of Sumer Singh in the motor accident.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.6,03,044/- in favour of the Claimants/Respondents 1 & 3 with interest @ 7.5 per annum from the date of filing of the claim petition till its realization and liability fastened upon the Appellant and Respondents 4 and 5 to pay compensation jointly and severally to Respondents 1 & 3.

5. Before Tribunal, Respondents 4 and 5 filed their written statements stating inter alia that on the date of accident, Tata Magic was duly insured with the Insurance Company/Appellant, therefore, Insurance Company is liable to make payment of compensation. But before the Tribunal, driver and owner, Respondents 4 and 5, of the offending vehicle after filing their written statements, did not appear, therefore, they were proceeded *ex parte*.

6. Learned counsel for the Insurance Company/Appellant submits that before Tribunal, Appellant filed its separate written statement stating inter alia that on the date of accident, vehicle (Tata-Magic) in question was being plied in violation of terms of policy of insurance, therefore, Insurance Company is not liable to make payment of compensation. He further submits that as per registration certificate of the offending vehicle, it has been registered as transport vehicle for carrying passengers and for that valid and effective permit is legally required, but the same has not been produced by the owner/Respondent No.5 either before police authority or before the Tribunal.

7. Learned counsel for Respondents 1 and 3 submits that initially the burden lies upon the owner of producing the necessary document before the Tribunal, the owner and driver though filed written statements but thereafter did not appear before the Tribunal and were proceeded *ex parte*. Therefore, the burden stands shifted upon the Insurance Company to prove that there was any breach of policy conditions which it utterly failed to prove and in these circumstances, the Tribunal was justified in fastening the liability upon the Insurance Company of satisfying the award.

8. I have heard the learned counsel appearing for the Appellant/Insurance Company as also the counsel appearing for Respondents 1 and 3 and perused the impugned award including the records of the Claims Tribunal.

9. Considering the facts and circumstances of the case, as per Ex.-P/8 – seizure memo, the investigating authority has seized registration book, fitness certificate, insurance policy, which was valid on the date of accident, of the offending vehicle as also driving licence of driver/Respondent No.4, but, no permit has been seized by the investigating authority or produced before the Tribunal. Further, no application filed by the Insurance Company regarding producing of permit by owner and examined NAW-1 – Bharat Bhushan Mahajan, Senior Assistant of Insurance Company, who admits in his statement in para-4 that no letter demanding permit sent to the owner of vehcle is there on record. He also states that he has no permit with him and he does not know whether as per insurance policy, the deceased was a third party. The Insurance Company had an opportunity before the Tribunal to call the owner and driver of the offending vehicle as witness and examine them on the issue of permit, but no effort has been made by the Insurance Company in this regard. Therefore, in view of the above facts and circumstance of the case, the Tribunal has rightly fastened the liability upon the Insurance Company as it could not establish the violation of policy conditions.

10. For the foregoing reasons, the appeal filed by the Appellant/Insurance Company is, therefore, liable to be and is hereby dismissed.

11. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

vatti