NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 16 of 2013

Manager, Shri Ram General Insurance Company Limited, Santrabadi, Station Road, Above S.B.I. Bank, Durg C.G.

---- Appellant

Versus

1. Ubaran Das Deshlahre S/o Late Rajaram Deshlahre Aged About 35 Years, R/o. Pathariya, Tah. And Distt. Durg C.G.
2. Balak Das S/o Late Rajaram Deshlahre Aged About 25 Years, R/o. Pathariya, Tah. And Distt. Durg C.G.
3. Ghasidas S/o Rajaram Deshlahre Aged About 22 Years, R/o. Pathariya, Tah. And Distt. Durg C.G.
4. Smt. Gulabo Bai D/o Rajaram Deshlahre Aged About 24 Years, R/o. Pathariya, Tah. And Distt. Durg C.G.
5. Smt. Pushpa Bai Banjare W/o Kalyan Singh Banjare Aged About 23 Years, R/o. Pathariya, Tah. And Distt. Durg C.G.
6. Satnam Das Deshlahre S/o Late Rajaram Deshlahre Aged About 16 Years R/o. Pathariya, Tah. And Distt. Durg C.G., Minor, Through-Natural Guardian Brother- Ubaran Das Deshlahre.
7. Omprakash Nirmalkar................(Died and Deleted).
8. Durga Prasad S/o Sitaram, R/o Ward No. 3, Ahiwara, Distt. Durg C.G.

---- Respondents

For Appellant	: Mr. H.B. Agrawal Sr. Advocate with Ms. Prabha Sharma, Advocate
For Respondents	: None

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

07/05/2019

1. This appeal has been filed by appellant/Insurance Company under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 05/10/2012 passed by Sixth Additional Motor Accident Claims Tribunal, Durg (hereinafter referred to as 'Claims Tribunal') in Claim Case No.81/2011 whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.25,26,462/- as compensation to the claimants.

2. Brief facts for disposal of this appeal are that on 29/03/2011 Rajaram Deshlahre was going to work as labour along with one other person, namely Vishram Sahu, on bicycle. On the way, they met with an accident as one Truck bearing registration No.CG-07C/3095 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 Omprakash Nirmalkar (died during pendency of appeal) turned turtle and fell over on Rajaram Deshlahre and Vishram Sahu near village Deurjhal, due to which, both the persons died on spot. Matter was reported to concerned Police Station and Crime No.124/2011 was registered against driver of offending vehicle vide Ex. P-1.

3. On account of death of Rajaram Deshlehre, claimants who are children of deceased filed claim application under Section 166 of M.V. Act before the competent Claims Tribunal for grant of compensation claiming Rs.1,06,62,800/- from the non-applicants therein on all heads on the grounds mentioned therein.

4. Non-applicants No. 1 and 2 who are driver and owner of offending vehicle, even after service of notice, did not choose to appear before learned Claims Tribunal and were proceeded *ex parte*.

5. Appellant/Insurance Company submitted its reply to claim application and denied the contents of claim application. It has been pleaded that deceased Rajaram Deshlahre along with other person was travelling on offending vehicle loaded with stones. It has been further pleaded that they were sitting over stones in back side of open body of offending vehicle. It has been also pleaded that on the date of accident, driver of offending vehicle was not possessing valid and effective driving licence to drive the vehicle, therefore, on both counts, there was violation of conditions of insurance policy and no liability can be fastened upon Insurance Company.

6. Learned Claims Tribunal on appreciation of pleadings and evidence available on record held that offending vehicle met with an accident due to negligence of driver of offending vehicle, deceased Rajaram Deshlahre and another person was travelling on bicycle and not on offending vehicle. Learned Claims Tribunal further held that there was no violation of conditions of insurance policy as on the date of accident, offending vehicle was insured with appellant/Insurance Company and while fastening the liability for payment of compensation on Insurance Company, awarded a total sum of Rs.25,26,462/- to the claimants.

7. Learned counsel appearing for appellant/Insurance Company submitted that in the First Information Report (Ex. P-1), Final Report (Ex. P-2) and *Dehatinalishi* (Ex. P-3), there was mentioned that deceased Rajaram Deshlahre along with other person was travelling on offending vehicle loaded with stones and in the accident, they came under stones loaded on offending vehicle and succumbed to injuries. He further submitted that deceased was a gratuitous passenger, which is evident from First Information Report (Ex. P-1), Final Report (Ex. P-2) and *Dehatinalishi* (Ex. P-3), therefore, Insurance Company is not liable to pay any amount of compensation as the gratuitous passengers are not covered with the terms and conditions of insurance policy. He lastly submitted that learned Claims Tribunal committed an error in disbelieving the contents of First Information Report (Ex. P-1), Final Report (Ex. P-2) and *Dehatinalishi* (Ex. P-3).

8. I have heard learned counsel appearing for appellant/Insurance Company and perused entire record carefully.

9. Perusal of First Information Report (Ex. P-1), Final Report (Ex. P-2) and *Dehatinalishi* (Ex. P-3), which is said to be lodged by Kishan Das Manikpuri (AW-3), Kotwar of village Deurjhal specifically bears that when he was returning from village pond after taking bath, he saw offending vehicle turtled and when he reached near the spot, he saw one person lying under stones and other lying under the truck.

10. From reading of entire contents of First Information Report (Ex. P-1) and *Dehatinalishi* (Ex. P-3), it is clear that informant i.e. Kishan Das Manikpuri (AW-3), Kotwar of village actually was not an eyewitness, but he subsequently reached on spot after happening of accident.

11. In view of above material and specific mentioning in the aforesaid documents itself, it cannot be said that First Information Report (Ex. P-1), Final Report (Ex. P-2) and *Dehatinalishi* (Ex. P-3) narrates correct fact.

12. Learned counsel for appellant placed reliance on the judgment passed by Hon'ble Supreme Court in the matter of **Oriental Insurance Co. Ltd. v. Premlata Shukla and Others**[1] to support his argument.

13. Kishan Das Manikpuri (AW-3) cannot be permitted to revert back from the facts, who is an eyewitness and narrated before the concerned Police Station. The law laid down by the Hon'ble Supreme Court in the matter of **Premlata Shukla** (supra) is on different facts. In that case, First Information Report was lodged by an eyewitness and also one of the occupants of the vehicle, but in the instant case, Kishan Das Manikpuri (AW-3) who lodged the First Information Report (Ex. P-1) was not an eyewitness, which is evident from reading of first 2-3 lines of the First Information Report. Reliance placed by learned counsel for the appellant on judgment of **Premlata Shukla** (supra) is misplaced.

14. For the reasons stated above, contents of First Information Report (Ex. P-1) cannot be taken as gospel truth, but it requires to be proved by Insurance Company by producing admissible piece of evidence in

1 **2007 AIR SCW 3591**

which it failed. Insurance Company failed to produce any witness who saw the deceased travelling on truck.

15. Violation of conditions of insurance policy is a fact which is required to be proved by the Insurance Company by producing cogent, clinching and admissible piece of evidence before learned Claims Tribunal.

16. In the case at hand, Insurance Company examined one witness i.e. Chandrashekhar Mourya as (NAW(3)-1), Sales Officer of appellant/Insurance Company. From perusal of evidence of Chandrashekhar Mourya (NAW(3)-1), it is clear that he is not an eyewitness to the incident and even in cross-examination, he stated that he is not able to state that on the date of accident whether some persons were travelling on offending vehicle or not.

17. In view of above facts and material available on record, appellant/Insurance Company utterly failed to produce any material inasmuch as clinching and admissible piece of evidence before learned Claims Tribunal to prove the fact that there is violation of conditions of insurance policy. In the above mentioned facts and evidence available on record, learned Claims Tribunal has rightly held that Insurance Company failed to prove the violation of conditions of insurance policy and rightly fastened the liability for payment of compensation on Insurance Company.

18. No other ground has been raised by learned counsel for the appellant/Insurance Company.

19. For the foregoing discussions, I do not find any good ground to interfere with the impugned award passed by learned Claims Tribunal. The appeal being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh