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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No. 1410 of 2018

The National Insurance Company Limited, Divisional Office, Above Central Bank, In front of R.M.S. Office, Jagdalpur, District Jagdalpur, Chhattisgarh (Insurer).

---- Appellant

Versus

1. Suneeta Markam, Wd/o Late Sh. Tularam Markam, Aged About 46 Years, Caste Gond, R/o Harampara, Gidam, P.S. Gidam, District Dantewada, Chhattisgarh (Respondent No.1) (Applicant No.1).

2. Minesh Kumar Markam, S/o Late Sh. Tularam Markarm, Aged About 24 Years, Caste Gond, R/o Harampara, Gidam, P.S. Gidam, District Dantewada, Chhattisgarh (Respondent No.2) (Applicant No.2).

3. Bhupesh Kumar Markam, S/o Late Sh. Tularam Markam, Aged About 22 Years, Caste Gond, R/o Harampara, Gidam, P.S. Gidam, District Dantewada, Chhattisgarh (Respondent No.3) (Applicant No.3).

4. Budhruram Tarma, S/o Bugurram Tarma, Aged About 20 Years, R/o Mofalnar, Post Chotetumnar, P.S. & Tehsil Gidam, District Dantewada, Chhattisgarh (Respondent No.4) (Applicant No.1).

---- Respondents

For Appellant	:	Shri Sanjay Patel, Advocate.
For Respondent Nos.1 to 3	:	Shri Sunil Sahu, Advocate.
For Respondent No.4	:	None, though served.

Hon'ble Shri Justice Sanjay Agrawal

Order On Board

14.08.2019

1. Heard on I.A. No.1/2018, an application for condonation of delay of 32 days in filing the appeal.

2. On due consideration and for the reasons assigned therein, I am inclined to allow the same. Accordingly, the said application is allowed and the delay of 32 days in filing the appeal is hereby condoned.

3. Also heard on admission.

4. This Miscellaneous Appeal has been preferred by Non-Applicant No.2/National Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award dated 10.04.2018 passed by the Motor Accident Claims Tribunal North Bastar, Kanker (C.G.) (for short 'the Claims Tribunal') in Claim Case No. 16/2017, by which the learned Claims Tribunal has awarded the total amount of compensation to the tune of Rs.33,26,567/- with 7.5% interest per annum from the date of filing of the claim petition till its realization while fastening the liability upon the Insurance Company.

5. Briefly stated the facts of the case are that on 23.01.2017 at about 07:45 pm, deceased Tularam Markam was returning to his home at Harampara by his motorcycle bearing its Registration No.CG-18-J-2774. At the relevant time his motorcycle was hit

vehemently by the offending vehicle, the another motorcycle, bearing its Registration No.CG-18K-9847 which was being driven rashly and negligently by its owner himself namely, Budhruram Tarma insured with the Non-Applicant No.2/ National Insurance Company Limited. As a result of which, deceased sustained multiple serious injuries and was admitted immediately into the Maharani Hospital, Jagdalpur, where during the course of the treatment, he expired on 24.01.2017.

6. Based upon the aforesaid incident, the claimants being legal representatives of deceased Tularam Markam, instituted a claim petition enumerated under Section 166 of the Act, 1988 alleging *inter alia* that at the relevant time, deceased was returning home by his motorcycle while driving slowly and cautiously, however due to the rashness and negligent driving of the driver of the offending vehicle, it was hit vehemently resulting into the sad demise of said Tularam Markam. According to the claim petition, the deceased was 53 years old and was performing his duty as an Assistant Development Extension Officer (Sahayak Nistar Adhikari) in Janpad Panchayat, Gidam, where he used to earn Rs.35,039/- per month, and thus, total amount of compensation to the tune of Rs.57,45,973/- has been claimed on various heads.

7. Non-Applicant No.1/owner-cum-driver of the offending vehicle was proceeded ex parte, whereas, the Non-Applicant No.2/National Insurance Company Limited while disputing the monthly income of the deceased contested the claim mainly on the ground that the deceased was equally responsible for the

alleged accident, as both the vehicles collided with each other and it was contested further on the ground that the driver of the offending vehicle was not holding the valid and effective driving license, therefore, no liability could be fastened upon it in relation to the accident occurred on 23.01.2017.

8. In order to establish the claim, the applicants have examined as many as 3 witnesses while none was examined by the Non-Applicant No.2/National Insurance Company Limited.

9. After considering the evidence led by the claimants and that by considering the statement of Premlal Markam, the eye-witness of the alleged accident, the Claims Tribunal arrived at a conclusion that the alleged accident occurred due to rashness and negligent driving of the driver of the offending vehicle alone resulting into the sad demise of said Tularam Markam. It held further that the Insurance Company has failed to establish the fact that the vehicle in question was being driven in violation of the insurance policy. As a consequence, while assessing the monthly income of the deceased to the tune of Rs.32,963/- and that by applying the multiplier of 11, awarded total amount of compensation to the tune of Rs.33,26,567/- with 7.5% interest per annum from the date of filing of the claim petition till its realization while fastening the liability upon the Insurance Company.

10. Being aggrieved, the Non-Applicant No.2/National Insurance Company Limited has preferred this appeal. Shri Patel, learned counsel for the appellant, submits that the award impugned as passed holding that the driver of the offending vehicle was possessing the effective and valid driving licence is apparently

contrary to law. While inviting the attention of this Court to the spot map mentioned in the Crime Detail Report (Ex-P-3), it is submitted that the deceased was equally responsible for the alleged accident. However, without considering the said fact in its proper manner, the Claims Tribunal while entertaining the Issue No.2 has erred in holding that the driver of the offending vehicle alone was responsible for the alleged accident. In support, he placed his reliance upon the decision rendered in the matter of ***Smt. Pushpabai and others vs Padumnath Mali and others***, reported in 2005 (5) MPHT 36 (CG).

11. On the other hand, Shri Sahu, learned counsel for the Respondent Nos.1 to 3, submits that in absence of any evidence led by the Non Applicants, the Claims Tribunal has not committed any illegality in holding that the driver of the offending vehicle alone was responsible for the alleged accident and the vehicle in question was not being used in violation of the policy.

12. I have heard learned counsel for the parties and perused the entire record carefully.

13. The main contention of the appellant herein is that the vehicle in question was being used in violation of insurance policy, as the driver of the offending vehicle was not holding the effective and valid driving licence to drive the same and the deceased was equally responsible for the alleged accident. The burden was, therefore, heavily upon the appellant to establish the said fact. However, perusal of the record would show that no evidence as such was adduced by the appellant so as to hold that the driver of the offending vehicle was not possessing the effective and valid

driving licence and the alleged accident occurred due to rashness and negligent driving of both the drivers.

14. In any case, as reflected from the perusal of the record that the claimants have established the factum of the alleged accident which occurred on 23.01.2017 by adducing the statement of the brother of the deceased, namely Premlal Markam (A.W.-2), who was the eye witness of the occurrence of the alleged accident. Apart from it, perusal of the documentary evidence, like Ex.P-1 to Ex.P-11 would show that immediately after the occurrence of the alleged accident, FIR was lodged by deceased's brother and after investigating the matter, the concerned Investigating Officer has submitted the charge sheet against Budhruram, the owner-cum-driver of the offending vehicle, while registering the offence punishable under Sections 279, 337 and 304-A of IPC.

15. In view of the statement of said Premlal Markam vis-a-vis the documentary evidence, as observed herein above, it appears that the driver of the offending vehicle alone was responsible for the alleged accident. This material piece of evidence could not have been rebutted by the Non-Applicants. Even Budhruram, the driver of the offending vehicle, who could throw some light in relation to the factum of the alleged accident, has not entered into the witness box for the reasons best known to him. In such circumstances, I do not find any legal ground to discard the evidence led by the claimants, and thus, from stretch of any imagination, it is difficult to hold merely on the basis of the spot map mentioned in the Crime Detail Report (Ex-P-3) that the deceased was equally responsible for the alleged accident, as

contended by the learned counsel for the appellant and the reliance as placed by him upon the principles laid down in ***Smt. Pushpabai*** (supra) would not be of any use, as the same is distinguishable from the facts involved in the present case. In the said matter, the driver of the offending vehicle was examined and after considering his statement, it was held that the deceased and the driver of the offending vehicle both were equally responsible for the alleged accident. However, in the present case, the driver of the offending vehicle Budhruram was not examined and from a bare perusal of the statement of deceased's brother, namely, Premlal Markam, it is crystal clear that the driver of the offending vehicle alone was responsible for the alleged accident. In consequence, the findings so recorded by the Claims Tribunal based upon the evidence led by the claimants deserve to be and are hereby affirmed.

16. Consequently, 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

Deepti Jha