NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 221 of 2019

- The New India Insurance Company Limited (Correct Name Assurance), Divisional Manager, Division Office, Chouhan Estate, Near Mourya Talkies, G.E. Road, Bhilai, Tahsil And District Durg Chhattisgarh. (Insurer Of Trailer No. C.G. -04/j.B./7732),

---- Appellant

Versus

1. Smt. Rambha Devi W/o Dinesh Singh Aged About 45 Years R/o Mirajganj, District Gopalganj (Bihar), Presently Residing At Shanti Nagar, Bhilai -3, Tahsil Patan, District Durg Chhattisgarh.,

2. Dinesh Singh S/o Late Swaminath Singh Aged About 50 Years R/o Mirajganj, District Gopalganj (Bihar), Presently Residing At Shanti Nagar, Bhilai -3, Tahsil Patan, District Durg Chhattisgarh.,

3. Bablu Singh S/o Dinesh Singh Aged About 26 Years R/o Mirajganj, District Gopalganj (Bihar), Presently Residing At Shanti Nagar, Bhilai -3, Tahsil Patan, District Durg Chhattisgarh. (Claimants),

4. Kalapram Bhagat S/o Pande Ram Bhagat Aged About 35 Years R/o Urdana, Police Station Kotwali, Raigarh, District Raigarh Chhattisgarh. (Driver Of Trailer No. C.G. - 04/j.B./7732).

5. Narwada Devi Agrawal W/o Late Bhagwan Agrawal Through Dinesh Agrawak R/o Kewdawadi, Bus Stand, Police Station Kotwali, Raigarh, District Raigarh Chhattisgarh. (Registered Owner Of Trailer No. C.G. -04/j.B./7732).,

---- Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate
For Respondents No. 1 to 3	:	Shri Pravin Kumar Dhurandhar, Adv.
For Respondents No.4 & 5	:	None, though served.

Hon'ble Shri Justice Sanjay S. Agrawal

Order / Award on Board

30.01.2020

1. This Miscellaneous Appeal has been preferred by Non-Applicant No.3 – the New India Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the legality and propriety of the award dated 31.08.2018 passed by the 3rd

Additional Motor Accident Claims Tribunal, Durg (for short, the Claims Tribunal) in Claim Case No.50/2017, by which, the Claims Tribunal, while allowing the claim in part, has awarded total amount of compensation to the tune of Rs.9,77,200/- with interest @ 7% per annum from the date of filing of Claim Petition till its realisation, while fastening the liability upon the insurance company. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that on 14.09.2014 at 2:15 PM, deceased Dabloo Singh was returning from village Punjipathra to Salhebhata by his newly sold motorcycle, along with pillion rider, namely, Railo Minj, a labourer and as soon as they reached near the J.P.L. gate No.4 of village Salihabhata, they were hit vehemently from its opposite side by the offending vehicle “Trailor” bearing its registration No.CG-04/JB/7732, which was owned by Non-Applicant No.2 – Narwada Devi and was insured with Non-Applicant No.3 – the New India Insurance Company Limited. At the relevant time, the alleged offending vehicle was being driven rashly and negligently by its driver, namely Kalapram Bhagat, Non-Applicant No.1. As a result of which, both Dabloor Singh and said pillion rider were injured badly and expired on account of injuries sustained by them, on the spot.

3. On account of the aforesaid accident, the Claimants being legal representatives of deceased instituted a Claim Petition under Section 166 of the Act of 1988 alleging therein that the deceased was a contractor and used to earn Rs.1,00,000/- per month and thus claimed total amount of compensation to the tune of Rs.2,95,20,000/- under various heads.

4. Non-Applicants No.1 & 2, the driver and owner of the offending vehicle, were proceeded ex parte, while Non-Applicant No.3/insurance company has contested the Claim mainly on the ground that the deceased Dabloo Singh

was also equally responsible for the alleged accident and contested further that since the vehicle in question was being driven in violation of the insurance policy, therefore, no liability could be fastened upon it.

5. In support, the Claimants have examined one of their witnesses Babloo Singh, while none was examined by the Non-Applicants in order to disprove the Claim.

6. After considering the evidence led by the Claimants, it has been held by the Claims Tribunal that the accident occurred on 14.09.2014 due to rash and negligent driving by the driver of the offending vehicle 'Trailor', resulting into, the sad demise of Dabloo Singh and also of pillion rider Railo Minj. It held further that the vehicle in question was not being used in violation of the insurance policy and that by considering the monthly income of the deceased at Rs.6,000/- and that by applying the multiplier of 18, awarded total amount of compensation, as mentioned herein above, while fastening the liability upon the insurance company.

7. Being aggrieved, Non-Applicant No.3 has preferred this appeal. Shri Pankaj Agrawal, learned counsel appearing for the appellant, submits that while passing the award impugned, the Tribunal ought to have held that the deceased Dabloo Singh was equally responsible for the alleged accident owing to driving of his motorcycle in a rash and negligent manner. It is contended further that since the vehicle in question was being used in violation of the insurance policy, therefore, the insurance company ought to have been exonerated from its liability.

8. While assailing the award impugned as such, an application (I.A.No.4/2019) enumerated under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (for short, the CPC) has been made seeking production of certain documentary evidence, like investigator's report, R.C. Book, permit as

well as the fitness certificate and driving license of the driver of the offending vehicle.

9. I have heard learned counsel for the Appellant and perused the entire record carefully.

10. In so far as the application filed under Order 41 Rule 27 of CPC is concerned, I am not inclined to allow the same as neither the reasons have been assigned as to why those additional documentary evidence were not produced on an earlier occasion nor the photocopies thereof were taken into consideration. The application is, therefore, liable to be and is hereby rejected.

11. Now, in order to establish the fact that the deceased was equally responsible for the alleged cause of accident, as contended by the counsel for the Appellant, the cogent and reliable evidence ought to have been brought on record. However, neither the driver of the offending vehicle has entered into the witness box nor any kind of evidence was led by the appellant/insurance company. In absence thereof, it cannot be held that the deceased was equally responsible for the alleged accident. Consequently, the Tribunal has rightly held that the driver of the alleged offending vehicle alone was responsible for the cause of alleged accident.

12. Perusal of the record would show further that the insurance company has failed completely to establish the fact that the vehicle in question was being used in violation of the terms and conditions of the policy as neither the specific plea was taken in the written statement in this regard nor any evidence whatsoever was placed on record. In such an eventuality, the Tribunal was left no other option except to fasten the liability upon the Appellant/insurance company.

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

Sd/-

(Sanjay S. Agrawal)
Judge

Anjani