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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1105 of 2014

- The Oriental Insurance Company Ltd. Through its Branch Manager, Branch Office Hotel Laxman Avenue, Murti Line, Jagdalpur (C.G.)

---- Appellant

Versus

1. Smt. Indira Lahre, w/o Late Sankrit Lahre, aged about 26 years.
2. Smt. Phool Bai, w/o Late Pyarelal Lahre, aged about 50 years.
3. Kumari Laxmi Lahre, S/o Sankrit Lahre, aged about 2 years, through her natural mother Smt. Indira Lahre.

   All are resident of Village Satnami Para, Mongrapal, Police Chauki Bastar, Zila Bastar (Chhattisgarh)
4. Mohammad Rehan S/o Mohad Sultan aged about 40 years occupation Bus Driver at Mahendra Travels, Through Proprietor of Mahendra Travels, Pandri Road, Raipur (CG)
5. Mahendra Travels, Through its Proprietor, Pandri Road, Bus Stand, Raipur.

---- Respondents

For Appellant : Mrs. Chitra Shrivastava, Advocate
For Respondent No.1 to 3 : Mr. Praveen K. Dhrundhar, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

03/09/2020

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 is filed by appellant Insurance Company against the award dated 2.8.2014 passed by the 3rd Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur (henceforth ‘the Claims

Tribunal') in Claim Case No.87/13 allowing application of claimants in part, awarding Rs.6,27,000/- as compensation in a death case and fastened liability upon the insurance company to pay the entire amount of compensation.

2. Facts relevant for disposal of this appeal, in brief, are that on 26.4.2013 Sankarit was going along with Gangaram on motorcycle bearing No.CG12-N-7378. Sankarit was driving motorcycle and Gangaram was travelling as pillion rider. When they reached near village Parchan Pal, one Mahindra Bus bearing registration No.CG04-E-1392 (for short 'the offending bus'), going towards Raipur from Jagdalpur, driven in rash and negligent manner by its driver, dashed their motorcycle from back side as a result Sankarit fell down on road, sustained grievous injuries on various parts of his body and died on spot. Accident was reported to the Police Outpost Jagdalpur based on which an offence was registered against non-applicant No.1-driver of offending bus.

3. Claimants, who are widow, minor daughter & mother of deceased respectively, filed an application under Section 166 of the Act of 1988 before the Claims Tribunal seeking a sum of Rs.13,75,000/- as compensation mentioning therein that on the date of accident, the deceased was working as 'Mill Operator' in Nanesh Rice Mill, Bakawand and earning income of Rs.6,000/- per month. They were fully dependent on the income of deceased and due to untimely death of deceased, they have been deprived from the same.

4. Non-applicant Nos.1 & 2 submitted their reply to claimants' application and denied the pleadings made therein. It was pleaded that on the date of accident, the offending bus owned and insured by non-applicant No.2 & 3 respectively and driver of offending bus was having valid and effective driving license. As the offending bus was not plied on road in breach of any of the conditions of insurance policy, the insurance company is liable to indemnify the insured.

5. Non-applicant No.3 Insurance Company filed its reply to the application denying the pleadings made therein. It was pleaded that Insurance Company has not issued any policy in favour of offending bus. There was no valid permit and fitness in respect of offending bus and even its driver was not possessed with a valid and effective driving licence. In these circumstances, the Insurance Company is not liable to indemnify the insured as there was breach of policy conditions. A plea of contributory negligence on the part of deceased was also taken.

6. On the basis of pleadings of the parties, the Claims Tribunal framed as many as three issues for consideration and after appreciating the pleadings and evidence placed on record by the respective parties, arrived at a conclusion that deceased Sankarit died due to injuries suffered by him in a motor vehicular accident occurred on account of rash and negligent driving of offending bus by its driver (non-applicant No.1) and at the time of accident the offending bus was being plied on

road in accordance with terms and conditions of insurance policy. Accordingly, the Claims Tribunal partly allowed claimants' application, awarded a total sum of Rs.6,27,000/- along with 9% interest per annum as compensation by taking monthly income of deceased as Rs.4,500/- on notional basis and fastened liability upon the Insurance Company to make payment of amount of compensation.

7. Mrs. Shrivastava, learned counsel appearing on behalf of appellant-Insurance Company submits that the Insurance Company has taken a specific plea with regard to breach of conditions of insurance policy as neither the driver of offending bus was holding valid and effective driving license nor was there any valid permit and fitness certificate in respect of the offending bus. However, no specific issue was framed by the Claims Tribunal relating to breach of terms and conditions of insurance policy. Similarly, a plea of contributory negligence on the part of deceased was also taken by the insurance company, but no issue in this regard was framed by the Claims Tribunal. She submits that non-framing of issues with regard to breach of condition of insurance policy and contributory negligence, has caused serious prejudice to appellant Insurance Company. She further submits that the Claims Tribunal erred in holding that appellant Insurance Company failed to discharge the burden of proving that at the time of accident, the offending bus was plied in breach of conditions of insurance policy, ignoring the fact that driver &

owner of offending bus neither contested the claim case nor produced relevant documents like driving license, permit, fitness of offending bus, enabling the insurance company to prove breach of terms and conditions of insurance policy. She also submits that the Claims Tribunal without affording adequate and proper opportunity to appellant to adduce evidence has closed the appellant's right to produce evidence in support of its case, thereby causing prejudice. She also submits that the impugned award passed by the Claims Tribunal is not based on proper appreciation of facts and evidence on record and therefore liable to be set aside.

8. Per contra, Mr. Dhurundhar, learned counsel appearing for the claimants / respondents No.1 to 3 submit that the claimants have produced relevant documents collected by the police in the course of investigation of Crime No.156/2013 registered in connection with accident in question, which included copy of FIR (Ex.A-1 & A-2), property seizure memos (Ex.A-3 & A-4), final report (Ex.P-9) etc.. They submit that although the driver and owner of offending bus did not appear before the Claims Tribunal and submit relevant documents relating to offending bus including license of its driver, the police had seized documents relating to offending bus like registration certificate, permit, fitness, insurance policy and driving license, as is evident from Ex. A-4, and despite availability of the aforesaid documents, the insurance company did not make any effort to obtain certified copies of the same and get it verified from

concerned department to prove wilful breach of conditions of insurance policy on the part of the driver & owner of offending bus. They also submit that sufficient opportunity to examine witnesses in support of its case was granted to appellant Insurance Company, but they failed to do so and its' not like that the Claims Tribunal without giving proper opportunity to examine the witnesses has closed the right of insurance company to produce evidence.

They further submit that the claimants/respondent Nos.1 to 3 have also filed cross-objection seeking enhancement in compensation on the grounds that the Claims Tribunal ought to have fixed income of deceased at Rs.6,000/- per month, in place of Rs.4,500/- per month, as the deceased was a 'Mill Operator', a skilled labour. The Claims Tribunal has not awarded any amount towards future prospects and the amounts awarded under other conventional heads are also on lower side. Hence they pray that the amount of compensation be enhanced suitably.

9. We have heard learned counsel for the parties and perused the record of the Claims Tribunal.

10. First submission made by learned counsel for appellant is that driver & owner of offending bus have not participated in the proceedings before the Claims Tribunal nor they produced copies of relevant documents including driving license of non-applicant No.1-driver and thereby they failed to discharge their burden. Perusal of record of claim case would show that the

claimants in support of their case have exhibited documents of criminal case as Ex.A-1 to A-9. Documents, Ex.A-3 & A-4, are the seizure memos by which documents relating to offending bus and driving license of non-applicant No.1-driver were seized by the police from the possession of non-applicant No.1. A glance of these documents would show that the police had seized registration certificate, permit, fitness, insurance policy of offending bus and driving license of non-applicant No.1 from the possession of non-applicant No.1 on the next day of accident in question i.e. on 27.4.2013 at Police Outpost Bastar. This being the position, it is not a case where the documents required to be proved were lying in exclusive possession of the driver and owner of offending bus, rather the same forms part of criminal case registered in connection with accident in question and were also available in the records of claim case as Ex.A-1 to A-9. The insurance company could have obtained copies of aforesaid documents and could have independently verified the veracity of these documents including driving license. But, appellant Insurance Company has not taken any pain to obtain copies of documents available in the record of criminal case and get the same verified. The burden is always on the Insurance Company to prove breach of condition. When the documents relating to offending bus as also driving license of its driver were available on record of the case pending before the Court, the appellant cannot take a defence that owner & driver of offending bus have not produced any document, therefore, they were not in a position to prove the breach of condition of insurance policy. In the case of National Insurance Company Ltd. vs. Swaran Singh reported in (2004) 3 SCC 297 Hon'ble Supreme Court has considered the issue of burden to prove breach of condition of insurance policy and held thus:-

> "84.We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle admittedly did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence........"

11. It is not the case of appellant Insurance Company that they have made efforts but documents were not available in the records of criminal case. Had it been the case where the police had not seized any document relating to offending bus or license, then submission of learned counsel for appellant that in absence of documents available with regard to offending bus and license of driver, the insurance company could not have proved those documents, to be not valid or forged or fake on the date of accident. The burden then will be upon the owner.

12. In view of above discussion, we do not find any force in the submission of learned counsel for appellant that the Claims Tribunal has wrongly held that the insurance company failed to prove the breach of condition of insurance policy.

13. So far as second ground raised by learned counsel for appellant that the Claims Tribunal has not afforded adequate opportunity of hearing to appellant is concerned, we have perused the copies of order sheets of claim case recorded by the Claims Tribunal. On 25.6.2014 the claimants have closed their evidence and on that date, witnesses of non-applicant No.3 were not present, therefore, the case was adjourned for 8.7.2014 for examination of witnesses of non-applicant No.3. On 8.7.2014 & 17.7.2014 counsel for non-applicant No.3 took time for examining its witnesses, which was granted and the case was fixed for evidence of appellant herein on 23.7.2014. On 23.7.2014 also the witnesses of appellant did not turn up, therefore, the Claims Tribunal has closed the right of appellant to lead evidence and fixed the matter for final arguments on 24.7.14. The Claims Tribunal passed the award on 2.8.2014.

14. It is trite law that the Courts are required to decide the case after affording adequate and proper opportunity of hearing to both the sides. In the case at hand, we are of the view that the Claims Tribunal has erred in not framing issues with regard to breach of condition of insurance policy and contributory negligence. Further, the Claims Tribunal has

erred in closing the right of appellant Insurance Company to produce evidence to prove its case.

15. For the foregoing reasons, the appeal is allowed. Impugned award is hereby set aside and the matter is remanded back to the Claims Tribunal for considering and deciding the claim case afresh, in accordance with law, after framing issues with regard to 'violation of terms & conditions of insurance policy' and 'contributory negligence' and after providing proper opportunity of hearing to the parties, to adduce further evidence, oral and documentary both, amend the pleadings and file documents, if any. Considering the fact that the claim case was filed as back as on 5.7.2013, it seems necessary to direct that the proceeding should be concluded expeditiously. It is, accordingly, directed that the Claims Tribunal shall decide the claim case within a period of five months from the date of receipt of original record of claim case. The Registry is directed to send back the entire original record to the Claims Tribunal forthwith.

16. Claimants/respondents No.1 to 3 have filed cross-objection for enhancement in compensation on the grounds mentioned therein. As we have set aside the impugned award itself and remanded the case back to the Claims Tribunal for fresh adjudication in accordance with law, we are not passing any order on it. However, the claimants/respondents No.1 to 3 will be at liberty to raise all the grounds as raised in the cross-objection, before the Claims Tribunal, which shall be

considered and decided by the Claims Tribunal in view of decisions of Hon'ble Supreme Court in the matter of **Sarla Verma & ors Vs. Delhi Transport Corporation & another** reported in **(2009) 6 SCC 121** , **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130**.

17. The appeal is allowed in above terms.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	(Parth Prateem Sahu)
Chief Justice	Judge

roshan/-