NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 960 of 2015

The Oriental Insurance Company Limited, Through Divisional Manager Opposite Laxman Avenue, Krishi Upaz Mandi Marg, Jagdalpur, Chhattisgarh.

---- Appellant/Non-applicant No.3.

Versus

1. Shankar Lala Baghel Died & Deleted.
2. Smt. Sonmati W/o Shankar Lal Aged About 40 Years.
3. Kumari Babli D/o Shankar Lal Bhagel Aged About 23 years.
4. Kumari Puja D/o Shankar Lal Bhagel Aged About 20 Years.

   All are R/o.- Patnampara Sukma, Thana- Sukma, Tahsil and Zilla- Sukma, Chhattisgarh. **---- Applicants/claimants.**
5. Sheikh Shakeel Ahmad S/o Sheikh Liyakat Ali Aged About 31 Years. (Driver).
6. Sheikh Ashad Ahmad S/o Sheikh Liyakat Ali Aged About 35 Years. (Owner).

   Both are R/o.Patnampara Sukma, Tahsil & Zilla Dantewada, Chhattisgarh. **---- Non-applicant Nos.1 & 2.**

---- Respondents

For Appellant	:	Smt. Chitra Shrivastava, Advocate.
For Respondent No.2 to 4.	:	Shri Vijay Kumar Sahu, Advocate.
For Respondent No.5 & 6	:	Shri Praveen Dhurandhar, Advocate.

Hon'ble Shri Parth Prateem Sahu, J
Order on Board

27/10/2020

1. Appellant -Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') challenging the impugned award dated 30.04.2015 passed by learned Additional Motor Accident Claims Tribunal, South Bastar, Dantewada, (CG), in Claim Case No.404/2014, whereby Tribunal partly allowed application filed under Section 166 of the Act of 1988 and awarded Rs.3,31,000/- as compensation in a death case.

2. Facts relevant for disposal of this appeal are that on 03.01.2011, Sunil Kumar @ Babu was returning from village- Neelavaram on Commander Jeep bearing registration No. CG/18/ZT/0119 (for short, 'offending vehicle). On the way, due to rash and negligent driving of offending vehicle by Non-applicant

No.1, it turned turtle near the cross bridge turn. In the said accident, Sunil Kumar came under the Jeep, suffered grievous injuries and died on spot.

3. Claimants filed an application under Section 166 of the Act of 1988 seeking compensation Rs22,00,000/- pleadings therein that on the date of accident, deceased was working as ‘Conductor’ and earning Rs.5,000/- per month.

4. Non-applicant No.1 & 2, driver and owner of offending vehicle, submitted reply to application, denying pleadings made therein. They have admitted the fact that deceased was working as 'Conductor' in offending vehicle and had gone to villlage-Neelavaram with non-applicant No.1. They have also accepted income of deceased to be Rs.5,000/- per month, but denied the fact of rash and negligent driving of offending vehicle by Non-applicant No.1. On the date of accident, offending vehicle was insured with non-applicant No.3-Insurance company, hence liability, if any, to satisfy the amount of compensation would be of Insurance Company.

5. Non-applicant No.3/Insurance Company submitted reply to application, denied the pleadings made therein for want of knowledge. The fact of employment of deceased as 'Conductor' in offending vehicle and his income as Rs.5,000/- per month was also denied. It was further pleaded that on the date of accident, offending vehicle was plied in breach of policy conditions as non-applicant No.1 was not possessed of valid and effective driving license.

6. Upon appreciation of pleadings and evidence placed on record by the respective parties, Tribunal held that Sunil Kumar died on account of motor-accidental accidental injuries suffered by him in a road accident. Accident was a result of rash and negligent driving of offending vehicle by non-applicant No.1. Accident on account of mechanical fault in offending vehicle not found to be proved. The ground taken by Insurance company that Non-applicant No.1 was

not possessing valid and effective driving license was not found to be proved. Engagement of deceased as 'Conductor' and income has not been found to be proved. Tribunal allowed claim application in part, awarded total compensation of Rs.3,31,000/- along with interest @ 7.5% p.a and fastened liability upon non-applicants to satisfy the amount of compensation, jointly and severally.

7. Learned counsel for appellant -Insurance Company submits that non-applicants No.1 & 2 have not entered into witness box to prove their case. Insurance policy issued was 'liability only policy', vehicle was insured as ‘Private Vehicle’ under the 'act only policy', hence, there is no provision for keeping a person as Conductor in private vehicle. Deceased was travelling as 'gratuitous passenger'. Risk of occupant was not covered under the Policy and extra premium to the tune of Rs.25/- was paid only to cover the risk of driver. She further submits that Insurance Company has placed on record copy of particulars of licence issued by the Competent Authority, certified copy of which is available on record but Tribunal has not considered these documents and arrived at a wrong finding. When Tribunal based on Insurance Policy arrived at a finding that on the date of accident, offending vehicle was insured with Insurance Company then contents of Policy ought to have been considered in its entirety. Tribunal has not taken into consideration nature of policy, premium paid by insured for covering risk of driver and occupant of third party. Coverage of risk of occupants is limited. She further submits that Tribunal erred in assessing monthly income of deceased as Rs.3,000/- per month which is on higher side, applying deduction towards personal expenses and applying multiplier. Deceased was unmarried, hence, application of multiplier would be based on age of claimants.

8. Learned counsel for the claimants submits that though he has not filed any appeal or cross objection, but fixation of Rs.3000/- as monthly income of deceased, who died in a road accident which took place on 3.1.2011, by the Tribunal is on lower side. Income of deceased is established from the pleadings made by non-applicants No.1 & 2, but the Tribunal has not assessed income accordingly. He further submits that impugned award passed by Tribunal, in absence of any challenge to the quantum by claimants, is just and proper and does not call for any interference. Lastly he submits that if it is found that risk of deceased was not covered under the Policy then a direction be issued to Insurance company to first deposit the entire amount of compensation and then to recover the same from non-applicants No.1 & 2.

9. Learned counsel for the respondents No.5 & 6/driver and owner submits that the Tribunal on appreciation of pleadings placed on record by the respective parties arrived at correct findings that the Policy was issued for offending vehicle, accident took place during the currency of Insurance Policy. He further submits that Insurance company has not led any evidence before the Tribunal nor exhibited the Insurance Policy to prove the contents of policy. In absence of any specific evidence, submission made by learned counsel for the insurance company cannot be accepted. The Tribunal has rightly concluded that non-applicant No.1 has produced license authorising him to drive offending vehicle registered under the 'LMV".

10. I have heard the learned counsel for the parties and perused the record.

11. Perusal of records would show that claim application was filed by applicants/claimants on 15.06.2011. Non-applicant Nos.1 & 2 driver and owner, submitted reply to application on 03.10.2011 pleadings therein that on the date of accident, offending vehicle was insured with non-applicant No.3-Insurance

Company, hence liability to pay the amount of compensation would be upon Insurance Company. Appellant/Insurance Company submitted reply to claim application on 17.09.2012, did not take a plea with regard to nature of Insurance Policy issued for offending vehicle. Insurance Company has placed on record list of documents on 27.03.2015 alongwith particulars of driving license, certified copy of Insurance Policy having its validity from 02.10.2010 to 01.10.2011. Learned counsel for the appellant while making her submission has pointed out that Insurance Policy issued by appellant -Company under the head of private car liability only policy -Zone B. Once the Policy is relied upon to arrive at a finding that on the date of accident, offending vehicle was insured then contents of Policy has to be taken note off. The liability of Insurance Company is contractual liability with insured and Insurance Company cannot be held liable for the risk which not covered under contract. The document is to be read as whole. True it is that Insurance Company neither entered into witness box nor examined any witness to prove the Policy but at the same time looking to the nature of pleadings and provisions under Section 168 of the Act of 1988 and the Rule of 226 of the Chhattisgarh Motor Vehicles Rules it was the duty of Tribunal to consider the documents and materials available on record to arrive at a just conclusion. Certified copy of policy also bears the Schedule of premium which is extracted below :-

Attached to and forming part of policy number 192001/31/2011/2860

SCHEDULE OF PREMIUM

A. OWN DAMAGE	B. LIABILITY	
	BASIC TP COVER	2,500.00
	BASIC TP TOTAL	2,500.00
	ADD :PA -UN-NAMED-GR36B2	450.00
	ADD :LL-PAID DRIVER, CONDUCTOR, CLEANER-IMT-28	25.00
	TP TOTAL	2,975.00
	TOTAL PREMIUM	2,975.00
	STAMP DUTY	0.50
	ADD :SERVICE TAX	306.00

TOTAL AMOUINT	3,281.00

Personal Effects SI ACB No. of Days Payable Benefit

Deductibles under Section-I : Compulsory Deductible

Subject to IMT Endorsement Printed herein/attached to :IMT-16, IMT-28

(Details of IMT Endorsements and GR also available on Internet TAC website www.tac.org.in

12. In view of aforesaid facts and documents available on record, submission made by learned counsel for the appellant that one opportunity may be given to Insurance Company to prove the Policy and extent of its liability under the policy issued in favour of offending vehicle and relied upon by the Tribunal appears to be reasonable prayer. The Tribunal has not conducted proper enquiry, not exercised its power envisaged under Section 168 of the Act of 1988 and the Rules of 226 of the Chhattisgarh Motor Vehicles Rules, 1994. In the considered opinion of this Court the matter requires reconsideration at the end of the Tribunal.

13. For the foregoing reasons, appeal is allowed, impugned award is set aside and matter is remitted back to Tribunal concerned for only deciding the liability to satisfy the amount of compensation only after giving proper opportunity of hearing to all the respective parties. It goes without saying that the parties to claim case will be at liberty to lead further evidence in support of their respective case. It is made clear that as the quantum of compensation is not under challenge, amount of compensation calculated by Tribunal is affirmed.

14. Records be sent back forthwith. Looking to the date of accident, Tribunal is directed to decided the claim case at the earliest on priority basis.

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-