NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 46 of 2015

- HDFC Ergo General Insurance Co. Ltd. Branch Office, Devendra Nagar, Near Railway Line, P.S. Devendra Nagar, Civil and Revenue Dist. Raipur C.G.

-----Appellant

VERSUS

1. Kumari Namrata Sahu D/o Shri Hariram Sahu, aged about 18 years R/o Vill. Mechka (Sondur) Tahsil Nagri, P.S. Nagri Civil and Revenue Dist. Dhamtari C.G.

   At present- Sichai Colony, Sankra, Tahsil Nagri, P.S. Nagri, Civil and Revenue Dist. Dhamtari C.G.
2. Poonamchand Sahu D/o Roop Singh Sahu, aged about 27 years, R/o Vill. Kormudapara Sankra, Tahsil Nagri, P.S. Nagri, Civil and Revenue Dist. Dhamtari C.G.
3. Umendra Ram Sahu S/o Bisru Ram Sahu R/o Vill Sankra, Tahsil Nagri, P.S. Nagri Civil and Revenue Dist. Dhamtari C.G.

----Respondents

WITH

MAC No. 1330 of 2014

- Kumari Namrata Sahu D/o Shri Hariram Sahu Aged About 18 Years R/o Village Mechka Sondhur, Tah. Nagri, Distt. Dhamtari C.G.

---- Appellant

Versus

1. Poonamchand Sahu S/o Roop Singh Sahu Aged About 27 Years R/o Village Kormudpara Sankra, Tah. Nagri, Distt. Dhamtari C.G.
2. Umendram Sahu S/o Bisaru Ram Sahu R/o Village Sankra, Tah. Nagri, Distt. Dhamtari C.G.
3. H.D.F.C. Irgo General Insurance Co. Ltd. Branch Office Devendra Nagar, Near Railway Line, Raipur, Tah. and Distt. Raipur C.G.

---- Respondents

For Appellant	:	Mr. Nilesh Thakur, Advocate
For Respondent 1	:	Mr. Anil Gulati, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per Parth Prateem Sahu, J.

09/10/2020

1. Both the appeals are arising out of the common award dated 15-09-2014 passed by Chief Motor Accident Claims Tribunal, Dhamtari C.G. in claim case no. 17/2013, hence, both these appeals are being disposed of by this common order.

2. MAC No. 46/2015 is filed by the Insurance Company challenging fastening liability to satisfy the amount of compensation on the ground that the Insurance Company neither has insured the offending vehicle nor issued the policy. MAC No. 1330/14 is filed by the claimant for enhancement of the impugned award. Status of party as referred in MA(C) No. 46/2015 is referred.

3. Facts relevant for disposal of this appeal are that on 23-08-2012 at about 10:45 a.m. when claimant/ Respondent 1 was going to school on her bicycle and reached near forest barrier Sakra, one tractor bearing Registration No. CG 05G 3696 (hereinafter referred to as "offending vehicle") driven rashly and negligently by Respondent 2/ Non-applicant 1 dashed the bicycle of claimant Namrata and caused accident. In the said accident she suffered grievous injuries over her person including fracture of left hand, lost her four teeth, fracture of her fingers of right hand along with other injuries. She was taken to government hospital, Nagri but looking to the grievousness of her injuries, she was referred to Christian hospital Dhamtari and from there, she was shifted to Narayana Hospital, Raipur. She took treatment at Narayana hospital from 23-08-2012 to 28-08-2012 as in-patient. Both of her hands were operated and rod was implanted. The accident was reported to concerned police station based upon which crime bearing no. 39/2012 was registered against Respondent 2/ non-applicant 1.

4. Claimant has filed an application under Section 166 and Section 140 of the

Motor Vehicles Act, 1988 pleading therein that on the date of accident she was able bodied person studying in Class 12th. She suffered dis-figuration of her body and deprived of her proper marital match. On account of injuries, she also suffered loss of eye-sight due to which, he could not able to pursue her studies further. Prior to the date of accident, she was earning Rs. 100/- per day from the work of stitching and embroidery. She claimed Rs. 11,50,000/- as total compensation.

5. Non-applicant 1 and 2/ Respondent 2 and 3 submitted reply to the claim application pleading that Non-applicant 1 to be driver of the offending vehicle, Non-applicant 2 to be registered owner and the offending vehicle was insured with Non-applicant 3-Insurance Company. Non-applicant 1 was possessed with valid and effective driving licence, there was no breach of conditions of insurance policy hence the liability, if any, would be of the Insurance Company.

6. Non-applicant 3-Insurance Company has denied the entire pleading made in the claim application. In additional submission, they have pleaded that on the date of accident, driver of the offending vehicle was not possessed with valid and effective driving licence, tractor (offending vehicle) was used contrary to the policy conditions, no document was placed with regard to the education of the claimant. Non-applicant 2-owner has not intimated about the accident nor submitted claim form, hence, the Insurance Company is not liable to satisfy the amount of compensation.

7. Learned Claims Tribunal, on appreciation of pleadings and evidence placed on record has allowed the claim application in part and awarded a total sum of Rs. 1,12,800/- as compensation and fastened the liability upon Non-applicant 1 to 3 jointly and severally.

8. Mr. Nilesh Thakur, learned counsel for the appellant-Insurance Company submits that the appellant-Insurance Company has taken the specific

ground in reply to the claim application that there was breach of conditions of insurance policy but no specific issue has been framed in this regard. He further argued that the owner, though represented and contested the claim case before the Claims Tribunal, has not placed on record the original document of insurance policy but on the basis of the photocopy of the policy available on record, the Claims Tribunal has fastened the liability upon the appellant. It is argued that the photocopy available on record claiming it to be insurance policy issued with respect to the offending vehicle is not correct. Appellant-Insurance Company has filed the copy of the insurance policy of the cover note number and insurance policy number mentioned in the photocopy of the policy but the insurance policy for the same policy number and cover note number has been issued in the name of Lalji Patel for different vehicle i.e. one HMT tractor having different vehicle and engine number. He submits that the Insurance policy which is placed on record in this appeal along with the application for taking additional evidence on record shows that the policy of the similar number and cover note number is issued for a new vehicle and, therefore, the insurance policy available on record, prima facie appears to have not been issued by the Insurance Company. He submits that the application for taking additional evidence on record be allowed and appropriate orders be passed in this appeal. He further submits that the Insurance Company was represented by a counsel before the Claims Tribunal but inadvertently the policy placed on record in this appeal could not be brought on record before the Claims Tribunal, one opportunity may be granted to the appellant-Insurance Company to produce the fact that the insurance policy was not issued in the name of Non-applicant 2/ Respondent 3.

9. Per contra, Mr. Anil Gulati, learned counsel appearing for appellant-claimant in MAC No. 1330/2014 submits that the Insurance company has not taken any such plea before the Claims Tribunal. The plea of non-issuance of insurance policy is being taken for the first time before this Court and,

therefore, the appellant-insurance Company cannot be permitted to fill up the lacuna, if any, in their defence. He submits that the application under Order 41 Rule 27 CPC to be dismissed as no appropriate reason has been assigned in the application for not placing subject document before the Claims Tribunal as evidence.

10. We have heard learned counsel for the respective parties and also perused the record of the claim case.

11. So far as, the submission made by the learned counsel for the appellant with regard to application under Order 41 Rule 27 CPC. The appellant has not mentioned any specific ground for not producing the copy of the policy which is placed along with this application in an appeal, for not producing it before the Claims Tribunal. True it is that the additional evidence can be accepted only when some acceptable justification is mentioned in the application for not placing copy of the document which the party wanted to be admitted as an additional evidence. But taking into consideration that the driver and owner were represented by an advocate before the Claims Tribunal till 02-05-2014 and thereafter they absented themselves. They have not placed on record the original policy said to be issued for the vehicle owned by Non-applicant 2, more so when, the appellant-Insurance Company has taken specific defence that the non-applicant 3/ appellant company is not insurer of the Tractor (offending vehicle). It was the burden upon the owner of the offending vehicle to place on record original copy of the insurance policy, which is not done. From perusal of two policies, one photocopy available on record of claim case and another filed along with application under Order 41 Rule 27 CPC, one thing is clear that one of the documents may be forged. Taking benefit, based on forged document, cannot be permitted if once it is brought to the notice of this Court. The award was passed by the Claims Tribunal on 15-09-2014, appeal filed on 07-01-2015 before this Court. Respondents owner and driver of the

offending vehicle are served but they have not chosen to appear before this Court.

12. In the aforementioned facts of the case, keeping in mind that it was the duty of the owner of the offending vehicle also to place document on record, the original copy of the insurance policy available with him. Looking to the fact that if the plea of the Insurance Company is accepted then the photocopy available on record may be the forged document, this Court cannot shut its eye and to decide the case based on the document which is not in existence as argued by the learned counsel for the appellant and a forged document. The application under Order 41 Rule 27 of CPC is allowed, additional evidence is taken on record.

13. In the aforementioned facts of the case, we find it appropriate to remand the case back to the learned Claims Tribunal to consider whether the offending vehicle was insured with Non-applicant 3-Insurance Company and thereafter to decide the case afresh. The Claims Tribunal will decide the case after affording opportunity of hearing to all the parties to the claim application. It goes without saying that the parties will be at liberty to amend their pleadings, to lead further evidence and the Claims Tribunal may further frame additional issues, if required, in view of the amended pleadings of the respective parties and thereafter to decide the case afresh, after affording opportunity of hearing to all the concerned parties.

14. For the foregoing reasons, MAC No. 46/2015 is allowed in part. Case is remitted back to the concerned Claims Tribunal with the aforementioned direction.

15. As we have not considered the case on merits but the case is remitted back to the Claims Tribunal, we are not passing any order on merits in MAC No. 1330/2014. The appellant-claimant will be at liberty to raise all the grounds raised in this appeal seeking enhancement of compensation before the Claims Tribunal.

16. Registry is directed to send back the records of the claim case without any delay, along with copy of application under Order 41 Rule 27 CPC and the document annexed with it.

17. Both the appeals stand disposed of in above terms.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Pawan