NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 933 of 2013

- Akash Diwan S/o Late Genddhar Diwan Aged About 45 Years R/o Diwan Bhawan, Bramhan Para, Naya Para, Rajim, P.S. Nayapara, Rajim, Distt. Raipur C.G., Chhattisgarh (NA-2 Owner of alleged vehicle Truck)

---- Appellant

Versus

1. Smt. Radhika Sahu, W/o Late Ishwar Sahu Aged About 35 Years
2. Golu @ Ramnarayan S/o Late Ishwar Sahu Aged About 19 Years
3. Ku. Payal D/o Late Ishwar Sahu Aged About 9 Years Minor
4. Shital D/o Late Ishwar Sahu Aged About 7 Years Minor

   Respondents No.3 and 4 minors, Thru- Mother Smt. Radhika Sahu

   All R/o Piproud, Post Office And P.S. Gobra Navapara, Tah. Abhanpur, District : Raipur, Chhattisgarh
5. Mahendra Kumar Sahu S/o Shri Ram Sahu Aged About 44 Years R/o House No. 117, Village- Koma, P.O. Kirwai, P.S. And Tah. Rajim, District : Raipur, Chhattisgarh(NA-1 Driver of alleged vehicle Truck)
6. The United India Insu. Co.Ltd. S/o Tara Complex, Power House G.E. Road, Bhilai, 490011, Tah. And Distt. Durg C.G., Thru- Division Office, Krishna Complex, In Front Of District Court, Distt. Raipur Chhattisgarh (NA-3 Insurer of alleged vehicle Truck)

-----Respondents

For Appellant	:	Shri SP Sahu, Advocate
For Respondent- 6/Insurance Company	:	Shri Dashrath Gupta, Advocate

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Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J

09.06.2020

1. Appellant/owner has challenged the award dated 30.08.2013 passed by the 2nd Additional Motor Accident Claims Tribunal, Raipur (for short 'Claims Tribunal') in Claim Case No.5 of 2013, whereby learned Claims Tribunal exonerated the Insurance Company and held Non-applicants No.1 and 2 to be liable to satisfy the award of Rs.5,65,000/-

along with interest @ 6% per annum from the date of filing of claim application.

2. Facts of the case in a nutshell are, that on 20.08.2012 when Ishwar Sahu was returning on the truck bearing No.CG 07-ZC 1125 (for short,'offending vehicle') from Manacamp to Nawapara Rajim, after unloading the offending vehicle met with an accident. Ishwar Sahu was travelling as labour (Hamal) in offending vehicle. He suffered grievous injuries over his person and was taken to Primary Health Center, Abhanpur, where he succumbed to the injuries during the course of treatment. The accident was reported to Police Station, Abhanpur, based upon which, crime was registered against Non-applicant No.1, driver of offending vehicle. After completion of investigation, charge-sheet has been filed against him.

3. Claimants, who are widow and three children of deceased- Ishwar Sahu filed claim application seeking compensation of Rs.16,00,000/- in total, against death of deceased.

4. Non-applicants No.1 and 2, driver and owner of offending vehicle appeared before learned Claims Tribunal after service of notice, but thereafter, they became *ex parte*, without submitting any reply to the claim application.

5. Non-applicant No.3/Insurer of offending vehicle submitted reply and resisted the claim on the ground that offending vehicle was not insured by the Company. The cover note produced in the record is a concocted document and they are making complaint against it. It was also pleaded

that there was no valid permit and fitness of offending vehicle for plying the same on public road. And further that even if it is found that offending vehicle was insured, there was violation of conditions of Insurance Policy, as driver of offending vehicle on the date of accident, was not possessing valid driving license.

6. On appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that deceased Ishwar Sahu died in a motor accident, due to rash and negligent driving of offending vehicle by its driver.

7. Learned Claims Tribunal also recorded a finding that offending vehicle was not insured with Insurance Company/Non-applicant No.3 and awarded a total sum of Rs.5,65,000/- as compensation and fastened liability on owner and driver.

8. Learned Counsel for the Appellant/Owner of offending vehicle submits that offending vehicle was insured with Non-applicant-3/ Insurance Company. Appellant has paid premium and cover note was also issued to this effect to him mentioning therein the period of insurance of offending vehicle ie from 16.07.2012 to 15.07.2013. Appellant placed before us copy of insurance cover note to support his submissions with regard to the insurance of offending vehicle with the insurance company for the above period. Learned counsel further submits that appellant has engaged counsel before the learned Claims Tribuhnal but unfortunately after appearing for some hearings, he did not turn up and therefore,

appellant could not defend his case properly, and prays for remand of the case.

9. Per-contra, Shri Dashrath Gupta, learned counsel appearing for respondent-6/Insurance Company submits that learned counsel representing Insurance Company before the Tribunal has moved an application under Order-11 Rule-12 of the CPC on 28.02.2013 and copy of that application was also served upon the counsel for non-applicants 1 & 2 (Appellant also), but even then, counsel for non-applicants 1 & 2 nor appellant produced any documents, particularly insurance policy was not produced before learned Claims Tribunal. It is also pointed out that Insurance Company has sent registered letter / notice vide Ex.D4 to produce all relevant documents with the offending vehicle but even then non-applicant-2 had not produced any document even after service of notice / registered letter. Insurance company has produced computer generated premium register (Ex.D2) from 16.7.2012 to 31.07.2012 in which name of appellant do not find place. It is also contended that Insurance Company examined Shri JS Bhatia, Divisional Manager, before learned Claims Tribunal in their support to prove pleadings. Learned Claims Tribunal taking into consideration all these factual aspects and deliberate non-supply of documents by the appellant, arrived at finding that offending vehicle was not insured with the Insurance Company. This finding is based on material and evidence available on record, which does not call for any interference.

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

11. To appreciate the submission made by the learned counsel for the appellant, we have perused the record. Copy of the cover note which has been placed before us was already on record as Article A1. Perusal of contents of Article A1 would show that, it is only a cover note and not insurance policy. Appellant / owner has filed this appeal challenging fastening of liability upon him but had not placed before us any record, even a copy of Insurance Policy, if any, issued for offending vehicle. Appellant, who was non-applicant 2 before learned Claims Tribunal initially was represented by his advocate namely, Shri Ashok Sahu, but immediately after serving application under Order-11, Rule-12 of the CPC on 28.02.2013, he remained absent. This factual proceeding has been recorded by learned Claims Tribunal in Paragraph-15 of the award. Learned counsel for the appellant does not dispute the finding recorded by learned Claims Tribunal in paragraphs-12 to 16 of the award.

12. Another aspect of the case is that the award was passed on 30.08.2013, which was challenged by the appellant but he has not pleaded or placed any document before us to show that if he has purchased any insurance policy, initial cover note has been issued to him by the Insurance Company but premium was not deposited with insurance company, then what action was taken against agent to show his *bona fide.* From the finding recorded by learned claims tribunal in paras 15 and16 of the award, it is apparent that appellant consciously avoided to place relevant documents of offending vehicle owned by him, on record. Service of notice as recorded by learned Claims Tribunal in para 15 of the award is also not denied by the appellant in this appeal. The Insurance

Company by examining its Divisional Manager, J.S.Bhatia and placing the computer generated premium register from 16.07.2012 to 31.07.2012 proved that Insurance Policy of offending vehicle was not issued in the name of appellant.

13. The insurance company has not issued any insurance policy for offending vehicle, thereby, no contractual liability lies between the appellant (insured) and respondent-6 herein (insurer) to indemnify the insured.

14. For the foregoing reasons and discussions, we do not find any error in the finding recorded by learned claims tribunal that on the date of accident offending vehicle was not insured with non-appellant 3/Insurance Company.

15. So far as the submission made by learned counsel for the appellant that amount of compensation awarded by learned claims tribunal is on higher side is concerned, learned Claims Tribunal awarded only Rs.5,65,000/- as total compensation in a death case Learned Claims Tribunal looking to the date of accident i.e on 20.08.2012, taken income of the deceased as Rs.4,000/- per month which in our view cannot be said to be on higher side, when the deceased has to maintain a family of five members, including himself, as also the price index and wage structure.

16. The submission made by the learned counsel for the appellant that learned claims tribunal erred in assessing income of the deceased @ Rs.4,000/- per month to be on higher side is not sustainable and it is repelled.

17. For the foregoing reasons, we do not find any merit in this appeal. The appeal is liable to be and it is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma