**NAFR**

**HIGH COURT of CHHATTISGARH, BILASPUR**

**MAC No. 429 of 2013**

- The Oriental Insurance Company Limited, Branch Office Sunday Market, Raigarh, District Raigarh C.G.

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

**VERSUS**

1. Ramsevak Ram S/o Somaru Ram, aged about 45 years.
2. Smt. Kunti Devi Wd/o Late Sikandar Ram, aged about 19 years
3. Smt. Sohani W/o Ramsevak Ram, aged about 43 years

   No. 1 to 3 are by caste- Korwa, R/o Village Bhitghara (Gwashi) P.S. and Tahsil Bagicha, District Jashpur C.G. **------Claimants**
4. Smt. Padmawati Devi W/o Lalchand Kashyap, aged about 45 years R/o Village Salka, Patrapali, Ambikapur, P.S. Ambikapur, District Surguja C.G.

   **-------Non-Applicant No. 1**
5. Fagunath Ram @ Faguram S/o Lachchu Ram, aged about 23 years, Occupation-Driver, R/o Village Budhadand, P.S. and Tahsil Bagicha, District Jashpur C.G.

   **-------Non-Applicant No. 2**

-------**Respondents**

---

| | | |
|---|---|---|
| For Appellant | : | Mr. Pankaj Agrawal, Advocate. |
| For Respondent No. 1 to 3 | : | Mr. A.K. Prasad, Advocate. |

---

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

**Per Parth Prateem Sahu, J.**

**21/05/2020**

1. Challenge in this appeal is to the order dated 20-02-2013 passed in Claim Case No. 22/2011 by learned Motor Accident Claims Tribunal, Jashpur District Jashpur C.G., whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs. 2,19,000/- as compensation in a death case.

2. Facts relevant for disposal of this appeal are, that on 19-11-2000 at about 09:00 a.m., Sikandar (deceased) was traveling on a tractor bearing registration No. MP 27 B 5565 (hereinafter referred to as 'offending vehicle') along with one other person namely Prabal. The deceased fell down from the offending vehicle and became unconscious, he was taken to home and then, while going to the hospital, he succumbed to the injuries suffered by him in the aforesaid accident.

Claimants who are widow and parents of the deceased Sikandar filed claim application claiming Rs. 18,60,000/- as compensation on account of untimely motor accidental death of deceased Sikandar.

3. Respondent No. 4/ non-applicant No. 1 submitted reply to the claim application admitted to be owner of the offending vehicle and denied the fact of engagement of the deceased as labour with the vehicle. Respondent No. 5/ Non-applicant No. 2 who is driver of the offending vehicle submitted reply to the claim application pleaded that the pleadings of Rs. 60/- per day from the work of labour was exaggerated, he was driving the offending vehicle in slow speed but on account of fault of the deceased himself, he fell down from the vehicle.

4. Insurance Company submitted reply to the claim application and pleaded that the offending vehicle was insured for the agricultural purposes and at the time of accident it was being used for the purpose other than agricultural activities, on the date of accident, respondent No. 5/ non-applicant No. 2-driver was not possessing valid and effective driving licence.

5. On appreciation of the pleadings and evidence placed on record by the respective parties, the Tribunal held that deceased Sikandar died on account of rash and negligent driving of the offending vehicle and awarded a total sum of Rs. 2, 19,000/- as compensation to the respondent No. 1 to 3/ Claimants and fastened the liability upon non-applicant No. 1 to 3 jointly and severally.

6. Learned counsel for the appellant submits that the Tribunal erred in recording the finding in para 24 of the impugned award that the Insurance Company had issued the cover note in which it has been mentioned about the premium for 1+ 4 person and on that account, the Tribunal held that there was no violation of conditions of Insurance policy and held that the Insurance Company to be liable to satisfy the award. He submits that the policy issued for the vehicle mentioned about use for the purposes of agriculture and no premium has been taken for labour or any person traveling on it other than the driver. Learned counsel places his reliance

in SLP(C) No. 3900/2006 to support his contention.

7. Per contra learned counsel appearing for the respondent No. 1 to 3 /claimants submits that the Insurance Company has neither placed on record copy of the Insurance Policy nor any witness has been produced by him, therefore, the Insurance Company cannot be permitted to take such plea before this Court in an appeal.

8. We have heard learned counsel for the respective parties and perused the record.

9. Perusal of record would show that the Insurance Company has not led any evidence before the Tribunal nor produced copy of the Insurance Policy to prove the pleadings of violation of conditions of the insurance policy. It is a settled law that party ascertaining any fact is required to prove that fact by producing cogent and reliable piece of evidence. In the instant case, as per the submission made by the learned counsel for the appellant that there is violation of conditions of insurance policy, but the policy itself was not produced before the Tribunal for proving the contents of the insurance policy. In view of the aforementioned fact that the Insurance Company has not placed any witness nor any document to prove the policy, this Court has to consider whether the Tribunal on the basis of the pleadings and evidence placed on record to prove the pleadings has arrived at a correct finding or committed any error in recording the finding as recorded in the award.

10. Insuring a vehicle and issuing a policy is a contract between insurer and insured. The violation of the condition of policy as asserted by the appellant is required to be proved by placing the policy which is a contract that these conditions of policy are violated, the Insurance Company neither placed on record, material with regard to prove the contents/ conditions of policy nor led any evidence in this regard, in fact, insurance of the offending vehicle was admitted. For the aforementioned reasons, in the considered view, we do not find any error in the

finding recored by the Tribunal while holding the Insurance Company to be liable to satisfy the amount of compensation.

11. Lastly the learned counsel for the appellant made submission that the Tribunal erred in awarding the penal interest of 9% in not paying the amount of award within the prescribed period mentioned in the award. Award of interest is envisaged under Section 171 of the Motor Vehicles Act, 1988. It only provides for awarding simple interest. There is no provision under the act to award default interest. In view of the above, awarding penal interest by the Tribunal is erroneous and is hereby set aside.

12. The award holding that the appellant is liable to satisfy the awarded amount of compensation is upheld and the award of default interest is set aside.

13. The appeal filed by the Insurance Company is allowed in part. The impugned award is modified to the extent as indicated hereinabove.

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

Pawan