NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 24 of 2013

Order reserved on 02.07.2020

Order pronounced on 29.09.2020

- Branch Manager, Oriental Insurance Company Limited, Geetanjali Building Main Road, Old Bus Stand, Korba C.G.

---- Appellant.

Versus

1. Amrita Bai W/o Late Rajesh Kumar, aged about 28 years,
2. ***Deleted (Minor Vikki Chandra),***
3. Minor Bharti Chandra, age 5 years, through guardian mother Amrita Bai, W/o Late Rajesh Kumar Chandra,
4. Set Bai W/o Deonarayan Chandra, age 23 years,
5. Hemcharan Chandra S/o Deonarayan Chandra, aged about 23 years,

   All Caste Chandra

   All respondents No.1 to 5 are resident of Village Chhirradih, Thana Jaijaipur, District Janjgir-Champa (CG). *(R. No.1 to 5 Claimants)*
6. Shriram Karsh S/o Terasram Karsh, aged about 37 years, Caste Dhobdi, R/o Kutrabod, Thana Jaijaipur, District Janjgir-Champa C.G. *(Bus driver)*
7. Sindhu Singh Banafar, W/o Late Padmdhar Singh Banafar, Aged 26 Years, Caste Thakur, Sakti, Thana- Sakti, Distt. Janjgir-Champa C.G. *(Bus owner)*
8. Devnarayan Chandra S/o Mahettar Lal, Aged About 59 Years Brijraj Nagar, Distt. Jharsugda, Orissa.

---- Respondents

Shri Prasanjeet Dutta, Shri Mirza Kaiser Baeg, Shri Ratnesh Kumar, Shri Guru Prasad Kurre, Counsel for the respective parties.

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

The present appeal has been filed by the appellant/Insurance Company under Section 173 of the Motor Vehicle Act 1988 (hereinafter referred to as the “Act 1988”) against the judgment and award dated 22.09.2012 passed by the Additional Motor Accident Claims Tribunal, Sakti, District Janjgir Champa in the Motor Accident

Claim Case No.09/2012, whereby the Tribunal has awarded a compensation of Rs.4,76,500/- to the claimants/respondents No.1 to 5.

2. Facts of the case, in brief, are that the claimants have filed Claim Case No.9/2012 before the Tribunal alleging that on 04.11.2011 at about 7:45 PM when deceased Rajesh Kumar came from village Beladula to Chhiradih village on his motor cycyle bearing Registration No.CG-11/9462, the truck bearing Registration No.CG-11 ZA/0180 driven by one Shriram Karsh in a rash and negligent manner dashed the motor cycle of the Rajesh Kumar due to which he suffered grievous injuries and succumbed to the same on the spot.

3. It is further alleged in the claim case that at the time of accident the deceased was 31 years old and drawing Rs.40,000/- per annum. The claimants/respondents No.1 to 5 are the legal representatives of the deceased Rajesh Kumar. The offending vehicle/bus was insured with the appellant – Oriental Insurance Company who was held liable to pay compensation awarded by the Claims Tribunal.

4. In this appeal, the appellant/Insurance Company contested the proceedings in the claim petition alleging contributory negligence by the deceased and also alleged that at the time of accident, the driver of the offending vehicle did not have valid driving licence therefore, the appellant could not be held liable to pay compensation to the claimants awarded by the Tribunal.

5. In the impugned award dated 22.09.2012, the Tribunal decided issues regarding factum of accident and negligence of the

driver of the offending vehicle in favour of the claimants/respondents No.1 to 5 and also held that the Insurance Company was liable to pay compensation to the claimants as at the time of accident, driver of the offending vehicle was insured with the appellant and he had valid driving licence. Consequently, after considering the age of the deceased and his income the Tribunal awarded compensation of Rs.4,76,500/- to the claimants No.1 to 5.

6. I have considered the submission of learned counsel for the appellant and respondents and perused the records.

7. It is evident from the impugned award dated 22.09.2012 passed by the Tribunal that an FIR regarding the incident was lodged by one Kartik Ram Chandra. The said FIR was lodged within 3 hours of the incident. After investigation a charge-sheet under Section 304-A IPC was filed by the concerned police station against the driver of the offending vehicle. The charge-sheet supports the allegation of the claimants that the deceased died in an accident caused due to the rash and negligent driving the offending vehicle.

8. The burden of proof of contributory negligence of deceased in the accident was on the appellant and learned counsel for the appellant has not produced any evidence to prove the contributory negligence on the part of the deceased. In the aforesaid circumstances, there is no error in the findings recorded by the Claims Tribunal regarding the negligence of the driver of the offending vehicle and that there was no contributory negligence of the deceased in causing the accident. The findings of the learned Tribunal on the aforesaid issues are based on the evidence on record.

9. The Insurance Company has not adduced any oral or documentary evidence to establish that the driver of offending vehicle was not having valid driving licence at the time of the accident therefore, the Insurance Company cannot be exonerated from its liability to pay the compensation.

10. It is established from the material available on record that the accident took place by the offending vehicle was duly insured with appellant/Insurance Company. The deceased suffered grievous injuries in the accident in question and died on spot.

11. It is settled law that the Insurance Company cannot be absolved of its liability to pay compensation of the policy. It has failed to prove that the owner of the vehicle had committed any negligence or had not taken reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licenced driver while employing the driver of the vehicle. The observation of the Supreme Court in paragraphs 110 (iii) and (vi) in **National Insurance Company Ltd Vs. Swaran Singh and others** reported in **(2004) 3 SCC 297** : 2006 (4) ACCD 240 (SC) relevant for the purpose and reproduced herein below :-

> **"(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.**
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> **(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to**

> **the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act."**

12. In view of the aforesaid the argument of the learned counsel for the appellant/Insurance Company relating to driving licence unfounded and stands rejected.

13. For the aforesaid reasons, no error has been committed by the Tribunal in holding that the appellant Insurance Company was liable to pay compensation to the claimants/respondents No.1 to 5. There is no illegality in the judgment and award passed by the Claims Tribunal and therefore, appeal filed by the appellant/Insurance Company fails and is dismissed.

Sd/-
(Vimla Singh Kapoor)
Judge

Ajay