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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 1312 of 2019

- Manager, The National Insurance Company Limited, Branch Office, Jagdalpur, District Bastar Chhattisgarh. (Insurer of Motorcycle Bearing Registration No. C.G.17 KF- 7442). **---- Appellant**

Versus

1. Sharda Bai Kanwar Wd/o Late Bhuwan Singh Kanwar, Aged About 26 Years R/o Village Bhilai, Tahsil Balouda, District Janjgir- Champa Chhattisgarh. (Claimants).
2. Ku. Aditi Kanwar D/o Late Bhuwan Singh Aged About 4 Years Minor Through Their Natural Guardian Mother Namely Sharda Bai Kanwar, R/o Village Bhilai, Tahsil Balouda, District Janjgir- Champa Chhattisgarh. (Claimants).
3. Ku. Ankita Kanwar D/o Late Bhuwan Singh Aged About 2 Years Minor Through Their Natural Guardian Mother Namely Sharda Bai Kanwar, R/o Village Bhilai, Tahsil Balouda, District Janjgir- Champa Chhattisgarh. (Claimants)
4. Kailash Bakde S/o Late Laxman Bakde Aged About 44 Years R/o Village Jaitgiri, Police Station And Tahsil Karpawand, District Bastar Chhattisgarh (Driver Of Motocycle Beaing Registration No. C.G.17 KF- 7442).
5. Kendrabhan Bakde S/o Kanairam Bakde R/o Village Jaitgiri, Police Station And Tahsil Karpawand, District Bastar Chhattisgarh. Ownerof Motocycle Beaing Registration No. C.G.17 KF- 7442)
6. Punibai Wd/o Mansingh Kanwar Aged About 70 Years R/o Village Bhilai, Tashil Balouda, District Janjgir - Champa Chhattisgarh. **---- Respondents**

For Appellant:	Shri Anil Gulati, Advocate.
For Respondents No.1 to 3:	Shri Ram Narayan Sahu, Advocate along with Shri Punit Ruparel, Advocate
For Respondents No. 4 to 6:	None, though served.

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J

Award On Board

23.01.2020

1. Heard on admission.

2. This Miscellaneous Appeal has been preferred by Non-applicant No.3- the National Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act, 1988') questioning the legality and propriety of the award dated 15.02.2019

passed by Third Additional Motor Accident Claims Tribunal, District Janjgir-champa (C.G.) in Motor Accident Claim Case No. 16/18, whereby the Claims Tribunal while allowing the claim in part has fastened the liability upon the Insurance Company.

3. Briefly stated the facts of the case are that on 08.09.2017 at about 6:00-7:00 p.m., deceased Bhuwan Singh Kanwar was going to his house at Jaitgiri by his motor cycle and as soon as he reached near the village Aavarabhata, he was dashed vehemently by the offending vehicle, the another motorcycle bearing its registration number CG-17-KF-7442, which was owned by Non-applicant No.2 Kendrabhan Bakde and insured with Non-applicant No.3 National Insurance Company Ltd. At the relevant time, the vehicle in question was being driven rashly and negligently by its driver, namely, Kailash Bakde (Non-applicant No.1). As a result of which, the alleged accident occurred, where the deceased injured badly and expired on 12.09.2017 during the course of his treatment at Ohm Hospital, Raipur, giving rise to the institution of the claim petition under Section 166 of the Act, 1988 by the Claimants, claiming a total amount of compensation to the tune of Rs.70,35,000/- by alleging *inter alia* that the deceased was the Shiksha Karmi and used to earn Rs.16,000/- per month and thus claiming the said amount of compensation under various heads.

4. The Non-applicants have contested the aforesaid claim. Non-applicant No.3, the insurer has contested mainly on the ground that the driver of the offending vehicle was not holding the valid and effective driving licence and, therefore, no liability could be fastened upon it.

5. The Claimants have examined one of their witnesses, while none was examined by the Non-applicants.

6. After considering the evidence led by the Claimants, it has been held by the Claims Tribunal that the alleged accident occurred on 08.09.2017 due to rash and negligent driving by the driver of the offending vehicle, resulting into the sad demise of deceased Bhuwan Singh Kanwar. It held further that the vehicle in question was not being used in violation of the insurance policy as the driver of it was holding the valid and effective driving licence and thus by fastening the liability upon the Insurance Company, awarded total amount of compensation to the tune of Rs.23,38,028/- with 6% interest per annum from the date of filing of the claim petition till its realization.

7. Being aggrieved, Non-applicant No.3 has preferred this appeal. Shri Anil Gulati, learned counsel for the Appellant submits that the Claims Tribunal, while passing the award impugned, has committed an illegality in holding that the driver of the offending vehicle was holding the valid and effective driving licence in order to fasten the liability upon the Insurance Company. It is contended further that at the time of lodging the merg intimation, number of vehicles was not mentioned and even in absence thereof, the Tribunal has erred in holding that the vehicle in question was involved in connection with the alleged accident occurred on 08.09.2017. While inviting attention to the driving licence of the driver of the offending vehicle marked as Ex.A.34 and by moving an application under Order 41 Rule 27 of CPC for production of documentary evidence on record submits that Non-applicant No.1 Kailash Bakde was, in fact, not the driver of the offending vehicle and someone else was driving the same, therefore, the award impugned is liable to be set aside.

8. I have heard learned Counsel for the Appellant and perused the

entire record carefully.

9. From perusal of the record, it appears that the alleged accident occurred on 08.09.2017 when the deceased was going to his house by his motorcycle and at the relevant time, he was dashed vehemently by the driver of the offending vehicle, namely, Kailash Bakde. In order to establish the fact that the driver of the offending vehicle was not holding the valid and effective driving licence, the burden was heavily upon the Insurance Company, however, no evidence as such was adduced by the Insurance Company. In such circumstances, it cannot be held that the driver was not holding the valid and effective driving licence, as alleged by the Appellant/Insurance Company. The Tribunal has, therefore, not committed any illegality in holding that the driver of the offending vehicle was holding the valid and effective driving licence while fastening the liability upon the Insurance Company. As far as the question of identity of Non-applicant No.1, namely, Kailash Bakde, the driver of the offending vehicle, is concerned, I am not impressed with the contention of Shri Gulati, as neither the defence as such was taken by the Insurance Company nor any evidence was led in this regard. In absence of such a plea, an application moved by the learned counsel for the Appellant under Order 41 Rule 27 of CPC is, therefore, liable to be and is hereby rejected and it cannot be held that Non-applicant No.1 Kailash Bakde was not the driver of the alleged offending vehicle, as contended herein for the first time.

10. In view of the foregoing discussions, I do not find any substance in this appeal. The appeal being devoid of merits is, accordingly, dismissed at admission stage itself. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE

Nikita