NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 300 of 2014

1. Tikaram, S/o Sewakram Sahu Aged About 50 Years R/o village Chantipali, P.S. And Tah. Sarangarh, Distt. Raigarh C.G., President And Tractor Owner
2. Tambu @ Tamaradhwaj S/o Dharam Das Aged About 35 Years Occupation- Driver, Caste-Vaishnav, R/o Mauhadodha, P.S. And Tah. Sarangarh, District : Raigarh, Chhattisgarh

---- Appellants /NA 1 and 6

Versus

1. Smt. Shyam Bai, Wd/o Dhansai Aged About 30 Years, Caste-Satnami, Occupatin-Dependant, R/o village Bataupali, Police Chowki- Kosir, P.S. And Tah. Sarangarh, Distt. Raigarh, Chhattisgarh
2. Minor Ashok Kumar S/o Late Dhansai Satnami, Aged About 12 Years
3. Minor Ku. Ashok Bai D/o Late Dhansai Satnami Aged About 10 Years
4. Minor Ku. Dilbai D/o Late Dhansai Satnami Aged About 8 Years
5. Minor Ku. Jagriti D/o Late Dhansai Satnami Aged About 6 Years
6. Minor Avinash S/o Late Dhansai Satnami Aged About 2 Years

   Respondents- 2 to 6 are minors through legal guardian, Mother Smt. Shyam Bai, Wd of Dhansai Satnami

   All are R/o Bataupali, Police Chowki- Kosir, P.S. And Tah. Sarangarh, Distt. Raigarh, Chhattisgarh
7. Jagdish S/o Douram Sahu Occupation- Agriculture And Tractor Owner Member.,P.S. And Tah. Sarangarh, Distt. Raigarh, Chhattisgarh
8. Murit Ram, S/o Dhanau Sahu (since dead) Aged About 45 Years, Through- Lrs- Chherka, S/o Late Murit Ram Sahu, Aged about- 45 Yrs, R/o village Chantipali, P.S. And Tah. Sarangarh, Distt. Raigarh C.G., President And Tractor Owner
9. Gudlu S/o Bhogi Yadav, Aged About 35 Years, Occupation-Agriculturist and Tractor Owner member, R/o village-Chantipali, P.S. And Tah. Sarangarh, Distt. Raigarh C.G., President And Tractor Owner
10. Chandram Sahu Since Dead S/o Janakram Sahu (since dead) Through- Lrs- Aghori, S/o Chandram Sahu, Aged about- 50 Yrs, Occupation- Agriculturist, R/o Village Chantipali, P.S. And Tah. Sarangarh, Distt. Raigarh C.G., President And Tractor Owner
11. United India Insu.Co.Ltd. Through- The Branch Manager, Branch- Raigarh, Chhattisgarh

----Respondents

For Appellants	:	Ms Sharmila Singhai, Advocate
For Respondent-11/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.
28.08.2020

1. Owner and driver of the offending vehicle Tractor have preferred this appeal under Section 173 of the Motor Vehicle Act, 1988 challenging the impugned award dated 12.12.2013 passed in Claim Case- 01 of 2006 by the Additional Motor Accident Claims Tribunal, Sarangarh, District Raigarh (for short, 'Claims Tribunal'), whereby, learned Claims Tribunal partly allowed the application filed under Section 166 of the Act of 1988, awarded Rs.1,75,200/- as compensation and fastened liability upon NA1, Owner and NA6, Driver of offending vehicle ie appellants herein, for satisfying the amount of compensation.

2. Facts relevant for disposal of this appeal are that on 20.06.1997 at about 10 am Dhansai Satnami in search of his missing Ox, reached village Lendra and when he reached Lendra Nala, Tractor bearing No.MP 26 E 5654 along with Trolley, driven by NA6 in a rash and negligent manner, dashed Dhansai Satnami. In the aforementioned accident, Dhansai Satnami suffered grievous injuries and died on the spot. Accident was reported to concerned Police station, based upon which crime was registered against NA6 for offence punishable under Section 304 A IPC.

3. Claimants, who are widow and children of late Dhan Sai, filed an application under Section 166 of the Act of 1988 claiming Rs.7,08,000/- as compensation, mentioning therein that on the date of accident deceased was doing work of agriculture labour and earning Rs.1200/- per month.

4. NA1 to 4 and NA6 jointly submitted their reply to claim application denying the pleadings made therein. They further pleaded that offending vehicle was insured till 11.02.1988 and on the date of accident, NA6, driver of offending vehicle, was having valid and effective driving license to drive the offending vehicle.

5. NA7 /Insurance Company also submitted reply to claim application and denied the pleadings made in the claim application. The photocopies of relevant documents of the offending vehicle have not been filed and there was breach of conditions of Insurance Policy.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record held that NA6 drove the offending vehicle rashly and negligently, which was owned by NA1, and dashed Dhan Sai near Lendra Nala and the deceased died on account of motor accidental injuries suffered by him. Breach of conditions of Insurance Policy could not be proved. Accordingly, awarded Rs.1,75,200/- as compensation and fastened liability upon the appellants herein to satisfy the amount of compensation.

7. Ms Sharmila Singhai, learned counsel for the appellants submits that learned Claims Tribunal erred in arriving at a finding that the appellants failed to prove any document showing that the offending vehicle was insured on 20.06.1997, ie on the date of accident. She also submits that learned Claims Tribunal erred in not considering document placed on record. In this appeal also, along with application under Order 41 Rule 22 of the CPC ie the Motor Acceptance Advice, in which the effective date of

Policy has been shown as 12.02.1997 to 11.02.1998 and the amount of premium has been paid towards it as Rs.1,955/-. It is contended by her that the claims Tribunal has taken Insurance Policy of 2004-05 and had not considered the Motor Acceptance Advice of the offending vehicle. She further submits that this document though available on record, has been completely overlooked by the Insurance Company. The offending vehicle was insured and the deceased being the 3rd party, is fully covered under the policy. Liability for satisfying the amount of compensation is upon the Insurance Company.

8. On the other hand, Shri Dashrath Gupta, learned counsel representing respondent-11/Insurance Company submits that learned Claims Tribunal after considering the documents available on record has rightly passed the impugned award fastening liability upon the appellants, owner and driver of offending vehicle. He submits that the appellants have not placed any document showing that the offending vehicle was insured on the date of accident and failed to place any document by marking Exhibits during the course of recording of their evidence before learned Claims Tribunal. He further argued that learned counsel for the appellants has not shown any reason for not placing the documents filed under Order 41 Rule 27 CPC before the learned Claims Tribunal and to prove the same. The document placed on record at the appellate stage before this Court cannot be accepted as evidence.

9. We have heard learned Counsel for the respective parties and perused the records of appeal as well as claim case.

10. To appreciate the submissions made by learned counsel for the appellant, we have perused the documents available on record in claim case filed by the parties therein in support of their respective cases.

11. Claimants in support of their pleadings, have placed on record the documents of Criminal Case. Copy of the Final Report is filed as Ex.P6, Copy of Seizure memo is filed as Ex.P9 and P10. Perusal of Ex.P9 would show that the Police during the course of investigation, have seized the document related to the offending vehicle from the possession of NA6 ie driver of the offending vehicle on 27.06.1997. The Police in the aforesaid seizure memo has seized driving license, registration and Insurance papers of the offending vehicle. It is also mentioned that the originals of all the copies were seized from the possession of driver. Copy of the vehicle particulars is also filed as Ex.P11. Perusal of the vehicle would show that the vehicle was registered in the name of Tika Ram Sahu. Class of vehicle has been mentioned as "Tractor", and its make is "HMT Limited", year of manufacture is 1997, Chasis No. is 15506 and Engine number is shown as 15767. Payment of premium has been made through cheque bearing No.466594 of SBI, Raigarh. Perusal of Ex.P11 would show that the Chasis number of offending vehicle was 15506 and Engine No.15767, whereas, in Motor Acceptance Advice under the head of Engine No.15506 is mentioned in document (Acceptance Advice) available on record. Appellants along with an application under Order 41 Rule 27 of the CPC again placed on record the same Motor Acceptance Advice to be taken as additional evidence. The Motor Acceptance Advice is a document of the Insurance Company and it is a hand written document. Insurance

Company before the learned Claims Tribunal has not made any specific statement about the nature of document available on record of the Claims Tribunal ie Motor Acceptance Advice issued by the Branch office of respondent-11 / Insurance Company. The respondent Insurance Company before this Court also have not filed any reply to the application filed under Order 41, Rule 22 of the CPC till date though the application was filed on 18.04.2016. A copy of application was served upon the clerk of respondent-11/Insurance Company, as appearing from the receipt dated 18.04.2016 and the application was filed before the Registry of this Court on 20.04.2016.

12. Finding recorded by the learned Claims Tribunal would show that learned Claims Tribunal has only taken note of the copy of Insurance Policy available on record at page No.213 having its validity from 30.03.2004 to 29.03.2005 but has not taken into consideration the document available on record at Pg No.92/127 of the records of learned Claims Tribunal.

13. Under the provisions of Section 168 of the Act of 1988 and Rule 226 of Chhattisgarh Motor Vehicle Rules 1994, it is the duty of the Claims Tribunal to enquire into the material placed on record, and to pass just award. The learned Claims Tribunal has taken note of the Motor Acceptance Advice of the year 1997, which was also placed on record by the claimants, but opined that the different Engine and Chasis numbers have been shown in the document of registration and in the document of Insurance Company. Insurance Company has not placed any other

document on record. The Claims Tribunal failed to consider that Insurance Company has not made out a case that the insured is having two tractors.

14. The document which has been placed on record under Order 41 Rule 22 of the CPC is a document issued by the Insurance Company and payment of premium has been accepted through a cheque but before this Court also the Insurance Company has not replied the application nor disputed the document to have not issued by the Insurance Company or no premium was received.

15. Looking to the fact that there is mention of the Chasis number in place of Engine number as argued by the learned counsel for the appellants and the document is a hand written document of the Insurance Company, we find it appropriate to allow the application filed under Order 41 Rule 22 of the CPC in the larger interest of justice and to remit back this case to learned Claims Tribunal for proving the document filed as Annexure AD1 by the appellants in accordance with law.

16. Accordingly, the appeal is allowed. Impugned award is set aside and the case is remitted back only with a specific purpose of proving the document Annexure AD1, Motor Acceptance Advice as to whether this is with regard to the offending vehicle or not. The appellant as well as respondent-11/Insurance Company will be at liberty to lead additional evidence in support of their claim to prove the Motor Acceptance Advice dated 12.03.1997. After recording evidence of the appellants/Owner, Driver and Insurance Company with regard to the Motor Acceptance

Advice, the learned Claims Tribunal shall pass fresh award within a period of five months from the date of production of certified copy of this order.

17. Records of claim case may be sent back forthwith along with copy of application under Order 41 Rule 27 of the CPC and the document attached to it.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma