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HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 188 of 2014

United India Insurance Company Limited, through its Divisional Manager, Divisional Office-2nd Floor, Gurukripa Towers, Vyapar Vihar Road, Bilaspur, District Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Smt. Pampa Bai Sen, W/o Dukhwaram Sen, aged about 45 years, Permanent Address- Village Chandee, P.S. and Tahsil Suhela, District Balauda Bazar – Bhatapara, Chhattisgarh, Hall Mukam – Kamal Colony, Balauda Bazar
2. Taran Singh Sen, S/o Firanta Sen, aged about 42 years, R/o Purani Basti, Bandhwapara, Near Panchmukhi Hanuman Mandir, Raipur, District Raipur, Chhattisgarh

---- Respondents

M. A. (C) No. 104 of 2014

1. Smt. Pampabai Sen, W/o Dukhwaram Sen, aged about 45 years, Permanent R/o Chandi, Police Station and Tahsil Suhela, District (Revenue and Civil) Balodabazar – Bhatapara, Chhattisgarh
2. Taransingh Sen, S/o Firanta Sen, aged about 42 years, R/o Purani Basti, Bandhwapara, Near Panchmukhi Hanuman, Raipur, Tahsil and District (Revenue and Civil) Raipur, Chhattisgarh

---- Appellants

Versus

United India Insurance Company Limited, Macro Branch Office, near Post Office Station Road, Bhatapara, District (Revenue and Civil) Balodabazar – Bhatapara, Chhattisgarh

---- Respondent

MAC No.188 of 2014

For Appellant : Shri Dashrath Gupta, Advocate
For Respondents : Shri Anand Kesharwani, Advocate

MAC No.104 of 2014

For Appellants : Shri Anand Kesharwani, Advocate
For Respondent : Shri Dashrath Gupta, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, Judge

26.08.2020

1. As both the appeals are arising out of award dated 20.11.2013 passed by the First Additional Motor Accident Claims Tribunal, Balodabazar, District Balodabazar, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Accident Claim Case No.243 of 2011, they are being disposed of by this common judgment.

2. Facts relevant for disposal of these appeals, are that, on 24.07.2011, at about 4.00 pm, Rambha Bai Sen along with her other companions were travelling as pedestrian from Rajim to Raipur during *hindi* calendar month of *Sawan. O*n the way, when they reached near Chhattisgarh Dhaba just ahead town Abhanpur, one motorcycle bearing registration No.CG-04/DZ/5306 (hereinafter referred to as 'offending vehicle') driven by one Hemant Sahu, dashed Rambha Bai Sen from her back side, on account of which, she fell down and suffered grievous injuries over her head and became unconscious, she was taken to District Hospital Raipur. In the aforementioned accident, driver of offending vehicle Hemant Sahu also died. The accident was reported to concerned Police Station, based upon which, crime No.238 of 2011 for offence punishable under Section 304A of IPC was registered against Hemant Sahu, but on account of the death of Hemant Sahu i.e. driver of motorcycle, crime registered against him was closed and closure report was submitted. Rambha Bai Sen took treatment at Ambedkar District Hospital, Raipur from 26.07.2011 to 28.07.2011, thereafter, she was shifted to Lifeworth Super Speciality Hospital, Raipur on 28.07.2011, at about 01.45 pm, but looking to seriousness of injuries, doctors of Lifeworth Super Speciality Hospital, Raipur discharged her on 29.07.2011. Rambha Bai Sen was brought to her village Chandi where she breathed her last on 30.07.2011 at 05.00 am. Last rituals of deceased Rambha Bai Sen was performed at village Chandi.

3. Claimants who are brother and sister of deceased Rambha Bai Sen filed an application under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before learned Claims Tribunal mentioning therein that deceased Rambha Bai Sen was married, but within few months of her marriage, she was deserted and thereafter she took customary divorce from her husband. She was not having any issue/child and claimants are the only legal representatives of deceased. It was further pleaded that deceased sometime lives with her brother (claimant No.2) and sometimes with her sister (claimant No.1), they have filed an application claiming compensation of Rs.8,04,500/-. In the claim application, claimants have impleaded only Insurance Company of offending vehicle. In claim application, details of late Hemant Sahu being driver and owner of offending vehicle has been mentioned and in paragraph-24, it is also mentioned that in the accident, Hemant Sahu also died.

4. Insurance Company submitted its reply to claim application pleading therein that from the spot map (Ex.A-5C), place of accident has been shown as center of the road and according to the facts and circumstances of the case, there is contributory negligence on the part of deceased; insurance of offending vehicle was admitted for a period from 08.07.2011 to 07.07.2012; customary divorce (*chhor-chhutti*) was also denied for want of any document. It was further pleaded that on the date of accident, driver of offending vehicle was not possessing valid and effective driving licence, thereby, there was breach of the conditions of insurance policy. Insurance Company has taken objection with regard to non-impleadment of necessary party.

5. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as five issues for consideration including the issue with regard to accidental death of Rambha Bai Sen with the offending vehicle driven by Late Hemant Sahu, whether the claimants to be legal representatives of deceased, whether Late Hemant Sahu was not possessing valid and effective driving licence.

6. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that Rambha Bai Sen died on account of motor accidental injuries suffered by her due to rash and negligent driving of offending vehicle by Hemant Sahu (deceased), claimants are the legal representatives of deceased, issue of deceased Hemant Sahu was not possessing valid and effective driving licence was not found to be proved and awarded a total sum of Rs.19,540/- as compensation.

7. MAC No.188 of 2014 is filed by the Insurance Company challenging that claimants have not impleaded legal representatives of deceased Hemant Sahu/driver and owner of offending vehicle, as such, claim application itself is not maintainable without fastening the liability upon owner of offending vehicle; Insurance Company cannot be ordered to indemnify the insured; deceased Hemant Sahu was not having valid and effective driving licence but was holding the licence to driver 'Light Motor Vehicle' only; claimants are not dependent upon Late Rambha Bai Sen, hence, claim application seeking compensation was not maintainable and Insurance Company ought to have been exonerated from its liability to satisfy the amount of compensation, whereas MAC No.104 of 2014 is filed by the claimants challenging that learned Claims Tribunal erred in not awarding just and proper amount of compensation treating the claimants to be legal representatives and dependent upon deceased Rambha Bai Sen; learned Claims Tribunal erred in recording a finding that claimants have failed to prove that Rambha Bai Sen died on account of motor accidental injuries without considering that deceased suffered grievous injuries and continuously took treatment at

Ambedkar District Hospital, Raipur and thereafter looking to seriousness of injuries, she was brought to Lifeworth Super Speciality Hospital, Raipur and thereafter she died. Learned Claims Tribunal erred in not awarding any amount of compensation towards funeral expenses, loss of estate, dependency, pain and suffering etc.

8. Shri Dashrath Gupta, learned counsel for the Insurance Company submits that learned Claims Tribunal erred in not considering that claim application itself is not maintainable in absence of owner or legal representatives of owner of offending vehicle in party array. He further points out that learned Claims Tribunal erred in not considering that driving licence of Late Hemant Sahu could not be proved and wrongly shifted the burden to prove the driving license upon the Insurance company. It is contended that claimants were not dependent upon deceased late Rambha Bai Sen, therefore, they are not entitled for any amount of compensation. It is further contended that claimant No.1 was married sister of deceased and residing separately in her matrimonial house situated at Kamal Colony, Baloda Bazar; adding that, she did not enter into the witness box to prove her claim in the facts and circumstances of the case. It is argued that deceased Hemant Sahu was not possessing licence authorizing him to driver 'Motorcycle', but was possessing licence authorizing him to drive 'Light Motor Vehicle' only and Insurance Company cannot be held liable to satisfy the amount of compensation in absence of valid and effective driving licence. It is pointed out that Insurance Company filed an application under Order 41 Rule 27 of the CPC for taking additional documents/additional evidence on record and along with it, they have filed letter written by Investigator of Divisional Manager, United India Insurance Company Limited, Raipur mentioning therein that driving licence of deceased Hemant Sahu was found not valid to driver 'Motorcycle' because under the licence, authorization is only to drive 'Light Motor Vehicle'. He lastly submits that for the foregoing reasons, impugned award is liable to be set aside.

9. Per contra, Shri Anand Kesharwani, learned counsel representing the claimants submits that Insurance Company has not made any objection before learned Claims Tribunal with regard to maintainability of claim application. He points out that though Insurance Company has pleaded that deceased Hemant Sahu/driver and owner of offending vehicle was not possessing valid and effective driving licence, but they have not made any effort to prove the same; driving licence of deceased Hemant Sahu was seized by the Police during the course of investigation along with other documents of offending vehicle and photocopy of driving licence, which is available on record shows that authorization of deceased was for driving 'Motorcycle and Light Motor Vehicle'. He further submits that application under Order 41 Rule 27 of the CPC is liable to be dismissed because in the application, no cogent reason has been shown for not placing the documents before learned Claims Tribunal at the time of recording of evidence, though the documents which are placed on record along with application under Order 41 Rule 27 of the CPC is dated 16.07.2012 i.e. much before the date of start of evidence before learned Claims Tribunal. It is contended that in an appeal filed by the claimants, they have very specifically pleaded that in the First Information Report (Ex.A2-C), it is mentioned that Hemant Sahu was resident of Boriyakala, dashed unknown woman from his motorcycle who suffered head injury and sent for her treatment from 108 Ambulance. It is further contended that claimants have filed Ex.A6-C, which is an information of Lifeworth Super Speciality Hospital, Raipur mentioning the name of injured and also the manner in which accident took place. The information was supplied by the employee of the Hospital to Police Station, Saraswati Nagar. After investigation, Police submitted final report (Ex.A1-C) under Section 173 of the Cr.P.C., in which, along with other documents, Police has also enclosed documents of memo of information issued by Lifeworth Super Speciality Hospital, Raipur, which is in the name of Smt. Rambha Soni, but learned Claims Tribunal erred in arriving at a finding that claimants have failed to prove that Rambha Bai Sen died on account of motor accidental injuries. He pointed out that Police seized the copy of driving licence of Late Hemant Sahu along with seizure of R.C. Book and Insurance Policy of motorcycle from Premlal Sahu, which is available on record, in which, it is mentioned that Hemant Sahu was authorized to drive 'Motorcycle and Light Motor Vehicle'. He lastly pointed out in the facts and circumstances of the case that claimants being legal representatives of deceased Rambha Bai Sen are entitled for the amount of compensation.

10. We have heard learned counsel appearing for the respective parties and perused the record carefully.

11. So far as the appeal filed by the Insurance Company is concerned, learned counsel for the Insurance Company raising a ground that claim application itself is not maintainable as legal representatives of owner of the offending vehicle were not impleaded in the party array and further that driving licence thereafter filed by the Insurance Company is not a valid and effective driving licence of deceased Hemant Sahu authorizing him to drive 'Motorcycle' but it is only for 'Light Motor Vehicle'.

12. Perusal of reply filed by Insurance Company, it is apparent that Insurance Company has not raised any objection with regard to maintainability of claim application before the learned Claims Tribunal, but has raised an objection with regard to negligence on the part of deceased herself, the accidental injuries over the deceased and offending vehicle was being used on the date of accident in breach of the conditions of the Insurance Policy. They have pleaded that on the date of accident, deceased Hemant Sahu/driver of offending vehicle was not possessing valid and effective driving licence. Even after taking a defence that driver of offending vehicle was not possessing valid and effective driving licence, has not produced any evidence before learned Claims Tribunal, particularly, when copy of driving licence of Hemant Sahu was available on record at page 48 of the Claims Tribunal's record. In copy of licence, tick-mark over 'Motorcycle with Gear' and 'Light Motor Vehicle' appears and below that, under the column of motor vehicle description, it is mentioned 'Motorcycle and Light Motor Vehicle Only'. The Insurance Company has failed to prove before learned Claims Tribunal that licence was not valid, but before this Court, they have moved an application under Order 41 Rule 27 of the CPC after about five years of filing of the appeal enclosing the information supplied by Investigator of Insurance Company along with Licensing Authority issued on 12.07.2012.

13. Taking into consideration the nature of additional evidence, which the Insurance Company has brought into record before this Court along with an application under Order 41 Rule 27 of the CPC and its impact over just decision of the case, in the larger interest of justice, we find it appropriate to allow the application under Order 41 Rule 27 of the CPC and to take additional documentary evidence on record. The claimants have not arrayed legal representatives of owner of the offending vehicle as party respondents, but only insurer of offending vehicle, but looking to the fact that there is difference of driving licence available on record and verified by the Insurance Company, we find it appropriate to remit back the case to the learned Claims Tribunal to decide the issue of driving licence on the basis of copy of driving licence available on record and documentary evidence placed on record by the Insurance Company along with application under Order 41 Rule 27 of the CPC.

14. So far as the appeal filed by the claimants are concerned, learned Claims Tribunal has erred in not considering the documentary evidence and arriving at a finding that claimants have failed to prove the death of deceased Rambha Bai Sen on account of motor accidental injuries. Learned Claims Tribunal had also not considered the records of claim case in its entirety, particularly, documentary evidence of criminal case, which are placed on record along with information supplied by Lifeworth Super Speciality Hospital, Raipur to the Police with regard to accidental injuries suffered by deceased Rambha Bai Sen. Learned Claims Tribunal when once arrived at a finding that Rambha Bai Sen suffered injuries in a motor accident with the offending vehicle driven by Hemant Sahu then erred in not considering the death of Rambha Bai Sen on account of motor accidental injuries for want of evidence. The said finding recorded by learned Claims Tribunal is set aside.

15. In view of the above discussion, we find it appropriate to set aside the impugned award and to remit back the case to learned Claims Tribunal for deciding the claim application afresh. Insurance Company as well as claimants will be at liberty to amend their pleadings, led further additional evidence in support of their claim. The claimants may also move an appropriate application for impleadment of legal representatives of deceased owner of motorcycle. The learned Claims Tribunal shall also consider the issue with regard to entitlement of claimants for award of compensation in the light of judgment passed by Hon'ble Supreme Court in case of **Manjuri Bera (Smt.) v. Oriental Insurance Company Ltd. and Another** reported in **(2007) 10 SCC 643** and recently in case of **National Insurance Company Limited v. Birender and Others** reported in **AIR 2020 SC 434.**

16. In the result, both the appeals (MAC No.188 of 2014 and MAC No.104 of 2014) are allowed. Impugned award is set aside and the matter is remitted back to the Court of First Additional Motor Accident Claims Tribunal, Balodabazar, District Balodabazar, Chhattisgarh in aforementioned terms. Since the accident is of the year 2011, we direct the First Additional Motor Accident Claims Tribunal, Balodabazar, District Balodabazar, Chhattisgarh to decide the Accident Claim Case No.243 of 2011 as expeditiously as possible.

17. Original record of Accident Claim Case No.243 of 2011 be sent back forthwith along with copy of this judgment.

Sd/- Sd/-

(P. R. Ramachandra Menon)
Chief Justice

(Parth Prateem Sahu)
Judge

Yogesh