NAFR

HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 92 of 2015

Bharatlal (B.A.) Dhruve S/o Baheranlal Dhurve, aged about 56 years, R/o Motipur, Ward No.5, Distt. Rajnandgaon (C.G.).

---- Appellant

Versus

1. Smt. Devki Wd/o Late Dakvar Netam, aged about 22 years,
2. Chintaram, S/o Late Pachkaud, aged about 60 years,
3. Amarvati W/o Chintaram, aged about 55 years,

   All are R/o Village Patpar, Tahsil/Thana Dongargarh, Distt. Rajnandgaon (C.G.).
4. Branch Manager, Reliance General Insurance Co. Ltd. Branch Office Ravi Bhavan, Jai Stambh Chauk, Room No.412/413, Distt. Raipur (C.G.).

---- Respondents

For Appellant : Shri Samir Singh, Advocate
For Respondents 1 to 3 : Shri Parag Kotecha, Advocate
For Respondent No.4 : Shri Rohitashava Singh, 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

11/01/2021

1. Owner/Non-applicant No.1 has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the correctness and sustainability of impugned award dated 13/08/2014 passed by the Additional Motor Accident Claim Tribunal, Link Court Dongargarh, District Rajnandgaon, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.48 of

2012, whereby learned Claims Tribunal allowed application for grant of compensation in part and awarded Rs.5,50,000/- as total compensation in a fatal accident case. While exonerating the Insurance Company from its liability, fastened liability upon appellant/non-applicant No.1 to satisfy the amount of compensation.

2. Brief facts relevant for disposal of this appeal, are that, on 01/07/2012, Dakvar was travelling on a Bajaj Discover motorcycle along with his friend Jitendra Gond from village Chhuriya to village Patpar. On the way near Baputola cross bridge, another motorcycle bearing No.CG-08/E/9389 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 coming from opposite direction, dashed the motorcycle of Dakvar and caused accident. In the said accident, Dakvar suffered grievous injuries over his head and waist. He was taken to the Hospital, where during the course of treatment, he succumbed to the injuries suffered by him.

3. Claimants who are widow and parents of deceased Dakvar filed an application under Section 166 of M.V. Act seeking compensation of Rs.27,50,000/- pleading therein that on the date of accident, deceased was working as driver, earning Rs.6,000/- per month and Rs.50/- daily allowance.

4. Non-applicant No.1/owner of offending vehicle submitted reply to claim application denying the pleadings made with regard to rash and negligent driving of non-applicant No.1. It was pleaded that accident was a result of negligence on the pat of deceased himself.

Three persons were travelling on motorcycle driven by deceased and they were under the influence of liquor. Non-applicant No.1 also suffered grievous injuries in the accident. He suffered injuries on his leg, he took treatment for about two months as inpatient in the Hospital. On the date of accident, offending vehicle was insured with non-applicant No.2/Insurance Company, as such, liability, if any, to satisfy the amount of compensation would be upon non-applicant No.2.

5. Non-applicant No.2/Insurance Company submitted reply to claim application and pleaded that accident was a result of rash and negligent driving of driver of motorcycle, on which, deceased was travelling. Non-applicant No.1 was not possessed with valid and effective driving licence. Three persons were travelling on the motorcycle, on which, deceased was travelling, as such, non-applicant No.1 could not be held liable for the accident. The offending vehicle was being driven in breach of policy conditions.

6. On appreciation of pleadings and evidence brought on record by respective parties, learned Claims Tribunal held that Dakvar died on account of motor accidental injuries suffered by him due to rash and negligent driving of motorcycle by non-applicant No.1; there was breach of conditions of insurance policy issued for offending vehicle; contributory negligence was not found to be proved and awarded Rs.5,50,000/- as total compensation. While exonerating the Insurance Company from its liability, fastened liability upon non-

applicant No.1/owner of offending vehicle to satisfy the amount of compensation.

7. Shri Samir Singh, learned counsel for appellant submits that learned Claims Tribunal while exonerating the Insurance Company has primarily taken into consideration that photocopy of cover note is only produced and original of the cover note has not been placed on record, hence, disbelieved the cover note. He further submits that appellant/non-applicant No.1 inadvertently could not able to place on record original of the cover note issued by the Insurance Company, which appellant has filed along with covering memo before this Court which bears the signature as well as hallmark sticker on it. The cover note was issued on 25/05/2012, whereas accident took place on 01/07/2012, which is within the validity period of cover note i.e. 60 days. Insurance Company has not produced any reliable and admissible piece of evidence to discard the copy of cover note placed on record in evidence by the appellant. The copy of cover note is placed on record as Ex.P/1 wherein hallmark sticker appearing in the bottom of cover note. It is contended that one opportunity may be given to appellant/non-applicant No.1 to adduce evidence with regard to issuance of cover note by producing original of the cover note before learned Claims Tribunal.

8. Per contra, Shri Parag Kotecha, learned counsel for non-applicants No.1 to 3/claimants however supported the impugned award with regard to quantum of compensation, but have supported the

contentions of leaned counsel for the appellant/non-applicant No.1 with regard to exoneration of Insurance Company from its liability to satisfy the amount of compensation.

9. Shri Rohitashava Singh, learned counsel for respondent No.4/Insurance Company submits that learned Claims Tribunal is justified in passing the impugned award, exonerating the Insurance Company in absence of any admissible piece of evidence with regard to issuance of cover note or policy for offending vehicle. It is contended that admittedly Ex.P/1 placed on record before Claims Tribunal is only a photocopy, which could not have been marked exhibited and learned Claims Tribunal has correctly arrived at a finding that photocopy of cover note placed on record cannot be exhibited in evidence. It is further contended that Insurance Company has examined Abhishek Singh (NAW-1), Manager Legal, who in his evidence has stated that premium has not been received for offending vehicle and placed a copy of print-out as Ex. D/1 from 01/05/2012 to 30/05/2012. It is contended that impugned award does not call for any interference.

10. We have heard learned counsel for the respective parties.

11. The only short ground raised by learned counsel for the appellant/non-applicant No.1 is that the learned Claims Tribunal erred in disbelieving the cover note (Ex.P/1) only on the ground that it is only a photocopy.

12. Taking into consideration the entire facts of the case and the law

with regard to marking of documents as exhibit, learned Claims Tribunal is justified in disbelieving the document (Ex.P/1) being only it to be a photocopy. Appellant/non-applicant No.1 has placed on record application under Order 41 Rule 27 of the CPC for taking additional document on record before this Court on 19/01/2015, whereas appeal has been filed on 06/01/2015. The application under Order 41 Rule 27 has been filed within 30 days of filing of appeal challenging the award.

13. Perusal of original cover note would show that it bears signature of the authorized signatory and hallmark sticker is affixed on it. Perusal of evidence of Abhishek Singh (NAW-1) would also show that he has not stated anything with regard to serial number of cover note, which is clearly appearing on Ex.P/1. Learned Claims Tribunal has disbelieved the document Ex.P/1 only because that it was a photocopy.

14. The proceedings under the M.V. Act is in the nature of enquiry, entire provisions of Code of Civil Procedure, 1908 do not apply. The object of M.V. Act is to award just compensation, which means the compensation to be just for parties to both the sides. In the case at hand, there are documents placed on record along with covering memo and application under Section 41 Rule 27 of the CPC. It is appearing from the document that appellant/non-applicant No.1 has paid premium for issuance of insurance policy, for which, authorized person has issued cover note on 25/05/2012, whereas accident took

place on 01/07/2012 within the validity period of cover note as prescribed under Rule 142 of the Central Motor Vehicles Rules, 1989. The provisions of Section 142 mandates that insurer shall issue a policy of insurance before the date of expiry of cover note.

15. Taking into consideration entire facts and circumstances of the case, Rule 142 of Rules of 1989 and prayer made by learned counsel for the appellant/non-applicant No.1 that as appellant/non-applicant No.1 is having in his possession original cover note issued for offending vehicle which was valid on the date of accident and original of which is filed in this appeal, we find it appropriate to set aside the finding recorded by learned Claims Tribunal with regard to issue No.2 that there was absence of insurance policy for fastening the liability upon non-applicant No.1/appellant and remit back the case for fresh consideration of the Claims Tribunal because original cover note produced by the appellant/non-applicant No.1 before this Court is required to be proved by examining witnesses, which is not possible in the proceedings before this Court.

16. We also make it clear that impugned award is set aside only to the extent of fastening of liability upon the appellant/non-applicant No.1 while deciding issue No.2. We are not interfering with the finding recorded by learned Claims Tribunal with regard to quantum of amount of compensation as the claimants have not challenged the impugned award.

17. Accordingly, the appeal is allowed. Impugned award is set aside

only to the extent of fastening of liability upon the appellant/non-applicant No.1 and the matter is remanded back to the Claims Tribunal with a direction to decide the issue No.2 afresh in accordance with law, after providing adequate opportunity of hearing to the parties. The parties will be at liberty to adduce additional evidence, if any, to prove the issuance of cover note in favour of the appellant/non-applicant No.1 of offending vehicle. Since the accident is of the year 2012, we direct learned Claims Tribunal to decide Claim Case No.48 of 2012 as expeditiously as possible, preferably within period of five months from the date of receipt of certified copy of this judgment.

18. Original record of Claim Case No.48 of 2012 be sent back forthwith along with copy of this judgment. Registry is directed to return back the original cover note filed by appellant/non-applicant No.1 along with covering memo dated 25/06/2020 after keeping photocopy of the cover note in record of this appeal.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh