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Single Bench

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A.(C) NO. 593 / 2014 (S.B.)

APPELLANT (INSURER)	:		The Oriental Insurance Co.Ltd., Kampthi Line, Rajnandgaon, Tahsil & Distt. Rajnandgaon-(C.G.)
	Versus		
RESPONDENTS (CLAIMANT)	:	1.	Smt. Dashoda Bai, Aged 42 years, W/o Shri Kunwar Singh Dhurve, Caste – Gond, R/o Village Kanda Para (Kharhoda Khurd), P.S. & Tahsil – Bodla, District – Kabirdham-(C.G.)
DRIVER-OWNER		2.	Dilchand Mangeskar, Aged 28 years S/o Shri Mahesh Das, R/o Village – Khairwar, P.S. – Piperia, Tahsil & District – Kabirdham-(C.G.)

R.No. 593/14
Presented by Shri Anand Kr Gupta
dated 16.6.14

MISC. APPEAL U/S 173 OF THE MOTOR VEHICLES ACT 1988

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Single Bench: Hon'ble Shri Justice P. Sam Koshy)

M. A. (C) No. 593 of 2014

Appellant The Oriental Insurance Co. Ltd.

VERSUS

Respondents Smt. Dashoda Bai and another

Present: Shri Raj Awasthi, counsel for the appellant.

ORAL ORDER
(24.12.2014)

By way of the instant appeal under Section 173 of Motor Vehicles Act the appellant Insurance Company has challenged the award dated 14.03.2014 passed by the Motor Accident Claims Tribunal, Kabirdham (Kawardha) in M.A.C.C. No.03/11.

2. Facts leading to the instant appeal are that the claimant before the Tribunal had filed a claim application under section 166 of Motor Vehicles Act seeking compensation for the grievous injuries sustained by her from the accident that took place on 26.08.2008. According to the claimant/respondent No.1, on the date of incident when she was returning to her village from Raipur, a Jeep bearing registration No. CG09 ZD 5027 which was owned by respondent No.2 and was insured with the present appellant dashed against the Jeep in which she was travelling as a result of which she sustained grievous injuries. It is pertinent to mention that at the relevant point of time the vehicle was being driven by the owner of the said Jeep i.e.

respondent No. 2.

3. The Tribunal after conclusion of the pleadings and recording of the evidences vide impugned award dated 14.03.2014 held that the claimant/respondent No.1 is entitled for compensation of Rs.70,750 along with interest @ 7.5% per annum from the date of filing of the application till realization. The Tribunal further held that respondent No.2 who was the owner and driver of the offending vehicle and the present appellant Insurance Company shall be jointly or severally liable for payment of compensation and also directed to pay the compensation within a period of two months failing which the amount shall carry interest @ 9 %.

4. It is this award dated 14.03.2014 which is put to challenge by the Insurance Company in the instant appeal.

5. The sole ground raised by the counsel for the appellant for challenging the impugned award in the instant appeal is that the driver of the offending vehicle was not having a valid license for driving a public passenger carrying vehicle and at the relevant time the driver was having a license to drive only LMV and therefore the liability of the Insurance Company for payment of compensation deserves to be absolved with. Counsel for the appellant submits that it is a case where the driver of the offending vehicle who also happens to be the owner was having a valid license from 16.03.2001 to 18.09.2011 for driving a LMV and in the instant case, the accident took place on 26.08.2008 and therefore at the relevant time, the driver was only having a permission to drive a LMV. He further submits that subsequent to the date of accident, the owner and driver of the vehicle got another endorsement made on the driving license to the effect that he has also been permitted to drive transport vehicle w.e.f. 19.09.2008 which according to the counsel for the appellant, prima facie, establishes the fact that at the time of accident the driver was not having a valid driving license for operating a transport vehicle.

6. However, on perusal of the record particularly the award passed by the Tribunal it is clear that the Insurance Company has not been able to adduce any evidence of the concerned RTO to establish the fact that whether the driver/owner of the offending vehicle at the relevant point of time had a valid license or not.

7. Even otherwise, the matter is no longer *res integra* on account of the fact that the Co-ordinate Bench of this High Court in the case of Naresh Ku. Sahu v. Smt. Kumari Sahu and Others reported in 2014 (2) C.G.L.J. 232 relying upon a series of decisions of the Supreme Court has held that if the driver/owner at the relevant point of time was having a license for driving a LMV and that the vehicle involved in the accident happens to be a LMV, the Insurance Company cannot be absolved of its liability for payment of compensation. In view of the decision rendered by the Co-ordinate Bench of this High Court in the case of Naresh (Supra) which has subsequently also been relied upon by this Bench in the case of Oriental Insurance Company Limited v. Niraj Dani and others in M.A.(C) No. 11 of 2007 dated 28.10.2014, this Court is of the opinion that the grounds raised by the counsel for the appellant are not sustainable and the appeal being devoid of merit deserves to be and is accordingly rejected.

8. However, the period of time for depositing the entire amount is further extended for another period of 45 days from today and in the event, the Insurance Company fails to deposit the awarded amount within 45 days, the penal interest @ of 9% awarded by the Tribunal shall remain in tact.

Sd/-
P.Sam Koshy
Judge