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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal No.1329 of 2005

Oriental Insurance Company Limited through its Branch Manager, Branch Office, Ambikapur, District Surguja, Chhattisgarh

---- Appellant

versus

1. Chaitu alias Ram Narayan, son of Dallu, aged 38 years, resident of Gram Jhilmili, Police Station Bhaiyathan, Tahsil Surajpur, District Surguja, Chhattisgarh
2. Santosh Kumar Singh, son of Bechuram, aged 32 years, resident of Gram Chandia, P.O. Patna, District Koriya, Chhattisgarh
3. Ishwar alias Nanhu, son of Kawal Singh, aged 17 years (After amendment 19 years), resident of Gram Darripara, Police Station Jhilmili, District Surguja, Chhattisgarh

---- Respondents

For Appellant	:	Shri Abhishek Sinha and Shri Ghanshyam Patel, Advocates
For Respondent No.3/Driver	:	Ms. Neha Verma, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

19.8.2016

1. This appeal by the Insurance Company is directed against award dated 30.9.2004 passed in Claim Case No.41 of 2003 by Third Additional Motor Accidents Claims Tribunal, Surajpur (Fast Track Court), District Surguja, whereby the Tribunal awarded compensation for a sum of Rs.55,000/- in favour of the Claimant along with interest holding the Insurance Company liable to pay the same.

2. The main ground of challenge to the award passed by the Claims Tribunal taken by Appellant Insurance Company is that the driver of the vehicle was a minor and could not have held a valid driving licence

and, therefore, the Insurance Company is entitled to recover the amount which has been directed it to pay from the owner of the vehicle.

3. The Claims Tribunal rejected the contention of the Insurance Company on the ground that the Insurance Company has failed to lead any evidence to prove that the driver of the vehicle was a minor at the relevant time.

4. It is not disputed that an offence was registered against the driver under Sections 279 and 337 of the Indian Penal Code (First Information Report, Ex.P-2) and he was prosecuted thereunder. In the said criminal proceedings, the stand of the driver was that he was a minor and juvenile and, therefore, he could not be tried in a regular Court and should be tried by the Juvenile Justice Board. It is also not disputed that the driver was tried by the Juvenile Justice Board.

5. I fail to understand how a party can take two diametrically opposite stands. While facing criminal trial, the driver took the plea that he was a juvenile, but while appearing in the proceedings before the Claims Tribunal, he took stand that he was a major and held a valid driving licence at the relevant time. These two stands cannot exist simultaneously. The driver having taken advantage of the fact that he was a minor, has been tried by the Juvenile Justice Board and dealt with in accordance with law. He was a minor and, therefore, he could not have held a valid driving licence. He may have obtained the valid driving licence by fraud by giving false date of birth and, therefore, the valid driving licence obtained fraudulently cannot come to his aid. The owner of the vehicle is cousin of the driver.

6. Keeping in view all these factors, I am clearly of the view that this is a fit case in which the Insurance Company is entitled to recover the

amount paid by it from the owner of the vehicle. For this reason, the Insurance Company will not have to file a separate proceeding and it can recover the amount of compensation along with the interest paid by it by filing a certificate proceeding under Section 174 of the Motor Vehicles Act.

7. The appeal is disposed of in the aforesaid terms.

Sd/-
(**Deepak Gupta**)
CHIEF JUSTICE

Gopal