NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 324 of 2010

1. Rathulal S/o Salikram, aged about 35 years, occupation Driver, R/o Churela, Police Station Bilaigrh, District Raipur, C.G.

2. Yogesh Banjare, aged about 45 years, R/o Kasdol, Police Station Bilaigarh, District Raipur, C.G.

---- Appellants

Versus

1. Dhaniram Varman S/o Yadram, aged about 36 years, Caste Satnami, R/o village Parsada (Hasaud), Tahsil Jaijaipur, District Janjgir-Champa, CG

2. The New India Insurance Co. Ltd. Branch Office Balauda Bazar, Raipur, CG

---- Respondents

For Appellants	:	Shri Suresh Verma, Advocate
For Respondent No.2	:	Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

05/10/2016

This is an appeal preferred under Section 173 of the Motor Vehicle Act by the driver and the owner of the vehicle involved in the accident against the order dated 26.10.2009 passed by the Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-Champa in Claim Case No. 44 of 2007.

2. Brief facts relevant for adjudication of the present case is that the accident took place on 04.12.2006 by a truck bearing registration no. CG 04J 3542 belonging to appellant no.2 driven by appellant no.1. From the said accident the claimant Dhaniram Varman sustained grievous injuries on account of which he was hospitalized. Subsequently, the matter was put before the Additional Motor Accident Claims Tribunal (hereinafter referred as “the Tribunal”), Sakti, District Janjgir-Champa in Claim Case No. 44 of 2007.

3. The learned Tribunal vide its order dated 26.10.2009 taking into consideration the evidence which was brought on record reached to the conclusion that the injured would be entitled for receiving compensation of Rs. 1,06,414/- with 6% annual interest from the date of filing of the claim application till realization of the total amount. While passing the award the learned Tribunal also reached to the conclusion that since there was a breach of policy condition in as much as the driver of the vehicle was not having a valid licence to drive the truck and the alleged document which was produced before the Tribunal showing the driving licence was in fact a fake licence which was proved by the witness of the Insurance Company as well as by the witness of the concerned Regional Transport Office from where the driving licence is alleged to have been issued. Thus, the liability was saddled upon the owner of the vehicle and it was directed that the Insurance Company shall have the liberty to pay and recover from the appellants herein.

4. It is this award dated 26.10.2009 which has been put to challenge by way of the instant appeal.

5. Counsel for the appellants submits that the appellant-owner in all bona fide was ensured that the driver had a valid licence and therefore the owner cannot be saddled the responsibility of any breach of policy condition. He further submits that the observation of the Tribunal for pay and recover is not proper and the entire liability of payment of compensation in fact ought to have been fastened upon the Insurance Company.

6. However, a perusal of the record would show that it was only the driver who has been examined before the Court below. So far as the owner is concerned, he has not appeared before the Court below nor has he substantiated his defence in any manner nor has he tried to make a statement before the Court below that he had acted bonafidely while engaging the driver Rathulal. From the record it is also reflected that the Insurance Company led its evidence to show that the licence issued to the driver was a fake licence which was also proved by the witness who had appeared on behalf of the Regional Transport Office, Bilaspur showing that no such licence was issued on the number which is reflected in the licence produced by the driver.

7. From the finding of the Tribunal it is evidently clear that the owner could not establish before the Tribunal that he had bonafidely engaged the driver after verifying of his having a driving licence or not. Since the owner has not given any evidence before the Tribunal nor has he been able to extract any material facts from the witnesses of Regional Transport Office as well as the Insurance Company, there is no reason to disbelieve the said witnesses. In the absence of any substantial evidence in favour of the appellant-owner showing that he had bonafidely engaged the driver, this Court finds it difficulty to interfere with the finding of the Tribunal.

8. Thus, the instant appeal being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola