NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 707 of 2010

Murari Sahu S/o Shri Sonai Ram, aged about 30 years, R/o village Manpur, Tehsil Surajpur, District Sarguja, C.G.

---- Appellant

Versus

1. Basant Lal Jaiswal S/o Lt. Shri Salik Ram, aged about 45 years, R/o village Mehangai, Tehsil Surajpur, District Sarguja, CG
2. Indirawati W/o Shri Basant Lal Jaiswal, aged about 42 years, R/o village Mehangai, Tehsil Surajpur, District Sarguja, CG
3. Roop Narayan S/o Nanak Ram, aged about 35 years, R/o village Kuruwa, Kenapara, Police Station Bishrampur, Tehsil Surajpur, District Sarguja, CG
4. The Oriental Insurance Company through Branch Manager, Ambedkar Chowk, Manendragarh Road, Ambikapur, District Sarguja, CG

---- Respondents

For Appellant	:	Shri Surfaraj Khan, Advocate
For Respondents 1 & 2	:	Shri Vaibhav Goverdhan, Advocate
For Respondent no.3	:	None
For Respondent no.4	:	Shri R. N. Pusty, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

05/10/2016

The present appeal has been preferred by the owner of the vehicle involved in the accident challenging the order dated 18.03.2010 whereby the liability of the Insurance Company has been exonerated and the liability for payment of compensation has been fastened upon the owner.

2. Counsel for the appellant submits that the issue involved in the present case is squarely covered by the decision of the Hon’ble Supreme Court in the case of **S. Iyyappan v. United India Insurance Co. Ltd** reported in **(2013) 7 SCC 62**. According to the counsel for the appellant, some of the undisputed facts in the instant case are that the vehicle involved in the present case was a mini bus bearing registration No. CG 10/ZA-0128 which met with an accident on 19.01.2007 resulting in the death of Anil Kumar Jaiswal, the son of respondents 1 & 2. Respondents 1 & 2 preferred a claim application under Section 166 Motor Vehicles Act seeking for compensation on account of the death of their son. The Tribunal vide impugned award dated 18.03.2010 allowed the same and ordered for payment of compensation to the tune of Rs.2,20,000/- along with interest @ 9% per annum from the date of filing of the application.

3. Counsel for the appellant further submits that undisputedly the driver i.e. respondent no.3 in the present case who was driving the vehicle at the time of accident was having a licence valid for a light motor vehicle. As per the Motor vehicles Rule, the light Motor vehicles are those vehicles of which the laden weight is upto 7,500 Kg. whereas in the instant case the laden weight of the vehicle was 5,300 Kg. Thus, there is no dispute that the vehicle involved in the instant case was a light motor vehicle.

4. According to the counsel for the appellant, the only ground for which the liability of the Insurance Company has been discharged is that there was no endorsement in the licence of the driver i.e. respondent no.3 for operating a commercial vehicle as the mini bus involved in the accident was being used for commercial purpose. Thus, the Tribunal accepting there to be a breach of policy condition has exonerated the Insurance Company from the liability of payment of compensation.

5. Counsel for the appellant relying upon the decision of the Supreme Court in the case of S. Iyyappan (Supra) submits that the issue involved in the instant case is no longer *res integra* as it has already been settled by the Supreme Court that only on account of the driver not being able to obtain an endorsement in the licence to drive a commercial vehicle, the Insurance company cannot be exonerated from its liability and it has to indemnify the owner in case of an accident occurred.

6. This Court has no hesitation in holding that the present appeal is squarely covered by the decision of the Supreme Court in the case of S. Iyyappan (supra). This High Court also in M.A. No. 560 of 2001 following the said case of S. Iyyappan (Supra) has taken the similar stand.

7. Accordingly, the instant appeal stands allowed to the extent that the liability of payment of compensation as awarded by the Tribunal shall be upon the Insurance Company and there shall be a condition for pay and recover of the said compensation as has been held in the case of S. Iyyappan (supra).

8. The impugned order thus stands modified to that extent and the present appeal is allowed.

Sd/-
JUDGE

Bhola