

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 745 of 2009**

M/s. Rajat Enterprises, Partner Mahaveer Golechha, First Floor,
Naveen Bazar, Phool Chowk, Raipur, Chhattisgarh

---- Appellant

Versus

1. Mukesh Chowdhari, S/o. Bhamchand Choudhari, R/o. Hanuman Nagar, P.S. Purani Basti, Raipur, Chhattisgarh
2. I.C.I.C.I. Lombard General Insurance Company Limited, Lal Ganga Shopping Mall, Raipur, District Raipur, Chhattisgarh
3. Bharat Lal Verma, S/o. Maya Ram Verma, R/o. Tarun Nagar, Dangania, P.S. D.D. Nagar, Raipur, Tahsil and District Raipur, Chhattisgarh

----Respondents

For Appellant	:	Mr. S.S. Rajput, Advocate
For Insurance Company	:	Mr. Sourabh Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

19/09/2017

1. Present is an appeal under Section 173 of Motor Vehicles Act assailing the award dated 03.01.2009, passed by the 8th Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh, in Claim Case No. 44/2008. Vide the impugned award the Tribunal has passed an award of Rs.1,21,000/- with interest @ 7.5% per annum from the date of application.
2. While passing the award the Tribunal has fastened the liability upon the owner and driver exonerating the Insurance Company. The Insurance Company had taken two grounds disputing the liability part i.e. the driving license of the driver of the offending vehicle to be fake, and the vehicle involved in the accident being a transport vehicle and the driver at the relevant point of time had a license of a Light Motor Vehicle with no endorsement of permission to drive a transport vehicle.
3. The first contention of the Insurance Company before the Tribunal was that the license of the driver being fake but could not be proved

by the Insurance Company before the Tribunal. However, since the license did not have proper endorsement of permission to drive the transport vehicle, the Insurance Company was exonerated of its liability and the responsibility was fastened upon the owner and driver. The present is an appeal by the owner challenging the liability which has been fastened upon him.

4. The issue involved in the case stands covered by the recent decision of the Larger Bench of the Hon'ble Supreme Court, reported in AIR 2017 S.C. 3668, in the case of ***"Mukund Dewangan vs. Oriental Insurance Company Limited"*** i.e. Civil Appeal No. 5826/2011, decided on 03.07.2017. Vide the said judgment the Hon'ble Supreme Court has categorically held that merely because there is no endorsement in the license of the driver of the offending vehicle while granting permission to drive a transport vehicle, when in fact he has a driving license for LMV would not by itself absolve the Insurance Company of its liability.
5. In view of the decision of the Hon'ble Supreme Court in case of "Mukund Dewangan" (supra) the appeal of the owner deserves to be and is accordingly allowed. The award stands modified to the extent, that the liability of payment of compensation shall now fall upon the respondent No.2- ICICI Lombard General Insurance Company Limited.
6. So far as the amount, which has been deposited by the appellant before the Tribunal as compliance of the award passed by the Tribunal, this Court is of the opinion that the appellant shall be entitled for refund of that much of amount from the Insurance Company and the balance of the awarded amount shall be deposited by the respondent No.2-Insurance Company.
7. The appeal of the appellant thus stands allowed.

Sd/-
(P. Sam Koshy)
Judge