NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1443 of 2007

Jawahar Lal Tonde, S/o. Shri Ratanlal Tonde, Aged about ….. years, R/o. Dev Nagar, Koni, Police Station Koni, Tahsil and District Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Munna Suryavanshi, S/o. Not known, R/o. Semartal, Police Station Koni, Tahsil and District Bilaspur, Chhattisgarh
2. Dukhiram Madhukar, S/o. Latelram Madhukar, R/o. Village Semartal, Police Station Koni, Tahsil and District Bilaspur, Chhattisgarh
3. The Oriental Insurance Company Limited, Through: Divisional Manager, Divisional Office, Opposite High Court, Tahsil and District Bilaspur, Chhattisgarh

–--Respondents

MAC No. 1175 of 2008

The Oriental Insurance Company Limited, Through: Divisional Manager, The Oriental Insurance Company Limited, Bilaspur, Rama Trade Center, Near Bus Stand, Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Jawahar Lal Tonde, S/o. Shri Ratanlal Tonde, Age Not mentioned in claim application, R/o. Dev Nagar, Koni, Police Station Koni, Tahsil and District Bilaspur, Chhattisgarh
2. Munna Suryavanshi, S/o. Not mentioned in claim application, R/o. Semartal, Police Station Koni, Tahsil and District Bilaspur, Chhattisgarh
3. Dukhiram Madhukar, S/o. Latelram, R/o. Village Semartal, Police Station Koni, Tahsil and District Bilaspur, Chhattisgarh

For Claimant	:	Mr. A.L. Singroul, Advocate
For Insurance Company	:	Mr. Ghanshyam Patel, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/11/2017

1. These are two appeals arising out of the award dated 30.06.2007, passed by the 9th Additional Motor Accident Claims Tribunal (FTC) Bilaspur, Chhattisgarh, in Claim Case No. 107/2005.

2. Vide the impugned award, the Tribunal in an injury case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.70,000/- with interest @6% per annum from the date of application.

3. MAC No.1175/2008 is an appeal by the Insurance Company challenging the liability fastened upon the Insurance Company and MAC No.1443/2007 is an appeal by the Claimant seeking for enhancement of the compensation. So far as the appeal of the Insurance Company is concerned, the ground of challenge is that the Driver of the offending vehicle i.e. Munna Suryavanshi was not having a license to drive the vehicle on the date of accident. The vehicle involved in the case is a Mahindra Cargo Pickup, owned by the respondent no.2 and insured by the respondent no.3.

4. What is relevant to be seen is that the Owner and Driver in spite of proper service did not appear and contest the case before the Tribunal and were proceeded ex-parte.

5. The Insurance Company on an application moved under Order 11 Rule 12 of C.P.C. to the Owner got photocopies of a license produced before the Court wherein the last renewal of the license which the respondent no.1 had was valid up to 25.07.1999 and thereafter there is no renewal, which means on the date of accident i.e. on 06.08.2005 the Driver did not have a license.

6. In the absence of any other document produced by the Owner and Driver and taking into account the photocopy of the license, which has been provided by the Owner to the Insurance Company it reflects that on the date of accident the Driver did not have a proper

valid license. Thus, there is a clear breach of policy condition. In the given factual matrix of the case and accepting the fact that the vehicle was dully insured on the date of accident, except for the breach of condition, this Court is of the opinion that the liability of payment of compensation shall be first upon the Insurance Company with a liberty to recover the same from the Owner and Driver.

7. It is ordered accordingly and the impugned award is modified accordingly applying the principles of pay and recovery. The Insurance Company shall deposit the compensation awarded and shall recover the same from the respondents no.1 & 2.

8. As regards the appeal of the Claimant is concerned, since it is an injury case, the only injury which has been suffered by the appellant is alleged to be that of the Claimant becoming hard of hearing. However, the Doctor in the instant case has not been examined to prove this fact.

9. Undisputedly, an accident did occur on 06.08.2005 resulting in certain injuries which the claimant had suffered. In the factual matrix of the case, this Court is of the opinion that ends of justice would meet if the Claimant is awarded an additional compensation of Rs.30,000/- in addition to what has already been awarded. Making the total compensation payable to the Claimant at Rs.1,00,000/- instead of Rs.70,000/- as awarded by the Tribunal.

10. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

11. As a result, the appeal of the Insurance Company is allowed in part and the appeal of the Claimant also stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Ved