

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 259 of 2012**

The New India Assurance Co.Ltd. through Divisional Manager,
Divisional Office No.1, Kachari Chowk, Raipur (CG).

---- Appellant**Versus**

1. Smt. Thanwarin Bai W/o Bishau Ram Gendhre, aged about 58 years.
2. Hemant Gendhre, S/o late Roop Gendhre, aged about 23 years.
3. Ashwani Gendhre, S/o late Roop Gendhre, aged about 15 years, minor through legal guardian Brother Hemant Gendhre.
All are R/o village Achholi Urla, Raipur, Distt .Raipur (CG).
4. Kamal Singh Thakur @ Kamal Singh Dhruv, S/o Chinta Ram Thakur, R/o Gram Tulsi, Thana, Mandir Hasaud, Distt. Raipur (CG).

---- Respondents

For Appellant	:	Smt. Chitra Shrivastava, Advocate.
For Claimants	:	Shri Chakresh Tiwari on behalf of Shri B.P. Sharma, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****21.11.2017**

1. The present appeal under Section 173 of the Motor Vehicles Act have been filed by the insurer against the award dated 29.11.2011 passed by the IInd Additional Motor Accident Claims Tribunal Raipur (in short, the Tribunal) in Claim Case No.113/2010. Vide the said impugned award, the Tribunal in a claim application under Section 166 of MV Act has awarded a compensation of Rs.1,99,000/-with interest @ 6 percent per annum from the date of application.
2. The present appeal has been filed by the insurance company questioning the liability which has been fastened upon it on the ground that the vehicle involved in the accident i.e. public carrying commercial vehicle Minidor bearing registration No.CG-04-T-2688

was not having a valid permit for operating as a public carrying commercial vehicle. The insurance company has led evidence of officer of the insurance company to substantiate this aspect and the said evidence of insurance company stands further corroborated from the evidence of NAW-2, Raj Kumar Xalxo, an officer of the Road Transport Department, wherein it has been specifically mentioned that the permit which was issued in favour of the offending vehicle was issued only on 10.01.2007 and valid up till 09.05.2007 and that on the date of accident i.e. on 05.01.2007 there was no valid permit issued in favour of the offending vehicle.

3. It was further submitted that apart from these two witnesses, the insurance company has also examined one Ishwar Lal Sahu, NAW-3, an Investigator of the Insurance company, who too on verification has categorically submitted that the offending vehicle on the date of accident did not have a valid permit.
4. Considering the totality of the facts and circumstances of the case and taking note of the evidence led by the insurance company, this court is inclined to accept the arguments put forth by the insurance company of there being a clear breach of policy conditions inasmuch as the offending vehicle was being operated without valid permit. The owner and driver of the vehicle cannot be granted advantage of plying the vehicle in utter disregard to the provisions of the MV Act, so also in contravention to the conditions to the insurance policy and yet be exonerated.
5. At this juncture, it would be relevant to refer to the decision of the

Supreme Court in case of National Insurance Co.Ltd. Vs. Challa Bharathamma & Ors., 2004(8)SCC 517 as also Division Bench judgment of Kerala High Court in case of Suresh Kumar Vs. Oriental Insurance Co.Ltd.& Ors. 2016 ACJ 679, which are two judgments specifically dealing with the issue of vehicle involved in the accident not having a valid permit.

6. In view of the above factual matrix of the case and also keeping in mind the ratio of law laid down in the aforesaid two judgments, this court is of the opinion that ends of justice would meet if the insurance company is directed to deposit the amount of compensation awarded with liberty to recover the same from the owner and driver of the offending vehicle applying the principle of pay and recovery. It is ordered accordingly.
7. The appellant-insurance company shall deposit the balance amount and shall recover the entire amount from the owner and driver of the offending vehicle i.e. respondent No.4.
8. The appeal thus stands allowed in part.

Sd/-

(P.Sam Koshy)
Judge