NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1186 of 2017

The Oriental Insurance Company Limited 16, R. S. S. Market, Power House Bhilai, District Durg Chhattisgarh

---- Appellant

Versus

1. Smt. Lata Devi W/o Shatrughan @ Raj Aged About 38 Years
2. Shatruhan @ Raj S/o Late Shiva Aged About 44 Years
3. Sunita Devi D/o Shatrughan @ Raj Aged About 21 Years
4. Sushil S/o Shatrughan @ Raj Aged About 13 Years Minor, Through Natural Guardian Mother

   Respondents No. 1 to 4 are R/o House No. 167/A, In Front Of Shiv Mandir Camp- 1 Subhash Chowk, Udiya Mohalla, Bhilai, District Durg Chhattisgarh
5. Karamjit Singh S/o Indrajit Singh Aged About 25 Years
6. Indrajeet Singh S/o Shri Darshan Singh Aged About 45 Years

   Respondents No. 5 & 6 are R/o House No. 167/A, In Front Of Shiv Mandir Camp- 1 Subhash Chowk, Udiya Mohalla, Bhilai, District Durg Chhattisgarh

–--Respondents

For Appellant	:	Mr. Raj Awasthy, Advocate

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

25/08/2017

1. The matter today is listed for defaults. The counsel is permitted to carry out the defaults during the course of day itself. With the consent of the counsel for the appellant the matter is heard today.
2. The present is an appeal by the Insurance Company under Section 173 of Motor Vehicle Act, assailing the award dated 10.05.2017, passed by the First Additional Motor Accident Claims Tribunal, Durg, in Claim Case No. 2499/2010. Vide the impugned award, the Tribunal has in a claim case under Section 166 has awarded a compensation of Rs.1,39,500/- with interest @ 6% per annum.
3. The challenge by the Insurance Company is only the point that the accident arose on the rash and negligent driving by the deceased himself. In addition, the deceased being a minor at the time of

accident was not eligible to have a license under Motor Vehicle Act neither did he had a license. Thus there is a clear breach of policy condition, while the motorcycle was being driven resulting in the accident, therefore the appellant have prayed for exonerating the Insurance Company of its liability.

4. Having considered the contentions of the Insurance Company and on perusal of the record from the evidence which have been brought before the Court below it reflects that the registered owner of the offending vehicle i.e. motorcycle bearing registration No. CG-07-LJ-6593 was the respondent No.6. The vehicle from the respondent No.6 was taken by the respondent No.5, the son of the respondent No.6, who before the Tribunal has deposed that the deceased had forcibly taken the offending vehicle from him and was driving the motorcycle.

5. The undisputed fact which has come from the record is that the respondent No.5, who had taken the vehicle from the respondent No.6 had a valid license at the relevant point of time. In the given factual matrix of the case what appears is that the registered owner, who had got his vehicle duly insured, the vehicle was taken by his son i.e. respondent No.5 and from whom the deceased is said to have taken the motorcycle.

6. Thus it is clear that so far as the registered owner is concerned there does not seem to be any fault or lapse on his part in handing over the motorcycle to a person illegible to have a license or to a person with no license. Thus this Court does not find any strong case made out by the Insurance Company worth admitting the present appeal as the Insurance Company have failed to establish any lapse or default on the part of the registered owner giving the vehicle to a person in breach of policy condition.

7. The appeal thus deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved