NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1401 of 2017

Adhyan Shikshan Samiti Through Director/ Secretary, Vivek Pathak, S/o Late V. D. Pathak, Aged About 45 Years, R/o L. I. G. 294, Padmanabpur, Durg, Tahsil And District Durg, Chhattisgarh (Owner).

---- Appellant

Versus

1. Hamid Ahmad S/o Late Shri Abdul Kadar Aged About 50 Years
2. Ashfaque Ahmad S/o Shri Hamid Ahmad Aged About 21 Years

   Both R/o C. H. 740, Aditya Nagar (Chhattisgarh Housing Board), Police Station Mohan Nagar, Durg, Tahsil And District Durg, Chhattisgarh (Claimants).
3. Leman Sahu S/o Shri Daniram Sahu Aged About 24 Years R/o Village Dhanora, Police Station Uttai, Tahsil And District Durg, Chhattisgarh (Driver).
4. Divisional Manager, I.C.I.C.I. Lombard General Insurance Company Limited, Enterprise Building No. 11, 401/402, 4th Floor New Link Road Malad (W) (West) Mumbai 400064, Local Office Chouhan Estate Chandra Near Mourya Talkies Supela, Bhilai, District Durg, Chhattisgarh (Insurer).

–--Respondents

For Appellant	:	Mr. P.R. Patankar, Advocate
For Insurance Company	:	Mr. Amrito Das, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20/11/2017

1. Present is an appeal by the Owner under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 25.07.2017, passed by the 1st Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh, in Claim Case No. 2537/2013.

2. Vide the impugned award, the Tribunal exonerating the Insurance Company of its liability has awarded a compensation to be paid by the present appellant to the Claimants of an amount of Rs.3,10,500/- with interest @ 9% per annum from the date of application.

3. The exoneration of the Insurance Company of its liability was on two grounds, firstly the Driver of the offending vehicle i.e. Mini Bus (School Bus) bearing registration No. CG-07-E-0716 was not having an effective license at the time of accident. Secondly the School Bus also at the relevant point of time was not having a permit.

4. So far as the first ground is concerned, the said issue stands squarely covered by the recent Larger Bench decision of the Hon'ble Supreme Court in the case of ***"Mukund Dewangan vs. Oriental Insurance Company Limited" AIR 2017 S.C. 3668,*** wherein it has been held that merely because there is no endorsement in the license permitting to drive the passenger vehicle by itself would not absolve the Insurance Company of its liability particularly if the vehicle falls within the same category. In the instant case the vehicle definitely falls within the definition of a Light Motor Vehicle and the Driver of the vehicle also had a license to drive a Light Motor Vehicle, except for the endorsement of permission to drive a passenger vehicle. Thus, said grounds raised by the appellant have force and the finding of the Tribunal deserves to be and is accordingly set-aside.

5. However, so far as the second ground is concerned, the admitted factual position in the instant case on the plea made by the counsel for the Owner itself is that the vehicle at the relevant point of time was being plied without any permit. In the said factual matrix, this Court is of the opinion that the finding of the Tribunal is justified in exonerating the Insurance Company on the ground that the vehicle was being run without a permit which would clearly fall as a breach

on the part of the Owner under Section 166 of the Motor Vehicles Act, so also it would be a breach of the policy condition.

6. The fact that there is an admitted breach of Motor Vehicles Act as also the policy condition so far as the fact that vehicle not having a permit from the concerned R.T.O., this Court does not find any strong case on the part of the appellant for interfering with the findings of the Tribunal as far as the exoneration of the Insurance Company is concerned. The opinion of this Court stands fortified from the decision of the Hon'ble Supreme Court in case of ***"National Insurance Co. Ltd. vs. Challa Bharthamma" (2004) 8 SCC 517*** as also Divisional Bench judgment of Kerala High Court in case of ***"Suresh Kumar vs. Oriental Insurance Company Limited and Others", 2016 ACJ 679.***

7. So far as the ground of the amount of compensation awarded being on the higher side is concerned, this Court considering the age of the deceased as also the income assessed and also taking into consideration the total compensation awarded in favour of the Claimants does not find the amount to be either exorbitant or on the excessive side.

8. The appeal of the Owner thus fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved