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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 53 OF 2002

New India Assurance Company Limited, Bajrang Market, Kachari Chowk, Raipur, through its official signatory- Branch Manager, Bilaspur Office, Rajendra Nagar, Link Road, Bilaspur.

… Appellant

Versus

1. Rajkumar Bacchani, aged about 31 years, Grain Merchant, R/o Nemichand Gali, Ganjpara, Raipur.
2. Chandi Das, S/o Vishesher Mandal, aged about 30 years, R/o 41, Naya Market, Raipur.
3. Smt. Paramjeet Sadana, W/o S.R. Sadana, aged about 38 years, R/o C-24, Ramkund, Raipur (C.G.)

… Respondents

For Appellant : Mr. Qamrul Aziz, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

31/07/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, preferred by the Appellant-Insurance Company against the award dated 13.10.2001 passed by the Second Additional Motor Accidents Claims Tribunal and Second Additional District Judge, Raipur, in Claim Case No. 160 of 2000.

2. Vide the impugned award, in an injury case, the Tribunal has granted a compensation of Rs.38,000/- to Respondent No.1-Claimant.

3. The present is an Insurer's appeal assailing the impugned award on the ground that at the of time accident, the driver of the offending vehicle was not having a valid driving licence and therefore there being a breach of policy condition, the liability should have been shifted upon the owner and driver of the offending vehicle and the Insurance Company should be discharged of its liability. Counsel for the Insurance Company refers to a decision of the Hon'ble Supreme Court made in the case of *Ishwar Chandra and Others* v. *Oriental Insurance Co. Ltd. and others*, 2007 ACJ 1067, wherein the appeal preferred by the owner and driver has been rejected upholding the order of the High Court in giving the liberty to the Insurance Company to pay the amount of compensation and then recover the same from the owner of the vehicle.

4. Considering the fact that in the instant case also from the evidence which has been led by the witness from the office of the R.T.O., there appears to be no valid driving licence available with the driver of the offending vehicle at the time of accident. The witness of the R.T.O. has categorically stated that beyond 26.8.1998 the licence was not renewed and it had got lapsed by efflux of time. This being the ground, in the opinion of this Court there is an apparent lapse on the part of the driver as well as the owner of the offending vehicle in not ensuring that the person who was driving the offending vehicle had a proper driving licence at the time of accident.

5. Thus, for the above reason and applying the ratio of law laid down by the Hon'ble Supreme Court in *Ishwar Chandra* (supra), this Court is of the opinion that the impugned award deserves to be modified to the extent that the Insurance Company though shall be liable to pay the entire amount awarded but will have the liberty of recovering the same from the owner and the driver of the offending vehicle, because of the admitted factual position of the driver not having a proper valid licence at the time of accident.

6. In the result, the appeal is allowed in part. The impugned award is maintained. However, the Appellant-Insurance Company is directed to deposit the amount of compensation awarded, if not deposited by now, with the liberty that the Insurance Company shall recover the same applying the principles of 'pay and recover'.

Sd/-
(P. Sam Koshy)
Judge

/shard/