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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1676 of 2017

1. Avinash Singh S/o Santbahadur Singh Aged About 26 Years R/o Ward No. 15 Village Bamhni Charbhata, Tahsil / Thana Chhuriya, Distt. Rajnandgaon Chhattisgarh (Owner)
2. Suresh Kumar Sinha S/o Ramdas Sinha Aged About 38 Years R/o Village Nandiya Khurd, Tahsil / Thana Chhuriya, Distt. Rajnandgaon Chhattisgarh (Driver)

---- Appellants

Versus

1. Smt. Sadhna Bai Wd/o Late Bhojpal Sirmaur, Aged About 28 Years
2. Rinki D/o Late Bhojpal Sirmaur Aged About 5 Years
3. Khumendra Kumar S/o Late Bhojpal Sirmaur Aged About 3 Years
4. Domeshwar S/o Late Bhojpal Sirmaur 3 Months,

   Respondent No. 2 to 4 are Minors Through their Guardian Mother Smt. Sadhna Bai, Wd/o Late Bhojpal Sirmaur,
5. Ampa Bai Wd/o Late Nohar Das Aged About 60 Years

   All are R/o Village Jarha Mahka, Tahsil Chhuriya Distt. Rajnandgaon Chhattisgarh
6. I F F C O Tokio General Insurance Co. Ltd., Through Branch Manager, Regional Office Near Chauhan Hotel Dakshin Gangotri, Supela, Bhilai, Tahsil / Distt. Durg Chhattisgarh (Insurance Co.)

–--Respondents

For Appellants	:	Mr. Samir Singh, Advocate
For Insurance Company	:	Mr. Amrito Das, Advocate

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

08/12/2017

1. Mr. Amrito Das, Advocate present in the Court is directed to accept notice on behalf of the respondent No.6- Insurance Company.
2. Present is an appeal by the Owner under Section 173 of the Motor Vehicles Act assailing the award dated 20.11.2017, passed by the Motor Accident Claims Tribunal, Rajnandgaon, Chhattisgarh, in Claim Case No. 69/2015. Vide the impugned award the Tribunal in a death case has awarded a compensation of Rs.13,64,078/- with interest @ 6% per annum from the date of application.

3. While passing the impugned award, the Tribunal had exonerated the Insurance Company and has fastened the liability on the present appellant-the Owner of the vehicle on the ground that the Driver of the vehicle at the relevant point of time did not have an effective driving license.

4. The counsel for the appellants submits that the issue involved in the case is squarely covered by the decision of Hon'ble Supreme Court in the case of ***"Mukund Dewangan vs. Oriental Insurance Company Limited" AIR 2017 S.C. 3668***. Counsel for the appellants submits that the undisputed fact in the instant case is the date of accident to be 22.11.2014, the vehicle involved in the accident is a Mini Bus bearing registration No. CG-09-F-0116. The present appellants being the Owner and Driver of the offending vehicle and the respondent No.6 being the insurer of the said vehicle. The appellant No.2 was the Driver of the said vehicle on the date of accident and he had a license for driving the Light Motor Vehicle (Non-Transport) and on the date of accident and that the endorsement of permission to drive the Transport Vehicle had expired on 25.09.2014 i.e. just about two months prior of the date of accident which was on 22.11.2014 and it has subsequent also been renewed for permitting the appellant No.2 to drive a Transport Vehicle.

5. Counsel for the appellants submits even minus the endorsement for permission to drive a Transport Vehicle, since the appellant No.2 had an effective license to drive a Light Motor Vehicle and the offending vehicle also falling within the category of a Light Motor Vehicle, the liability ought to have been fastened upon the Insurance Company

keeping in view of the judgment of the Hon'ble Supreme Court in the case of Mukund Dewangan (supra).

6. Mr. Amrito Das, who was directed to accept the notice on behalf of the respondent No.6. On perusal of record only raised two objections as regards the fact that the Driver on the date of accident, though had a license for a Transport Vehicle till about two months back, but the license had got expired, which he had not got renewed. He does not dispute the fact that the vehicle does not fall within the same category, except for the fact that it was a Transport Vehicle. The second aspect which was pointed out by Mr. Amrito Das was that the income assessed by the Tribunal seemed to be on higher side as the income assessed of the deceased was Rs.7,500/-.

7. However, perusal of the record would show that the deceased in the instant case was working as a mason and the income assessed by the Tribunal is of Rs.7,500/- per month. The accident being of November, 2014, undisputedly a mason who would supposed to be an skilled worker would be getting a daily wage of more than Rs.250-300/- a day i.e. Rs.7,500-9000/- a month. This being the factual matrix of the case, this Court does not find to assessment of compensation by the Insurance Company to be on the higher side in any manner.

8. In view of the same, this Court is compelled to allow the present appeal at this motion stage itself holding that the liability of payment of compensation would fall jointly and severally upon the appellants (Owner and Driver) and also that on the respondent No.6-Insurance Company. The liability of payment of compensation shall in the light

of the judgment of the Hon'ble Supreme Court shall now fall upon the Insurance Company.

9. With the aforesaid observations, the appeal stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved