

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 843 of 2006

Suresh Chandra Vishwakarma, S/o. Late R.P. Vishwakarma, Aged about 48 years, R/o. Ward No.16, Brahm Road, Ambikapur, District Surguja, Chhattisgarh

---- Appellant

Versus

1. Vidhya Sagar Jaiswal, S/o. Shiv Lal Jaiswal, Aged about 42 years, R/o. Village Rai, Thana Jainagar, Tahsil Surajpur, District Surguja Chhattisgarh
2. Dinesh Yadav, S/o. Shri Charanjit Yadav, R/o. Kunj Nagar, Post and Thana Jai Nagar, Tahsil Surajpur, District Surguja, Chhattisgarh
3. Prem Sagar, S/o. Not known, Aged about 22 years, R/o. Village Gopalpur, Post Silkili, Thana and Tahsil Surajpur, District Surguja, Chhattisgarh
4. The Oriental Insurance Company Limited, Through: The Branch Manager, The Oriental Insurance Company Limited, Ambikapur, District Surguja, Chhattisgarh

---Respondents

For Appellant	:	Mr. Sunil Tripathi, Advocate
For Insurance Company	:	Mr. Sudhir Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/11/2017

1. Present is an appeal under Section 173 of the Motor Vehicles Act challenging the award dated 25.02.2006, passed by the 2nd Additional Motor Accident Claims Tribunal (FTC) Surajpur, District Surguja, Chhattisgarh, in Motor Accident Claims Case No. 24/2005.
2. Vide the impugned award the Insurance Company has been exonerated of its liability of payment of compensation and the liability has been fastened upon the present appellant.
3. The present appellant has challenged the award on the ground that the vehicle involved in the accident i.e. Jeep bearing registration No.

MP-27-A-3989 is originally owned by the present appellant, but the same was subsequently sold to the respondent No.2 Dinesh Yadav and the sale was also complete. That the entry/endorsement so far as sale of the Jeep was also got entered in the registration book of the vehicle from the concerned R.T.O. much before the accident had occurred. He submits that the only lacuna, which had occurred on the part of the appellant, is non intimation of the sale to the Insurance Company. He submits that undisputedly the Claimant in the instant case was a third party and in view of the provisions of Section 167 of the Motor Vehicles Act, the Insurance Company cannot be absolved of its liability in covering the risk of a third party, even if an intimation of sale is not made to the Insurance Company. He further submits that so far as the facts of the case, it is undisputed that on the date of accident, it was the respondent no.2, who was the registered Owner of the vehicle. It is also not in dispute that it was under respondent No.2's control and possession, that the vehicle was being driven by one Ramesh on the date of accident.

4. Further, from the admitted factual matrix of the case and which stands proved from the evidence of the R.T.O. is that the Driver of the Jeep Ramesh who also died in the accident did not have a license to drive the Jeep on the date of accident, though in the record a license has been produced in the name of Ramesh, but the evidence which have come on record shows that vehicle license had been issue only on 04.04.2001, which is 3 days after the accident. Thus, the safest inference which can be drawn is that the Driver on the date of accident did not have a license.

5. In the given facts and circumstances of the case, this Court has no hesitation in reaching to the conclusion that the findings of the Tribunal so far as fastening the liability upon the present appellant does not seem to be proper, legal and justified and the impugned award deserves to be and is accordingly modified and it is held that the responsibility of payment of compensation, if any, to the Claimant Vidhya Sagar Jaiswal would fall upon the respondent no.2, who was the registered Owner on the date of accident. The appeal of the present appellant stands allowed to the aforesaid extent.
6. It is ordered that the present appellant is exonerated of its liability and the liability of payment of compensation stands shifted on the respondent no.2 Dinesh Yadav. Rest of the ward remain intact.
7. The amount which has already been deposited by the present appellant may be, if not released to the Claimant, be refunded back to the present appellant and the Claimant shall be at liberty, if the respondent no.2 fails to deposit the amount to recover the same initiating the appropriate recovery proceedings against the respondent no.2.

Sd/-
(P. Sam Koshy)
Judge

Ved