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HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 884 of 2006

National Insurance Company Limited, Raipur, Through: Its Divisional Office, B-1 Taha Complex Ring Road No.1, Bilaspur (C.G).

---- Appellant

Versus

1. Pyare Lal S/o Bhoj Ram Chouhan, aged 35 years, Occupation-Riksa Puller, R/o Bhagvanpur, at present Patara Pali, Tahsil & District Raigarh (C.G).
2. Vijay Kumar, R/o Old Bus Stand, Ambikapur, District Surguja (C.G).
3. Dharam Singh S/o Suk Dev Singh Chouhan, R/o Pathal Gaon, District Jaspurnagar (C.G).

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate
For Respondent No.2	:	Shri Anurag Singh, Advocate on behalf of Shri Manoj Paranjape, Advocate

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Hon'ble Shri Justice P. Sam Koshy

Order On Board

25/08/2017

1. Present is an appeal under section 173 of the Motor Vehicle Act challenging the award dated 07/03/2006 passed by the 3rd Additional Motor Accident Claim Tribunal, Raigarh, District Raigarh (C.G) in Claim Case No.25/2002.

2. Vide the said impugned award, the Tribunal in a claim case under Section 166 had awarded compensation of Rs.1,00,000/- to the Respondent No.1-Claimant along with interest @ 7.5%, if the amount is not deposited within the period of 30 days from the date of award. The liability of payment of compensation has been jointly and severally saddled upon the owner, driver and the appellant-Insurance Company.

3. The contentions of the Insurance Company is that, at the relevant point of time the offending vehicle i.e. Bus bearing registration No. MP-27-6601 owned by Respondent No.2 was not ensured with the appellant-Insurance Company. Counsel for the Insurance Company submits that the finding of the Tribunal in fastening the liability upon the Insurance Company is erroneous, perverse and contrary to the evidence on record. He submits that Insurance Company had substantially taken the plea before the Tribunal that the vehicle was not insured with the appellant-Insurance Company. He further submits that the provision of the Motor Vehicle Act itself under Section 134 requires the driver of the offending vehicle should immediately

provide necessary information so far as Insurance Policy Number and other details available.

4. So far as offending vehicle is concerned, this has not been complied by the owner or driver. He further submits that Insurance Company has also moved an application for a direction to the claimant, driver and owner to make available the policy with which the Insurance Company could indemnify the owner if it all if Insurance Company is held liable. He submits that deliberately the driver and owner did not enter appearance in spite of proper service before the Tribunal and let the matter be proceed ex-parte against them.
5. Further, there was no document produced before the Tribunal with which it could be establish that the vehicle involved in the accident was duly insured. He further submits that the only document which has been relied by the Tribunal is Annexure P-8 which is a seizure memo along with the criminal record in respect of criminal case which was registered against the Respondent No.3-Driver of the offending vehicle at the time of the accident. He further submits that seizure memo also does not provide any information so far as details of the policy are concerned except that there is a valid policy from 22/07/1999 to 21/07/2000 and the date of accident in the instant case being 22/07/1999.
6. In the given factual matrix of the case the liability of payment of compensation should have been saddled upon the owner of the Bus i.e. Respondent No.2 by exonerating the appellant-Insurance Company of this liability. Thus prayed for the appeal to be allowed.
7. Counsel appearing for Respondent No.2-owner however referred to the finding of the court below where-in it is mentioned in the seizure memo the period of policy mentioned, which is a finding of fact and which therefore does not warrant any interference and prayed for the rejection of the appeal.
8. On a pointed question being put to the counsel for the Respondent No.2 he fairly concedes that he is not in possession of any policy pertaining to the relevant period.
9. Considering the total facts and circumstances of the case, this court has no hesitation in reaching to the conclusion that the court below was not proper in reaching to the conclusion that vehicle at relevant point of time was duly insured as there was no material brought before the Tribunal with which it could be established that vehicle had been insured with any of the Insurance Company.

10. The fastening of the liability upon the appellant, owner and driver jointly and severally was only on the basis of entry that is reflected in the seizure memo which again has not been substantiated nor does Annexure P-8 seizure memo give details of the policy number, branch name from where it was issued etc.

11. The entry which is reflected in the seizure memo seems to be a managed entry at the police level when the criminal case was being registered against the driver with perhaps no materials. Even before this court the owner is not in a position to either produce the policy or provide details of the policy failing which it has to be only presumed that the offending vehicle at the relevant point of time was not insured at all.

12. In the given factual matrix of the case, this court is of the opinion that the finding of the Tribunal holding the Insurance Company liable to pay amount of compensation is not proper and justified. Considering the fact that in the instant case the accident is of 22/07/1999 i.e. more than 18 years ago. Further also keeping in mind the statement of the claimant who is by profession a Rikshaw Puller and was injured in the course of his pulling the Rikshaw, this court is of the opinion that ends of justice would meet if the appeal of the Insurance Company is allowed in part in as much as they are directed to deposit the amount of compensation first before the Tribunal if it is not been deposited and thereafter they shall have the liberty to recover the same from the Respondent No.2-owner of the vehicle applying the doctrine of 'pay and recovery'.

13. Thus, the appeal stands allowed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Sumit