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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 173 of 2008

Mohd. Firoz S/o Abdul Sattar, aged about 32 years, R/o Takiyapara, Durg, District Durg (CG). Office, Reliance Tour & Travels, New Bus Stand, Durg (CG).

---- Appellant

Versus

1. Dharam Singh S/o Pyara Singh, aged about 35 years, R/o Khursipar, Balaji Nagar, Khursipar, Police Station Khursipar Chowki, Bhilai, Tah. And Distt. Durg (CG).
2. Anupam Das S/o Shri Heera Das Gandharwa, Aged about 45 years R/o Polsaipara, Near Bajrang Mandir, District - Durg (C.G.)
3. Oriental Insurance Company Ltd. District - Durg (C.G.)

---- Respondents

&

MAC No. 626 of 2007

The Oriental Insurance Company Ltd. Malviya Nagar, Durg, Through Divisional Manager, Divisional Office, Malviya Nagar - Durg (C.G.)

---- Appellant

Versus

1. Dharam Singh S/o Pyara Singh, aged about 35 years, R/o Khursipar, Balaji Nagar, Khursipar, Police Station Khursipar Chowki, Bhilai, Tah. And Distt. Durg (CG).
2. Anupam Das S/o Shri Heera Das Gandharwa, Aged about 45 years R/o Polsaipara, Near Bajrang Mandir, District - Durg (C.G.)
3. Mohd. Firoz S/o Abdul Sattar, R/o Takiyapara, Durg, District Durg (CG). Office, Reliance Tour & Travels, New Bus Stand, Durg (CG).

---- Respondents

For Appellant : Shri Manoj Paranjpe and Shri Vikram Dixit, Advocates.
For respondent-Insurance company : Shri Raj Awasthy, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

14/07/2017

1. By this common award both the appeals are being disposed of as

common facts & issues are involved in these appeals and arise out of same accident. For the purpose of narrating the facts of the case, MAC No.173 of 2008 preferred by the owner is taken as lead case.

2. These are two appeals under Section 173 of the Motor Vehicles Act filed by the owner as well as insurer of the offending vehicle against the award dated 27.01.2007 passed by the 10th Motor Accident Claims Tribunal (FTC) (in short, the Tribunal) in Claim Case No.234/2005.

3. The facts in brief is that, the claimant Dharam Singh met with an accident on 25.03.2005 when he was traveling on Matador bearing registration No.CG-07-C-2284 was hit by Minibus bearing registration No.CG-07-E-0233 which was being driven by respondent No.2 and was owned by the present appellant and respondent No.3 was the insurer of the offending Minibus. As a result of said accident, the claimant sustained grievous injuries and had to be hospitalized for his treatment. A criminal case was also registered at PS Kotwali, Rajnandgaon in Crime No.125/2005. The claimant moved claim application under Section 166 of MV Act seeking for compensation in respect of the disability that was caused as a result of the accident.

4. Considering the evidence which have come on record and the pleadings of the parties, the Tribunal vide impugned award dated 27.01.2007 allowed the claim application and granted compensation of Rs. 3,21,771/-to the claimants. The Tribunal reached to the conclusion that the liability of compensation shall be upon the respondent No.3-insurance company with a condition that they have to pay the

compensation to the claimant and then can recover it from the owner of the offending vehicle i.e. the appellant herein as there was breach of policy conditions at the time of accident. It is this award which is under challenge in these appeals.

5. The owner has filed this appeal assailing the award on the ground that liability which has been fastened holding that the insurance company is liable to recover the compensation amount from the owner is bad in law. When there is a categorical finding on behalf of the Tribunal of their being breach of policy conditions, in asmuchas the Driver of offending vehicle at the relevant point of time was not having valid driving licence, the insurance company ought to have discharged its liability of payment of compensation and it should have fastened the liability upon the owner and driver of the vehicle jointly and severally. He relied upon the decision of Supreme Court in 2007 (10) SCC 650. According to insurance company, the fact which have come on record was evident enough to show that driver at the relevant point of time did not have the valid licence as on the date of accident as the licence of the driver already stood expired and it was not renewed and in the absence of valid driving licence at the time of accident, the insurance company cannot be held responsible for the payment of compensation.

6. So far as appeal on behalf of the owner is concerned, though he was ex parte before the Tribunal, but had filed the appeal along with an application under Order 41 Rule 27 CPC for relying upon certain document to show that the driver was having a valid licence at the

time accident. With the aid of this document, counsel for the owner vehemently argued to fasten the liability exclusively upon the insurance company as there was no breach of policy condition. He referred to document dated 22.10.2007 which is alleged to have been issued from the office of licencing authority, Additional RTO, Durg, on the basis of which he canvassed for accepting the said document as proof that the driver at the relevant time was having a valid licence.

7. Without deciding the application under Order 41 Rule 27 CPC, a perusal of that document dated 22.10.2007 itself would clearly reflect that it does not disclose the fact that the driver at the relevant time had a valid licence, The said document as endorsed shows that the renewal was valid up to 18.02.1999 to 17.02.2002 and again from 17.02.2002 to 17.02.2005. Thereafter, the licence was renewed only from 02.01.2006 to 01.01.2009, but the accident that had taken place in the present case was on 25.03.2005 on which date admittedly there was no renewal of the licence. Further, if we even consider that on the expiry of licence, it shall be presumed to be valid for another 30 days, even then, within that 30 day's period also the licence was not renewed and the accident had occurred beyond 30 days from the said date 17.02.2005 also.

8. The said application deserves rejection on the simple ground that inspite of service he did not make effort to appear and defend his case before the Tribunal. No proper explanation in the application has been reflected to show as to what prevented him from producing these documents before the Tribunal during the course of trial and as

to why he has not taken atleast such plea before the Tribunal.

9. For all the aforesaid reasons, this court is of the opinion that no strong case is made out by the owner calling for interference with the impugned award. The appeal deserves to be and is hereby dismissed.

10. So far as the appeal of the insurance company is concerned, though there is a finding of the Tribunal that there is a breach of policy condition, but taking into consideration the entire facts and circumstances of the case and relying upon the recent decision of Supreme Court in 2013 (2) SCC 41 as also AIR 2017 SC 1822, where under similar circumstances re-iterating the proposition of law that even if the driver of offending vehicle was not having valid licence on the date of accident and also held that insurer not liable to pay compensation, but have directed the insurance company to first pay the compensation to the claimant and then to recover it from the owner of the vehicle.

11. In view of the two aforesaid judicial pronouncements, the appeal of the appellant-insurance company, applying the same principle deserves to be and is accordingly dismissed.

12. Resultantly, both the appeals filed by the owner as well as insurer of the vehicle deserve to be and are hereby dismissed.

Sd/-

(P.Sam Koshy)
Judge

inder