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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 956 of 2011

Bajaj Allianz Insurance Company Limited, registered office GE Plaza Air Port Road Yerwada Pune M.H. through Branch Manager, Shivmohan Bhawan, Vidhansabha Marg, Pandri, Raipur (CG)

---- Appellant

Versus

1. Minor Sagar Satnami S/o Pooran Singh Satnami, aged 4 years, through natural guardian Pooran Singh S/o Harnam Singh Satnami, Age 35 years R/o village – Machabhath, P.S. Bhatapara (village) Th. Bhatapara, district Raipur (CG)
2. Ramesh Singh S/o Chotelal Singh Rajput R/o village – Potiya Kali, PS Pulgaon, District Durg (CG)
3. Sanjay Agarwal R/o Choubey Colony Hospital ward near Pradeep Pandey Nursing Home Raipur, PS Sarshwati Nagar, Raipur, district Raipur (C.G.)

---- Respondents

For Appellant	:	Shri Ghanshyam Patel on behalf of Shri Abhishek Sinha, Advocate
For Respondent no.1	:	Shri Amiyakant Tiwari, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

07/12/2017

Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 30.10.2010 passed by the Additional Motor Accident Claims Tribunal, Bhatapara (CG) in Claim Case No. 4 of 2008. Vide the impugned award, the Tribunal, in an injury case under Section 166 of MV Act, has awarded a compensation of Rs.1,85,000/- with interest @ 6% per annum from the date of application.

2. The appeal has been preferred by the Insurance Company assailing the liability part. The solitary ground of challenge is that the licence produced by the driver at the time of accident was a fake licence. Contention of the counsel for the appellant is that the original licence which has been renewed by the RTO Durg was a fake licence. Once the licence is fake, the same would always be a fake licence and therefore, the Insurance Company should not have been fastened with the liability of payment of compensation. He submits that the original licence in the instant case is reflected to have been issued from RTO, Malad (M.H). However, on verification, it was found that there was no such RTO office at Malad, which itself proves that the first licence to be a fake document. The Insurance Company in the instant case had moved an application for calling the witness from transport department of Maharashtra to establish this fact which was rejected by the Tribunal. The appellant has also moved an application under Order 41 Rule 27 CPC for adducing additional evidence in this regard in the present appeal also. Perusal of the record would show that the owner in the instant case had been proceeded ex parte and he has not cared to appear before the Tribunal in spite of proper service to establish the fact that before engaging the driver, he had taken all necessary precaution so far as the adherence to the provisions of the Motor Vehicles Act is concerned. For the above factual matrix of the case, counsel for the appellant prays for modification of the award suitably and fastening the liability upon the owner of the vehicle in stead of the Insurance Company.

3. Shri Amiyakant Tiwari, advocate engaged by the High Court Legal Services Department for defending the claimant in the instant case opposes the appeal and submits that the Insurance Company did not lead proper evidence in this regard to establish the factum that the licence of the driver was a fake licence. Thus prayed for rejection of the appeal.

4. Having considered the entire facts and circumstances of the case, particularly the fact that there is no transport office at Malad, Maharashtra which could have issued a licence in faovur of the driver, it prima facie appears that the driver did not have a valid licence at the time of accident. Though the licence was subsequently duly renewed by the authorities of RTO, Durg but what cannot be ignored is the fact that once a licence is proved fake, the same would always remain fake even it has been duly renewed by different competent authority at a different place.

5. In the light of the aforesaid facts and circumstances of the case, this Court is of the opinion that it is a fit case where the doctrine of pay and recovery should be made applicable. Accordingly, it is ordered that the appellant/Insurance Company shall deposit the amount of compensation awarded with liberty to recover the same from respondents 2 & 3.

6. The appeal of the Insurance Company thus stands allowed in part. The impugned award stands modified to the extent that the amount shall be deposited by the Insurance Company with liberty to recover the same from respondents 2 & 3. The copy of this order be sent to the Secretary, District Legal Services Authority, Baloda Bazar who in turn shall ensure serving the same to the claimant at his address shown in the cause title.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola