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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 98 of 2009

The Oriental Insurance Co. Ltd, Branch Office Kamptee Line, Rajnandgaon, CG

---- Appellant

Versus

1. Devendra Kumar S/o Manharan Lal Soni, age 24 years, resident of Gandai Pandria, Tahsil Chhuikhadan, District Rajnandgaon (CG)
2. Hemant S/o Ramesh Patel, age 22 years, resident of Biranpurkala, Thana Gandai, Tahsil Chhuikhadan, District Rajnandgaon (CG)
3. Ramesh S/o Umesh Patel, age 50 years, resident of Biranpurkala, Thana Gandai, Tahsil Chhuikhadan, District Rajnandgaon (CG)

---- Respondents

For Appellant	:	Shri Sudhir Agrawl, Advocate
For Respondent no. 1	:	Shri Pragalbh Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

09/11/2017

Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 03.10.2008 passed by the Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon (CG) in Motor Accident Claim Case No. 7 of 2008. Vide the impugned award, the Tribunal, in an injury case under Section 166 of MV Act, has awarded a compensation of Rs.1,76,359/- with interest @ 7.5% per annum from the date of application.

2. While passing the impugned award, the Tribunal has fastened the liability of payment of compensation upon the Insurance Company with liberty to recover the same from the owner-cum-driver.

3. The appeal preferred by the Insurance Company is on the ground that once when there is a finding that the vehicle involved in the accident was being used in breach of policy condition in as much as the driver did not have a licence at the time of accident, the Insurance Company could not have been fastened with the liability of payment of compensation with liberty to recover the same and that the liability of payment of compensation should have been shifted upon the owner of the vehicle.

4. Counsel for the appellant Insurance Company further submits that the application for pay and recovery should have been applied by the Tribunal only in the case the claimant would have produced sufficient evidence before the Tribunal that he was finding difficulty in getting the judgment executed or the amount recovered from the owner. He relied upon the decision of the Supreme Court in the case of Oriental Insurance Co. Ltd. Vs. Smt. Raj Kumari and Ors reported in 2007 AIR SCW 7149.

5. Having considered the contentions put forth on either side and on perusal of the records this Court finds that the finding of the Tribunal for pay and recovery was based upon certain judicial pronouncements passed by the Supreme Court as well as the High Courts in this regard. This Court does not find the impugned award in any manner erroneous for the reason that the vehicle involved in the accident was duly insured with the Insurance Company. The award was passed on 3rd October, 2008 i.e. almost about 9 years back and the claimant till date has not been able to reap the fruits from the said award as there is an interim order of stay of recovery proceeding which is still in operation.

6. In view of the overall facts and circumstances of the case, this Court is of the opinion that the order of pay and recovery passed by the Tribunal does not warrant any interference and it is directed that the Insurance Company shall forthwith proceed to deposit the amount awarded and recover the same from the owner and driver.

7. The appeal of the Insurance Company thus stands dismissed. The Interim order earlier passed stands vacated.

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

Bhola