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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1258 of 2009

The Oriental Insurance Company Limited through its Branch Manager, Branch office Ambikapur near Ambedkar Chouk, Manendragarh Road Ambikapur C.G.

---- Appellant

Versus

1. Smt. Gulbasi Devi W/o late Omprakash Singh, aged about 30 years
2. Ku. Amita Singh D/o late Omprakash Singh, aged about 11 years
3. Ku. Sunita Singh D/o late Omprakash Singh, aged about 7 years
4. Ku. Manita Singh D/o late Omprakash Singh, aged about 3 years
5. Prithivinath Singh S/o late Omprakash Singh, aged about 3 years
6. Rupan Singh S/o late Sukhdev Singh, aged about 75 years

   Respondents 2 to 5 are minors through their mother Smt. Gulbasi Devi

   Respondents 1 to 6 are R/o village Bhawanrmal, PS & Tahsil Ramanujganj, District Sarguja (CG)

7. Shivnath Singh S/o Khairu Singh, aged about 45 years
8. Amin Sai @ Veer Sai S/o Jainath Panika, aged about 23 years
9. Madan Singh S/o Jadish Singh, aged about 35 years

Respondents 7 to 9 are R/o Vill.-Bhawanrmal, PS & Tahsil -Ramanujganj, Distt.-Sarguja (CG) **---- Respondents**

For Appellants	:	Shri Ghanshyam Patel, Advocate
For Respondents 1 to 6	:	Shri Rohitashav Singh, Advocate
For Respondents 7 to 9	:	Shri Rahul K. Mishra, 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 25.02.2009 passed by the

1st Additional Motor Accident Claims Tribunal (FTC), Ramanujganj, Sarguja (CG) in Claim Case No. 19 of 2007. Vide the impugned award, the Tribunal, in a death case under Section 166 of MV Act, has awarded a compensation of Rs.2,09,400/- with interest @ 9% per annum from the date of application.

2. The challenge by the Insurance Company is primarily on the ground that the driver of the offending vehicle i.e. respondent no.8 did not have any licence at the time of accident and therefore the Insurance Company could not have been fastened with the liability of payment of compensation.

3. Counsel appearing for the Insurance Company submits that the driver in the instant case himself had entered appearance before the Tribunal and got his licence marked where it is clearly reflected that the licence was issued only on 31.07.2008 and in the instant case the accident occurred on 20.04.2007. Thus, it stands proved that the driver of the offending vehicle i.e. respondent no.8 at the time of accident did not have a licence.

4. However, the Insurance Company has not led any evidence to substantiate this aspect. Since it is an admitted factual aspect as stands proved from the deposition of the driver himself and the photo copy of the driving licence brought on record by the driver even in the event of the Insurance Company has not led any evidence, the breach of policy condition is writ large on the facts of the case which has come before the Tribunal. The said document has also been marked as Exhibit D-3 by the Tribunal. Thus this Court is of the opinion that there is a clear breach of policy condition on the part of respondents 7 to 9.

5. In the given factual matrix of the case, without further dealing with the other aspect, this Court is inclined to accept the appeal of the Insurance Company and modify the award to the extent that it shall be the responsibility of the Insurance Company to honour the award by depositing the compensation awarded and shall have the liberty to recover the same from respondents 7 to 9 by initiating recovery proceedings.

6. The appeal of the Insurance Company thus, stands allowed in part.

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

Bhola