

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1005 of 2009

ICICI Lombard, General Insurance Company Limited, Registered Office: ICICI Bank Towers, Bandra-Kurla Complex, Mumbai, 400051, Through: its Legal Manager, ICICI Lombard General Insurance Company Limited, Lal Ganga Shopping Mall, 3rd Floor, G.E. Road, Raipur, Chhattisgarh

---- Appellant

Versus

1. Yogesh Pandey, S/o. Not known, R/o. Girdhari Nagar, Durg, Tahsil and District Durg Chhattisgarh
2. Suryakant Janghel, S/o. Girdhari Lal Janghel, Aged about 29 years, R/o. Village Dhaneli, Post Khairagarh, District Rajnandgaon Chhattisgarh
3. Naina Bai, Wd/o. Poona Ram Verma, Aged about 66 years,
4. Arjun Singh, S/o. Late Poona Ram Verma, Aged about 40 years,
5. Gulam Ram Verma, S/o. Late Poona Ram Verma, Aged about 35 years,
6. Tuman Lal Verma, S/o. Late Poona Ram Verma, Aged about 31 years,
Respondents No. 3 to 6 are R/o. Village Bhatha Kokadi, Police Station Dhamdha, District Durg Chhattisgarh
7. Firantin Bai, W/o. Dhiraram Janghel, Aged about 50 years, R/o. Village Aamaghat Kada, Post Udaipur, Police Station Chhuikhadan, District Rajnandgaon Chhattisgarh
8. Chaiti Bai W/o. Shri Chhabiram Verma, Aged about 45 years, R/o. Rahud (Bade), Police Station Khairagarh, District Rajnandgaon Chhattisgarh
9. Mathura Bai W/o. Shri Yadram Janghel, Aged about 38 years, R/o. Village Joratarai, Police Station Atriya, District Rajnandgaon Chhattisgarh

---Respondents

For Appellant	:	Mr. Sourabh Sharma, Advocate
For Respondent No. 3 to 9	:	Mr. Vikas Dubey, Advocate on behalf of Mr. Abhinav Kardekar, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/11/2017

1. Present is an appeal by the Insurance Company challenging the award dated 15.05.2009, passed by 12th Additional Motor Accident

Claims Tribunal (FTC), Durg, Chhattisgarh, in Claim Case No. 34/2008.

2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.1,45,000/- with interest @7.5% per annum.
3. The primarily challenge to the award by the Insurance Company is that the vehicle at the relevant point of time did not have a permit to operate a transport vehicle.
4. According to the counsel for the appellant the factual matrix of the case stands proved from the deposition of the Driver of the offending vehicle, who has deposed before the Tribunal that at the relevant point of time the vehicle was plying without proper permit.
5. The counsel for the appellant relied upon the decision of the Hon'ble Supreme Court in the case of **"National Insurance Co. Ltd. vs. Challa Bharthamma" (2004) 8 SCC 517** and thus prayed for the impugned award to be modified suitably.
6. The counsel for the Claimants opposing the appeal submits that the finding of the Tribunal does not warrant interference as it is based on the evidence which have come on record. In the evidence it has categorically come that the requirement of a permit was not insisted while issuing the policy and that it was not required for the issuance of the policy as well. Therefore, the Insurance Company cannot be absolved of its liability of payment of compensation.
7. Having considered the contentions put forth on either side and on perusal of record the admitted position as it stands is that at the time of accident i.e. on 15.07.2008 the vehicle involved in the accident i.e.

a Mini bus a transport vehicle bearing registration No. CG-07-ZA-0377 was plying without a permit.

8. So far as the respondents/Owner and Driver in the instant case both are concerned in spite of paper publication being made, have chosen not to contest the case and there is no representation on their behalf, therefore we proceed to decide the appeal in absentia of the Owner and Driver.
9. From the evidence, which have come before the Tribunal the fact that the vehicle at the relevant point of time was not having a permit is not in dispute.
10. In view of the said admitted factual matrix of the case, it would be relevant at this juncture to refer to paragraph nos.12 & 13 of the judgment of Hon'ble Supreme Court in the case of "**Challa Bharthamma**" (supra) wherein the Hon'ble Supreme Court has held as under:-

12. The High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of [Section 149\(2\)](#) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. High Court was, therefore, not justified in holding the insurer liable.

13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering

the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured.

11. A similar view has also been taken by the Division Bench of Karnataka High Court in the case of ***“Suresh Kumar vs. Oriental Insurance Company Limited and Others”***, 2016 ACJ 679, wherein in paragraphs No. 18 & 19, the Karnataka High Court has held as under:-

“18. As the Apex Court, in Bijaya C. Tripathy's case (MANU/SC/0799/2004: AIR 2005 SC 1431, was of the view that what is prevented under Section 66 of the Act is the use of the vehicle as a transport vehicle without a permit and it does not prohibit plying of such a vehicle on public road, the same principle will apply herein also. It was also held therein that the vehicle can be driven in a public road so long as it is not used as a transport vehicle. The Apex Court categorically held that an owner of such a vehicle may use the vehicle for taking his family out for a picnic, etc. and Section 66 will not bar such a use.

19. Judged in the light of the above principle, we are of the view MACA1182007 16 that the facts

proved in this case will definitely show that the vehicle was not used as a transport vehicle. Therefore, the absence of permit will not result in any violation of the conditions of policy, as contended by the learned Senior Counsel for the insurance company. As held by this Court in Sethunath's case (MANU/KE/2190/2010 : 2011 (1) KLT 222 also, the prohibition is limited to the use of the vehicle as a transport vehicle without a valid permit."

12. In view of the aforesaid factual matrix of the case and also taking note of the fact that the Insurance Company in the instant case has already deposited the entire amount awarded, this Court is of the opinion that the appeal of the Insurance Company deserves to be and is partly allowed to the extent that since the Insurance Company has already discharged its liability of depositing the compensation, the same may be released to the Claimants with the liberty to the Insurance Company to recover the amount from the owner and Driver of the said vehicle.
13. The appeal thus stands partly allowed.

Sd/-
(P. Sam Koshy)
Judge

Ved