NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.1570 of 2009

ICICI Lombard General Insurance Co.Ltd., ICICI Towers, Bandra Krula Complex, Bandra (East) Mumbai, Through it's Legal Manager, 3rd Floor, Lal Ganga Shopping Complex, G.E.Road, Raipur, Chhattisgarh.

---Appellant

Versus

1. Smt.Phoolmati W/o Late Shri Sadhram Khadiya, aged about 27 years.
2. Rajesh S/o Late Shri Sadhram Khadiya, aged about 07 years.
3. Gokul Prasad S/o Late Shri Sadhram Khadiya, aged about 06 months.
   Respondent Nos.2 & 3 are minors through their mother Smt.Phoolmati.
   All are R/o village Achankapali, Thana Sarangharh, Distirct Raigarh, Chhattisgarh.
4. Shri Dinesh Kumar S/o Shri Chaitram Nishad, aged about 38 years, R/o village Bar, Thana Sariya, Tehsil Sarangarh, District Raigarh, Chhattisgarh.
5. Shri Manoj Kumar S/o Shri Mahabir Prasad Agrawal, aged about 37 years, R/o village Baramkela, Thana Baramkela, Tehsil Sarangarh, Chhattisgarh.

---Respondents

For appellant/Insurance Company	:	Shri P.Acharya under instruction of Shri Amrito Das, Advocate.
For respondent No.1 to 3	:	Shri Manoj Kumar Jaiswal, Advocate.
For respondent No.4 & 5	:	Shri B.N.Nande, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/10/2017

1. Present is an appeal under Section 173 of the Motor Vehicle Act 1988 preferred by the appellant-Insurance Company assailing the award dated 31/07/2009 passed by learned Additional Motor Accident Claims Tribunal, Sarangarh, District Raigarh, Chhattisgarh in Claim Case No.23/2007. Vide the said impugned award, the Tribunal has passed an award of payment of compensation of Rs.2,51,000/- along with interest @

5% per annum from the date of application. While passing the said impugned award, the Tribunal has directed the appellant-Insurance Company to pay the entire amount of compensation and has given the Insurance Company the liberty to recover the same from the respondent Nos.4 & 5-the driver and the owner of the Motorcycle involved in the accident.

2. The counsel for respondent Nos.4 & 5 submits that, he has also filed a cross-objection under Order 41 Rule 22 of C.P.C. challenging the award to the extent where the liberty to recover the amount has been granted to the Insurance Company.

3. The contention of the counsel for the appellant-Insurance Company is that, the driver of the offending vehicle i.e. respondent No.4-Dinesh Kumar did not have a valid license to drive the Motorcycle as it have already got expired and was not renewed within a period of 30 days from the date it got expired and therefore the order of pay and recovery made by the Tribunal below is improper. He further submits that, once when there is a finding that, the driver did not have a valid license, it means at the time of accident it would be a case of no license and therefore the Insurance Company should be completely exonerated of its liability of payment of compensation.

4. Shri Nande, Advocate appearing for respondent Nos.4 & 5 and who has also preferred a cross-objection opposing the appeal of the Insurance Company submits that, the finding of the Tribunal for pay and recovery is erroneous to the extent that, the respondent No.4-the driver of the Motorcycle on the date of accident did have a valid license to drive the Motorcycle. According to Shri Nande, the license in the instant case was issued on 21/10/1999. According to Shri Nande, as per Section 14(2)(b)(i)

(A), the license issued for a person below 50 years of age would have the initial validity for a period of 20 years. In the instant case, the respondent No.4 was aged around 28-29 years at the time of issuance of the license to drive the Motorcycle. Therefore, the license would had been valid for 20 years and therefore the finding of the Tribunal is bad in law and deserves to be modified suitably. He further submits that, the Insurance Company has not led any evidence from the transport department to prove that, the license was not a valid license at the time of the accident. Neither the Insurance Company have examined the investigators appointed by the Insurance Company to investigate on the veracity of the license of the respondent No.4 and in absence of any effective evidence produced by the Insurance Company, the contention raised by the counsel for the Insurance Company is not sustainable and the finding of the Tribunal to the extent of order of pay and recovery is bad in law.

5. Having considered the rival contentions put forth on either side and on perusal of record, particularly, the Exhibit-D/4 which has been relied upon by the Tribunal to order of pay and recovery, it clearly reflects that, it was the permission to drive the heavy vehicle which was issued on 18/02/2002 and which got expired on 17/02/2005.

6. So far as the validity of the license is concerned, as per Section 14(2)(b)(i)(A), the validity would be for a period of 20 years i.e. till 2019 and there is no substantial evidence of the transport authorities in this regard to take a different view of the license not been valid at the time of the accident.

7. In the given facts and circumstances of the case, the appeal of the Insurance Company thus fails and is accordingly rejected.

8. The counsel for the appellant-Insurance Company further submits that, the award is also wrong to the extent that, the multiplier has been wrongly considered in the instant case. Since the income assessed by the Tribunal itself being on the lower side and that the future prospects and other aspects have not been consider while quantifying the compensation and that even otherwise as per the Insurance Company, the change would be only that of multiplier of 17 instead of 18 which could not being a substantial change, this court is of the opinion that, at this juncture after about 8-9 years of the award having been passed it would not be justified for interfering with the award. Therefore, the appeal on this ground also deserves to be and is accordingly rejected.

9. So far as cross-objection filed by the counsel for respondent Nos.4 & 5 is concerned, taking into consideration the aforesaid provision of the Motor Vehicles Act and also scrutinizing the contents of Exhibit-D/4 this court is of the opinion that, so far as the license to drive the Motorcycle is concerned, the appellant have not been able to prove that, the driver did not have a valid license for driving the Motorcycle on the date of the accident.

10. Thus, the order of pay and recovery given by the Tribunal being not sustainable the cross-objection to that extent deserves to be and is accordingly allowed. The entire liability of payment of compensation shall be upon the Insurance Company and the order of pay and recovery thus stands set-aside.

Sd/-
(P. Sam Koshy)
Judge

Sumit