NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1219 of 2017

Bajaj Allianz General Insurance Co. Ltd. Through Branch Manager, 3rd Floor, Gurukripa Tower, Near I C I C I Bank, Vyapar Vihar, Bilaspur District Bilaspur, Chhattisgarh At Present Shivmohan Bhavan, Vidhan Sabha Road, Pandri, Police Station Pandri, Raipur, Tahsil & District Raipur, Chhattisgarh

---- Appellant

Versus

1. Smt. Seema Sharma Wd/o Late Prabhakar Sharma, Aged About 28 Years
2. Monika Sharma D/o Late Prabhakar Sharma, Aged About 8 Years
3. Aditya Sharma S/o Late Prabhakar Sharma, Aged About 5 Years
4. Smt. Kesharbai Sharma W/o Shivkant Sharma, Aged About 60 Years
5. Shivkant Sharma S/o Late Sambhu Sharma, Aged About 64 Years

   Respondents No.2 and 3 are Minor and representing through their mother Smt. Seema Sharma Wd/o. Late Prabhakar Sharma.

   Respondents No. 1 to 5 are R/o. Village Shyamnagar Lingiyadih. Thana Sarkanda, District Bilaspur (CG)
6. Manish Barsaiyya S/o M. L. Barsaiyya, R/o Shubham Vihar, Mungeli Road, Bilaspur Thana Civil Lines, District Bilaspur, Chhattisgarh

–--Respondents

For Appellant	:	Mr. Rohitasva Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

31/08/2017

1. Heard on I.A. No.1, which is an application for condonation of delay. Considering the reasons assigned in the application and finding them to be satisfactory, I.A. No.1 is allowed and delay of 32 days in filing the appeal stands condoned.

2. Present is an appeal under Section 173 of the Motor Vehicle Act challenging the award dated 22.04.2017, passed by the 4th Additional Motor Accident Claims Tribunal, Bilaspur (C.G.), in Claim Case No. 628/2015. Vide the impugned award the Tribunal in a death case in a proceeding under Section 166 of the Motor Vehicle

Act has awarded a compensation of Rs.27,35,136/- with interest @ 8.5% per annum.

3. The deceased in the accident case was working as a Senior Sales Engineer and was drawing a salary of more than Rs.37,000/- a month. The liability of payment of compensation has been jointly and severally saddled upon the owner, driver and Insurance Company of the offending vehicle, which is a Maruti Dezire which was registered as a Taxi Car bearing registration No. CG-10-P-2959 duly insured with the Insurance Company w.e.f. 12.12.2014 to 11.12.2015 and the accident in the instant case was on 22.07.2015 i.e. during the validity of the Insurance Policy.

4. The challenge to the award is on two counts, firstly, the driver of the offending vehicle was not having a proper valid license in as much as once when the vehicle was registered as a Taxi and was being used for Taxi purpose it becomes a commercial vehicle and the driver should have an endorsement of permission to drive commercial passenger vehicle also, which in the instant case was not there and the license which driver at the time of accident was of Light Motor Vehicle. This contention of the counsel for the appellant may not have much force in view of the recent larger bench decision of the Supreme Court in the case of ***“Mukund Dewangan vs. Oriental Insurance Company Limited”*** i.e. Civil Appeal No. 5826/2011, decided on 03.07.2017, thus the grounds stands negative.

5. The second ground which has been raised by the counsel for the Insurance Company is the fact that the offending vehicle at the relevant point of time did not have valid permit as well as fitness certificate of the said vehicle. He further submits that the Insurance Company had moved an application before the Tribunal calling upon the owner to produce these documents so as to ensure that there was no breach of policy condition, however the owner has refused to produce any of these documents neither the owner appeared before the Tribunal. This ground of the appellant/Insurance Company also may not be sustainable for the simple reason that while the policy

was being issued by the Insurance Company they does not seem to have verified whether the vehicle had a proper permit or fitness certificate which they are now requiring. Further it is also relevant to take note of the fact that except for the fact that the witness of the Insurance Company has appeared and made an oral deposition, there does not seem to have been any serious efforts made on the part of the Insurance Company to verify from the concerned department, which issues permit and fitness certificate ascertaining whether the vehicle was having valid permit or fitness or not. This exercise was all the more necessary from the Insurance Company to have been proved for the reason that the owner himself has not produced these documents to establish their contentions.

6. The Insurance Company should have got the matter verified from the competent authority. Thus this Court is of the opinion that for the reason assigned in the preceding paragraphs, this Court does not find any strong case made out for admitting the appeal and the appeal thus fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved