NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1522 of 2008

The Oriental Insurance Company through the Divisional Manager, Divisional Office – Geetanjali Bhawan, Main Road, Korba, Tahsil and District Korba (CG)

---- Appellant

Versus

1. Dharmuram Rahidas S/o Manbodh Rahidas, resident of village – Chandanpur, Tah. Katghora, District Korba (CG)
2. Sudhir Kumar S/o Walder Maseeh, resident of Kududand, Vivil Lines, Bilaspur (CG)
3. Manish Kumar Jain S/o S. K. Jain, resident of Vinoba Nagar, Bilaspur (CG)

---- Respondents

For Appellant	:	Shri Ghanshyam Patel under instruction of Shri R. N. Pusty, Advocate
For Respondent no. 1	:	Shri A. L. Singroul under instruction of Shri Amiyakant Tiwari, Advocate

---

Hon'ble Shri Justice P. Sam Koshy

Order On Board

08/11/2017

Present is an appeal under Section 173 of the Motor Vehicles Act by the Insurance Company assailing the award dated 06.09.2007 passed by the Additional Motor Accident Claims Tribunal, Katghora, District Korba (CG) in Claim Case No. 142 of 2007. Vide the impugned award, the Tribunal, in an injury case under Section 166 of MV Act, has awarded a compensation of Rs.2,28,000/- with interest @ 8% per annum from the date of application.

2. The facts of the case is that an accident occurred on 15.03.2003 when the injured Dharmu Ram Rahidas was hit by a truck bearing registration No.

CG 10 ZB 0960 owned by respondent no.3 and driven by respondent no.2. The said truck was duly insured with the appellant Insurance Company.

3. The solitary ground for challenging the impugned award is that the driver at the relevant time did not have a licence to drive the truck. According to the counsel for the appellant, it is a case where on the date of accident, the licence issued to the driver respondent no.2 had already lapsed and the renewal was made after about one year from the date of accident. Therefore, it has to be presumed that it is a case of no licence and the Insurance Company therefore should be exonerated of its liability and the liability should be shifted upon the owner and the driver. Counsel for the Insurance Company drew attention towards the evidence of Prem Narayan Gupta, a witness from RTO, Bilaspur and Shri K. C. Eapen, an officer from the Insurance Company where both of whom have proved the licence getting expired prior to the date of accident.

4. The driver in the instant case i.e. respondent no.2 was proceeded ex parte before the Tribunal. Since respondents 2 & 3 i.e. the driver and the owner have also not entered appearance before this Court, this Court proceeds to decide the case in their absence.

5. Undisputedly, the vehicle was duly insured with the appellant. However, a perusal of the evidence of Prem Narayan Gupta and K. C. Eapen establishes that the driver had a licence effective from 22.09.1978 to 18.05.2001. Thereafter it has only been renewed w.e.f. 14.07.2004 till 13.07.2007 that means during the intervening period from 19.05.2001 to 13.07.2004 the driver did not have an effective licence. The accident in the instant case occurred on 15.03.2003. As such it would be a case of no licence at the time of accident. Still considering the fact that the vehicle at the relevant point of time was duly insured and relying upon the decisions of the Supreme Court in the cases of

New India Assurance Co. Ltd. Vs. Suresh Chandra Aggarwal reported in AIR 2009 SC 2987, **Ram Babu Tiwari Vs. United India Insurance Company Limited and others** reported in (2008) 8 SCC 165 and **Ishwar Chandra and others Vs. Oriental Insurance Co. Ltd. and others** reported in (2007) 10 SCC 650, this Court is of the opinion that the impugned award deserves to be modified only to the extent of making the principle of pay and recovery applicable.

6. Thus, the appeal of the Insurance Company is allowed in part. The impugned order stands modified to the extent that the Insurance Company shall pay the entire compensation awarded with liberty of recovering the same from respondents 2 & 3.

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

Bhola