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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 994 of 2017

- The New India Assurance Company Limited Through Its Divisional Manager, Divisional Office No.1, Jail Road, Raipur, District Raipur, Chhattisgarh ....(Non-Applicant No.3/ Insurer Of Vehicle No. C.G.04 E 2903)

----Appellant

Versus

1. Mohan S/o Khajju Singh Parate, Aged About 30 Years R/o Siltara, P.S. Dharsiwan, District Raipur, Chhattisgarh ....(Applicant No.1)

2. Madhu W/o Mohan Parate, Aged About 28 Years R/o Siltara, P.S. Dharsiwan, District Raipur, Chhattisgarh ....(Applicant No.2)

3. Ramesh Kumar @ Sadhu S/o Govind Kumar Ghosh, R/o Mana Camp, 18-Block, P.O. & P.S. Mana Camp, District Raipur, Chhattisgarh .... (Non-Applicant No.1/ Driver Of Vehicle No. C.G.04 E 2903)

4. Haradhan S/o Narayan Chand Dey, R/o Mana Camp, Qtr No. H-57, P.O. & P.S. Mana Camp, District Raipur, Chhattisgarh ....(Non-Applicant No.2/ Owner Of Vehicle No. C.G.04 E 2903)

---- Respondent

For Appellant : Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

20/07/2017

1. Present is an appeal under Section 173 of the Motor Vehicle Act, 1988, assailing the award dated 18.04.2017 passed by the 8th Additional Motor Accident Claims Tribunal (for short 'the Tribunal') in claim case No.175/2015. By the said impugned award, the Tribunal in a proceeding under Section 166 of the Act, 1988 in respect of death of a 5 year old minor child Prakash has granted compensation of Rs.2 Lakhs to the parents of the

deceased the claimants with interest @ 7% p.a. from the date of application. While passing the award, the Tribunal has reached to the conclusions that the owner of the bus bearing Registration No.CG04 E/2903 was not having a effective permit, on account of which the Tribunal found that there was a beach of the policy condition and has held that so far as the payment of compensation is concerned, the same shall be made by the Insurance Company, however, with liberty to recover the same from the owner and driver of the vehicle.

2. It is this award which is under challenge in the present appeal. The grounds raised in the present appeal is the fact that the Tribunal has erred in reaching to the conclusion that there is breach of policy condition in the liability, which should have been exclusively fastened upon the owner and driver and the insurance company should have been exonerated from the payment. Apart from this ground the insurance company has not raised any other ground.

3. A perusal of the impugned award would clearly reflect that so far as the factual matrix of the case is concerned, there is no dispute as regards the date of accident, the death of the deceased arising out of the accident and the accident arising from the use of the bus belonging to respondent No.4, driven by respondent No.3 and the said offending bus i.e. the CG04 E/2903 being insured with the present appellant. The only issue which has been raise is the fact that the order of pay and recovery by the Tribunal is not proper.

4. If we look into the facts circumstances of the case, more particularly the decision which has been laid down by the Supreme Court wherein the Supreme Court has approved the practice of the principle of pay and

recovery by the Insurance Company where the vehicle has been properly insured. In view of the same, this Court does not find any illegality committed by the Tribunal while passing the impugned order directing the insurance company to pay first and then recover from the owner and respondent.

5. This view of this Court has been fortified from the recent decision of the Supreme Court in the case of **Manuara Khatun & others Vs. Rajesh Kr. Singh & Others**[1]**.** and in the case of **National Insurance Co. Ltd. v. Saju P. Paul**[2]**.** In view of the same, this Court does not intend to interfere with the impugned award and the appeal itself is dismissed.

6. The counsel for the appellant at this juncture makes a reference that in the operating part of the award, the Tribunal has not directed the appellant to pay for and recover the amount from the owner and driver expect the observation made in the body of the judgment.

7. The said objection is not sustainable for the simple reason that once when there is a finding by the Tribunal and where it has been held that the amount of compensation should be first paid by the insurance company and it can later on be recovered from the owner and driver, in the event if it has not been reiterated in the operative part of the judgment, it would still meant the same and it is accordingly ordered.

Sd/-

P. Sam Koshy

Judge

Ashu

1 2017 (2) SCCD 832 (SC)

2 (2013) 2 SCC 41