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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1256 of 2011

United India Insurance Company Limited through its Branch Manager, Branch Office - Ambikapur, near Kumkum hotel, Ambikapur, District Surguja (CG)

---- Appellant

Versus

1. Rampyare Singh S/o Lalman Singh, caste God, R/o Gadbudi, Tahsil Baikunthpur, district Koria (C.G.)
2. Mahendra Kumar S/o Devlal, occupation driver, caste Panik, R/o Amgaon (Basparihapara), PS Charcha, Tahsil Baikunthpur, District Koria (C.G.)
3. Devlal S/o Moharsai, caste Panik, occupation owner, R/o R/o Amgaon (Basparihapara), PS Charcha, Tahsil Baikunthpur, District Koria (C.G.)

---- Respondents

For Appellants	:	Shri Dashrath Gupta, Advocate
For Respondent no.1	:	Shri A. L. Singroul, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

08/12/2017

Present is an appeal by the Insurance Company assailing the award dated 23.07.2011 passed by the 1st Additional Motor Accident Claims Tribunal, Manendragarh Baikunthpur, District Koria (CG) in Claim Case No. 13 of 2010. Vide the impugned award, the Tribunal, in an injury case under Section 166 of MV Act, has awarded a compensation of Rs.3,03,000/- with interest @ 7.5% per annum from the date of application.

2. While passing the said award the Tribunal applying the principle of "pay and recovery" has ordered the Insurance Company to deposit the amount first and recover the same from the owner and driver.

3. The Insurance Company has contested the award on the ground that it is a case of no licence and that there is a specific finding by the Tribunal in paragraph-11 where it has held that the owner and the driver have failed to prove the aspect whether the driver of the offending vehicle at the time of accident had proper licence or not. According to Shri Gupta, counsel for the Insurance Company, in the given finding of the Tribunal, the liability should have been entirely shifted upon the owner and driver in stead of the Insurance Company. Thus, prayed for setting aside of the award to the extent of applying the principle of pay and recovery and to shift the entire liability upon the owner and driver.

4. Shri Singroul, counsel appearing for the claimant in the instant case submits that the vehicle was duly insured with the present appellant is not in dispute. Therefore, the claimant should not be put to suffer because of the non cooperation of the owner and driver. He further submits that even if there is a breach of policy condition, the fact that the vehicle was duly insured is not in dispute. In the given facts and circumstances of the case, the order of pay and recovery does not seem to be erroneous calling for an interference.

5. Having considered the contentions put forth on either side and on perusal of the record what is primarily notable at this juncture is that the award is of July, 2011, the appeal is of October, 2011 i.e. the appeal has been pending consideration before this Court for more than 6 years. It is also not in dispute that the vehicle at the relevant point of time was duly insured with the present appellant Insurance Company.

6. In the given facts and circumstances of the case and also keeping in view the principle of the Supreme Court as has been laid down in the case of **Manuara Khatun and others Vs. Rajesh Kumar Singh and others** reported in **(2017) 4 SCC 796** and also the decision of the Co-ordinate Bench of this

Court in the case of **National Insurance Co. Ltd. Vs. Kashi Das @ Mohandas and others** decided on 03.05.2016 in MA No. 496 of 2003, this Court is of the opinion that the judgment of the Tribunal applying the principle of pay and recovery does not warrant any interference. The appeal of the Insurance Company thus fails and is accordingly dismissed.

7. Needless to mention that the appellant shall deposit the entire awarded amount at the earliest with liberty of recovering the same by initiating appropriate recovery proceeding against the owner-cum-driver.

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

Bhola