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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1153 OF 2010

Bajaj Allianz General Insurance Company Limited, office at Shiv Mohan Bhawan, Vidhan Sabha Road, Pandri, Raipur

… Appellant

versus

1. Mohan Baghel, S/o Bhikhari Baghel, aged 55 years years, R/o Village- Doma, P.S. Tikrapara, District Raipur (C.G.)
2. Radheshyam Giri, S/o Late Chiteshwar Giri, R/o Krishna Nagar, Boriya Road, Santoshi Nagar, Tikrapara, Raipur, P.S. Tikrapara, Tahsil & District Raipur (C.G.)

… Respondents

For Appellant	:	Mr. Ghan Shyam Patel, Advocate, under instructions of Mr. Abhishek Sinha, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/10/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, preferred by the appellant-insurance company assailing the award dated 7.7.2010 passed by the Second Additional Motor Accident Claims Tribunal, Raipur, in Claim Case No. 66/2009.

2. Vide the impugned award, the learned Tribunal, in a claim case under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.67,000/- to respondent no.1/claimant, with interest thereon at the rate 6% per annum from the date of filing of the claim case.

3. Learned Counsel for the appellant-insurance company assails the impugned award on two grounds. Firstly, that the driver of the offending vehicle did not have a valid endorsement of driving a transport vehicle. Secondly, that the driver of the offending vehicle who was prosecuted in a criminal case has been acquitted of all the charges levelled against him and as such the allegations of rash and negligent driving stands disproved. Therefore, the claim case under Section 166 of the Motor Vehicles Act would not had been maintainable as the point of negligence against the driver stands disproved in a criminal case.

4. So far as the first ground regarding the driver not having proper endorsement of driving a transport vehicle, the issue raised by the appellant-insurance company in this regard stands squarely decided by a larger Bench of the Hon'ble Supreme Court in a recent decision rendered in the case of **Mukund Dewangan** v. **Oriental Insurance Company Limited, AIR 2017 SC 3668**, wherein it has been categorically held that merely because there was no endorsement permitting the driver to drive a transport vehicle when the vehicle fell within the same category of vehicle, the insurance company cannot be absolved of its liability of indemnifying the insured. This ground of the insurance company thus stands negated.

5. As regards the second ground, this Court is of the opinion that the same may not of much assistance to the insurance company, firstly for the reason that the judgment of acquittal has not been placed before this Court. Further, the evidence which is required to prove a case in a criminal proceeding is entirely different than the evidence required for consideration in a claim case under Section 166 of the Motor Vehicles Act. The standard of proof required in a criminal case is that of proving the evidence beyond all reasonable doubts and the proof required in a claim case under Section 166 of the Motor Vehicles Act is applying the principles of preponderance of probability. It is also found from the given factual matrix of the case that the involvement of the offending vehicle in the accident is not in dispute.

6. Thus, for the all the aforesaid reasons, this Court does not find this to be a strong case for interfering with the impugned award.

7. The appeal thus fails and is accordingly dismissed. Any interim order passed by this Court during pending of the present appeal shall also stand merged with the present final order. The appellant-insurance company is directed to deposit the entire amount awarded.

Sd/-
(P. Sam Koshy)
Judge

/sharad/