NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.1395 of 2015

National Insurance Company Limited, Branch Office-II, "Thakur Chamber" Power House, G.E.Road, Bhilai, District Durg (C.G.) (Insurer of Vehicle Mini Bus bearing registration No.C.G.-04-E-0236).

---Appellant

Versus

1. Praveen Agrawal S/o Arun Agrawal, aged about 24 years, R/o Near Ashirwad Hospital, Daganiya, District Raipur (C.G.).
2. Altaf S/o Mohd.Majid, aged about 24 years, R/o Luchkipara, Police Station City Kotwali, District Durg (C.G.).(Driver).
3. Raju Singh Raj Purohit S/o K.S.Raj Purohit, R/o State Bank Colony, House No.2, Mahoba Bazar, District Raipur (C.G.). (Owner).

---Respondents

For appellant	:	Shri G.V.Kutumba Rao, Advocate.
For resp.No.2	:	Shri Jitendra Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/12/2017

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicle Act, 1988 assailing the award dated 26/06/2015 passed by the learned 9th Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Motor Accident Claim Case No.90/2011.

2. Vide the said impugned award, the Tribunal in an injury case under Section 166 of the Motor Vehicle Act has awarded a compensation of Rs.15,52,291/- with interest @ 6% per annum from the date of application.

3. The counsel for the appellant/Insurance Company submits that, the only ground challenging the impugned award is that the driver of the offending

vehicle on the date of accident was not having a valid license and therefore the Insurance Company should had been exonerated of its liability and the liability should had been fastened upon the owner and the driver. He further submits that, the Insurance Company in support of its contention have examined one Shyam Kumar Rajak – NAW/1 who is an officer of the office of the concerned R.T.O. who has stated that, the license of the driver had got expired on 25/06/2006 and it was thereafter renewed only after the accident i.e. on 22/11/2006. Therefore, according to the counsel for the Insurance Company, from the aforesaid facts it is clear that, on the date of accident the driver did not have an effective license and therefore as there being a clear breach of policy condition, the liability should have been shifted upon the owner and driver and the Insurance Company should have been exonerated of its liability.

4. The counsel for the respondent No.2/driver however opposing the appeal on the ground that, the finding of the Tribunal seems to be just and reasonable and it does not warrant any interference.

5. Perusal of the record show that, the owner and driver of the offending vehicle before the Tribunal in spite of proper service had decided not to contest the case and were proceeded ex-parte. Even before this Court, the owner in spite of proper service has not appeared, though the driver is present before this Court and is represented through a lawyer.

6. The factual matrix as stated by the counsel for the Insurance Company is not disputed by the counsel for the respondent No.2/driver as it is a matter of fact and evidence which have been brought on record.

7. Given the factual matrix of the case this Court is of the opinion that, apparently there was a breach of policy condition and therefore the liability of payment of compensation would remain upon the Insurance Company. However it shall have the liberty of recovering the same from the respondent No.2 & 3 i.e. the driver and the owner of the offending vehicle.

8. With the aforesaid modification in the impugned award, the appeal stands allowed in part and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit