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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 950 of 2017

Sushil Kumar Badwani S/o Late Jodhram Badwani, Aged About 49 Years R/o Fafadih Naka, Thana Gunj, Fafadih, Raipur, District Raipur, Chhattisgarh.

---- Appellant

Versus

1. Smt. Pramila Nishad W/o Late Mohan Nishad, Aged About 27 Years.
2. Ku. Soniya Nishad D/o Late Mohan Nishad, Aged About 16 Years.
3. Ku. Tijiya Nishad D/o Late Mohan Nishad, Aged About 13 Years.
4. Kiran Nishad S/o Late Mohan Nishad, Aged About 10 Years
5. Ku. Sadhna Nishad D/o Late Mohan Nishad, Aged About 8 Years.
6. Smt. Maheshiya Nishad W/o Dayaram Nishad, Aged About 58 Years.
7. Dayaram Nishad S/o Bisambhar Yadav, Aged About 60 Years
   Respondents No.2 to 5 are minor represented through mother.
   All are R/o Village Nayapara, Patharidih, P.O. Urla, Thana Urla, Raipur, District Raipur, Chhattisgarh.
8. Ramgulal Nishad @ Gullu S/o Ramratan Nishad, R/o Village Nayapara Patharidih, P.O. Urla, Thana Urla, Raipur, District Raipur, Chhattisgarh.
9. United India Insurance Company Limited, Through Divisional Manager, United India Insurance Company Limited, Kutchery Chowk, Jail Road, Raipur, Chhattisgarh.

---Respondents

For Appellant	:	Shri S.S.Rajput, Advocate
For respondent No.9/Insurance Company	:	Shri B.N.Nande, Advocate

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Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/09/2017

1. Present is an appeal under Section 173 of the Motor Vehicle Act assailing the award dated 18/04/2017 passed by the 1st Additional Motor Accident Claims Tribunal, Raipur (C.G) (for short – the Tribunal) in Claim Case No.427/2015.

2. Vide the said impugned award, the Tribunal has in a proceeding under Section 166 of the Motor Vehicle Act awarded the compensation of Rs.6,25,800/- along with interest @ 6% per annum in favour of the claimants.

3. While passing the award, the Tribunal has exonerated the Insurance Company of its liability on the ground that, there was no proper endorsement on the license of the driver of the offending vehicle permitting him to drive the transport vehicle and have fastened the liability of payment of compensation upon the appellant-owner.

4. Present appeal is of the owner assailing the liability which has been fastened upon him and exoneration of the Insurance Company. The counsel for the appellant submits that, it is a case where the only ground for exoneration is the driver of the offending vehicle having no proper

endorsement permitting him to drive the transport vehicle. He further submits that, the issue involved in the case stands settled by the larger bench decision of the Supreme Court in the case of ***Mukund Dewangan Vs. Oriental Insurance Co.Ltd. [AIR 2017 SCC 3668].***

5. The counsel for the Insurance Company however opposing the appeal submits that, the finding arrived at by the Tribunal was just and reasonable and that it has given specific reason for exonerating the Insurance Company and the contentions put forth by the counsel for the appellant are not calling for any interference with the impugned award. He further submits that, the license itself shows that the driver at the relevant point of time did not have the validity to drive the vehicle between 08/02/2014 to 11/08/2014 as is reflected from Exhibit-D1. Thus, the appeal of the owner deserves to be rejected.

6. Having heard the rival contentions put forth on either side and on perusal of record, considering the admitted factual position, the only issue which arises for consideration before this court is whether the finding of the Tribunal in exonerating the Insurance Company was justified or not? Whether the driver of the offending vehicle had a valid license for driving the Light Motor Vehicle at the time of the accident? Perusal of the statement of the witness of the Insurance Company itself would reveal that, the license of the driver of the offending vehicle was initially issued on 14/01/1994 and it was valid till 20/03/2010. Subsequently, it was renewed from 08/02/2011 to 14/06/2018. This renewal was for permission to drive LMV vehicle. Subsequently, the endorsement for permission to drive the transport vehicle was obtained from 12/08/2014 valid till 11/08/2017. However, Exhibit-D1 shows that after the renewal of driving license, it was entered that licensee was not having a valid driving license for transport vehicle between 08/02/2014 to 11/08/2014. However, this endorsement has been reflected against the entry made of non transport vehicle which has caused the confusion.

7. If we perused the entire Exhibit-D1 it clearly reflects that, the license was originally issued on 01/04/1994 with validity till 20/03/2010. It was renewed for the driving of LMV on 08/02/2011 and was made valid till 14/06/2018.

8. Exhibit-D1 also reflects that for the period when it got first expired on 20/03/2010 and till it was renewed on 08/02/2011, for the intervening period i.e. between 21/03/2010 to 07/02/2011, there was no valid driving license with the driver, as only on 08/02/2011, it was duly renewed.

9. Likewise, the endorsement for permission to drive the transport vehicle was for the first time got entered on 08/02/2011 and it was valid till 07/02/2014.

10. Subsequently, it was not renewed till 11/08/2014 and was renewed again only on 12/08/2014 with validity up to 11/08/2017 and it is this intervening

period i.e. from the date when the earlier period of permission to drive the transport vehicle got over on 07/02/2014 till it was again renewed on 12/08/2014. Intervening period i.e. from 08/02/2014 to 11/08/2014 was shown as the period till which the driver did not have a valid endorsement for driving the transport vehicle.

11. In the opinion of this court, this requirement of endorsement for driving the transport vehicle issue has been dealt with by the Hon'ble Supreme Court in the aforesaid judgment cited by the counsel for the appellant in the case of ***Mukund Dewangan and others Vs. Oriental Insurance Co.Ltd. [AIR 2017 SCC 3668],*** there is nothing further remains to be adjudicated upon by this court and the facts of the case squarely fits in the judgment of Supreme Court and the impugned award therefore deserves to be and is accordingly modified to the extent that the liability of payment of compensation shall fall upon the Insurance Company and the driver and the owner jointly and severally and the responsibility of making the payment shall be upon the Insurance Company.

12. Thus, the appeal stands allowed and disposed off. Any amount which the owner has deposited he shall be entitled for refund by the Insurance Company. The balance of amount shall be deposited by the Insurance Company.

Sd/-
(P. Sam Koshy)
Judge

Sumit