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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 590 of 2013

United India Insurance Company Limited through its Divisional Manager, Divisional Officer Raipur, Kutchery Chowk, Riapur, P.O. Raipur, P.S. Moudhapara, Tah. & Distt. Raipur (C.G.) (Insurer of offending vehicle No. CG/04/CA/4181)

---- Appellant

Versus

1. Ku. Sristi Sonkar @ Lovelin D/o Umesh Sonkar, aged about 11 years, minor through her father Umesh Sonkar (Res. No. 2), R/o Tillu Chowk, Lakhe Nagar, Riapur, Tah & Distt. Raipur (C.G.)
2. Umesh Sonkar S/o Sukhnandan Sonkar, aged about 40 years, occupation business, guardian/father of respondent no.1. R/o Tillu Chowk, Lakhe Nagar, Riapur, Tah & Distt. Raipur (C.G.)
3. Rajesh Yadav S/o Bharat Lal Yadav, aged about 29 years, R/o near Joratalab, Raipura, PS Purani Basti, Distt. Raipur, C.G.
4. Sonmohan Singh S/o M. L. Singh, R/o D-6 , Civil Line Raipur, P.S. Civil Line Raipur, Distt. Raipur, C.G. (Register owner of offending vehicle No. CG/04/CA/4181)

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate
For Respondent/claimants	:	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 25.03.2013 passed by the 4th Additional Motor Accident Claims Tribunal, Raipur (CG) in Claim Case No. 259 of 2011. Vide the impugned award, the Tribunal, in an injury case under Section 166 of MV Act, has awarded a compensation of Rs.35,000/- with interest @ 6% per annum from the date of application.

2. The Insurance Company in the instant case has preferred this appeal assailing the liability on the ground that the driver in the instant case i.e. respondent no.3 Rajesh Yadav did not have a valid licence at the time of accident. Counsel for the appellant submits that the driver who was riding the motorcycle Herohonda Passion bearing registration no. CG 04 CA 4181 had a licence of only a light motor vehicle and that he did not have a licence to drive a motorcycle. Therefore, it is a case where the driver did not have a licence to drive the motorcycle on the date of accident. In the circumstance, the insurance Company should not have been fastened with the liability of indemnifying the owner. Thus, prayed for suitable modification of the award.

3. The issue so raised in the instant appeal has been discussed by the Supreme Court in the case of **Oriental Insurance Company Limited Vs. Zaharulnisha and others** reported in **(2008) 12 SCC 385** wherein under similar facts and circumstances of the case, the Supreme Court has held that in the given circumstances, the Insurance Company shall have the liberty to recover the amount assessed from the owner and driver after depositing the awarded amount before the Tribunal. This Court in the context of this case of the Supreme Court also has no hesitation in applying the same analogy and accordingly, modifies the impugned order to the extent that the Insurance Company shall deposit the awarded amount first and shall have the liberty of recovering the same from the owner-cum-driver by initiating appropriate recovery proceeding.

4. The appeal of the Insurance Company thus stands modified to the extent of applying the doctrine of pay and recovery.

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

Bhola