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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1174 of 2011

Aditya Daga S/o Prem Chand Daga, aged about 25 years, R/o Gudhiyari Chowk, near Jaganath Temple, Police Station Gudhiyari, Tahsil & District Raipur (CG) (Owner of alleged vehicle No. CG 04 JA/8576)

---- Appellant

Versus

1. Smt. Meena Sen W/o late Manharan Sen, aged about 35 years
2. Nilesh Kumar Sen S/o Late Manharan Sen, aged about 17 years
3. Bhuneshwar Sen S/o Late Manharan Sen, aged about 15 years
4. Chandan Sen S/o Late Manharan Sen, aged about 09 years through legal representative mother Smt. Meena Sen W/o late Manharan Sen

   Respondents 2 to 4 are minor through legal representative mother Smt. Meena Sen i.e. respondent no.1.

   All are resident of village Dhaneli, Post Girod, Police Station & Tahsil Dhrsiwa, District Raipur (CG)

5. Balkishan Yadav S/o Joku Ram Yadav, aged about 62 years, R/o Chuna Bhatti, Gudhiyari, P.S. Gudhiyari, Raipur(C.G.), (Driver of alleged vehicle No. C.G. 04- JA/8576)
6. Future General India Insurance Company Limited through Branch Manager/ Incharge Officer, Future General India Insurance Company Limited, Place B.M. 23, Area, Raipur, (C.G.) (Insurer of alleged Vehicle No. CG 04 JA/8576) **---- Respondents**

For Appellant	:	Shri P. P. Sahu, Advocate
For Respondent No.6	:	Shri Rohitashav Singh under instruction of Shri N. K. Thakur, Advocate

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Hon'ble Shri Justice P. Sam Koshy

Order On Board

01/09/2017

The present is an appeal by the owner under Section 173 of the Motor Vehicles Act assailing the award dated 27.08.2011 passed by the 5th

Additional Motor Accident Claims Tribunal, Raipur (CG) in Claim Case No. 75/2011.

2. The facts in brief are that the deceased Manharan who was driving his motorcycle on 07.05.2009 was hit by a Mahindra Jeep bearing registration No. CG 04JA/8576 owned by the present appellant and driven by respondent no.5 Balkishan. As a result of the accident, Manharan sustained grievous injuries to which he later on succumbed. On a claim application filed by the legal representatives of the deceased under Section 166 of the MV Act, the Tribunal vide impugned award dated 27.08.2011 awarded a compensation of Rs. 13,52,576/- with interest @ 9% from the date of application. The Tribunal, however, while passing the impugned award has exonerated the Insurance Company and fastened the liability of payment of compensation upon the appellant who is the owner of the offending vehicle leading to the filing of the present appeal.

3. The ground for exoneration of the Insurance Company was that the driver of the offending vehicle i.e. respondent no.5 was having a fake licence. The other ground for exonerating the Insurance Company was of non production of the fitness/permit pertaining to the vehicle at the relevant point of time before the Tribunal.

4. So far as the non availability of fitness/permit is concerned, the record shows that these documents were seized by the Police Authorities in the criminal case that was registered against respondent no.5 and which were also part of the challan and exhibited during the course of hearing before the Tribunal. Thus, the said ground cannot be a vital factor for exonerating the Insurance Company and therefore, the finding in this regard is set aside.

5. So far as the driver of the offending vehicle having a fake licence is concerned, the evidence which has come on record shows that the witness from RTO, Raipur was examined before the Tribunal who has categorically accepted the fact that the licence of respondent no.5 was duly renewed at regular intervals from the RTO, Raipur. The only evidence which has come is the original licence which the respondent no.5 had and which is alleged to have been issued from RTO, Alwar at Rajasthan was a fake document for which a witness from RTO, Alwar was also examined.

6. Be that as it may, the fact remains that when the owner had engaged the driver, he had a valid licence duly renewed from the RTO, Raipur which was proved from the witness of RTO at Raipur. In the given facts it cannot be said that there was any lapse on the part of the present appellant in engaging respondent no.5 as a driver. What is also relevant is the fact that undisputedly, the driver at the relevant point of time had a valid licence and apart from which there was no other allegation of any other breach of policy condition.

7. Thus, the finding exonerating the insurance Company by the Tribunal is bad in law and the same deserves to be and is accordingly set aside. The impugned award stands modified to the extent that the liability of payment of compensation shall be jointly and severally upon the Insurance Company, the owner and the driver and it shall be the responsibility of the respondent no.6 Insurance Company to pay the amount of compensation awarded by the Tribunal. The amount of compensation already deposited by the appellant shall be refunded to him by the Insurance Company.

8. The appeal thus stands allowed.

Sd/-

(**P. Sam Koshy)**
JUDGE

Bhola