NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1220 of 2017

Bajaj Allianz General Insurance Co. Ltd. Through Branch Manager, In Front Of Main Gate Rajkumar College, Near I C I C I Bank, G. E. Road, Raipur Chhattisgarh At Present Address Shiv Mohan Bhawan, Vidhan Sabha Road, Pandri, Police Station Tahsil And District Raipur Chhattisgarh.

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Versus

1. Vijay Lal Chopda S/o Late Manak Lal Chopra, aged about 46 Years R/o Ward No. 12, Amlipara, Khairagarh, Police Station And Tahsil Khairagarh, District Rajnandgaon (C.G.)
2. Lalit Sori, S/o Naval Ram Soni, aged about 30 Years R/o Village Singanpur, Police Station Keshkal, Tahsil Keshkal, District Kondagaon (C.G).
3. Umashankar Shukla, S/o Late Gajadhar Prasad Shukla, aged about 60 Years R/o Vardhaman Colony, Jagdalpur Police Station Jagdalpur District Jagdalpur (C.G.)

–--Respondents

For Appellant : Shri Rohitashva Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

31/08/2017

1. Challenge in the present appeal is to the award dated 08/02/2017 passed by the Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon (C.G.) in Claim Case No.51/2013.

2. Vide the said impugned award, the Tribunal in an injury case under section 166 of the Motor Vehicle Act has awarded the compensation of Rs.13,27,527/- of which an amount of Rs.8,86,927/- was towards the medical expenses incurred by the injured for his treatment.

3. Present appeal is preferred by the Insurance Company challenging the liability which has been fastened upon the Insurance Company.

4. The contentions of the counsel for the appellant-Insurance Company is that, the license belonging to the driver of the offending vehicle was not properly endorsed in as much as the driver was having a license for driving heavy goods vehicle whereas the vehicle which was involved in the accident was a dangerous type of vehicle for

which an specific endorsement under Section 14(2) of the Motor Vehicle Act is required. He submits that in the instant case, since there is no proper endorsement, the driver was not competent to drive and therefore there is no breach of policy condition for which the Insurance Company saddled with the responsibility of the payment of compensation.

5. In the instant case, the witness who had been examined before the court below on behalf of the Insurance Company is one R.K.Khalkho who has deposed before the Tribunal that, the driver of the offending vehicle in his license did not have the endorsement for granting the license for transportation of dangerous goods. However, the said witness accepts in his deposition that, Exhibit D-5 is a document produced before the Tribunal which shows that the driver had underwent training in respect of transportation and safety measures to be taken while transportation of dangerous vehicle as well as transportation of dangerous goods.

6. In addition, the Insurance Company further has also examined one Arijit Chakraborty, Law Officer to prove that the driver at the relevant point of time was having a fake license. But the subsequent witness i.e. R.K.Khalkho has categorically admitted the license of the driver to have been renewed from the concerned R.T.O. at the relevant point of time and that it was during its validity period when the accident occurred.

7. The witness of the Insurance Company have in their evidence not produced any evidence with which it could be established that the Insurance Company has been able to prove before the Tribunal any lapse of fault on the part of the owner of the vehicle to establish that there was a breach of policy condition. Further there is also no any evidence which shows that there was dangerous product available in the vehicle at the time of accident in absence of which the vehicle is a simple heavy vehicle.

8. Undisputedly, the driver of the offending vehicle at the relevant point of time had license with permission to drive heavy goods transport vehicle. The vehicle involved in the accident was also a heavy goods vehicle, except for the fact that, it was meant for transportation of petroleum product.

9. Thus, keeping in view the guidelines laid down by the Supreme Court in the case of ***Mukund Dewangan Vs.Oriental Insurance Co.Ltd. and ors.*** in civil appeal No.5826/2011 decided on 03/07/2017, the said ground raised by the Insurance Company cannot be accepted to be the strong ground calling for interference with the impugned award as the Insurance Company has not brought any substantive material worth admitting the appeal.

10. Therefore, the appeal thus fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Sumit