NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1422 of 2016

Reliance General Insurance Co. Ltd. Through Branch Manager, Reliance General Insurance Co. Ltd. Anil-Dhiru Bahi Ambani Group Shop No. 412-813, 4th Floor, Jaistambh Chowk, Raipur, At Present- 5th Floor, National Corporate Park, G.E. Road, Police Station Saraswati Nagar, Civil And Revenue District Raipur, Chhattisgarh ....(Insurer)

---- Appellant

Versus

1. Smt. Tulsa W/o Late Neeldhar, Aged About 24 Years
2. Ku. Lalita D/o Late Neeldhar, Aged About 10 Years
3. Ku. Sarita D/o Late Neeldhar, Aged About 8 Years
4. Chhavindra S/o Late Neeldhar, Aged About 5 Years

   Respondents No. 2 to 4 are Minors and Representing Through their Mother Smt. Tulsa W/o Late Neeldhar,

   All R/o Village Fulnar, Tahsil Dantewada, Dist. South Bastar, Dantewada, Chhattisgarh ....(Claimants)
5. Ravichand S/o K.C. Bharti, R/o Kirandul Police Station Kirnadul, Dist. Dantewada, Chhattisgarh ....(Driver)
6. Omprakash Watti S/o Shri Shyamlal Watti, R/o Balud, Thana Dantewada, Dist. Dantewada, Chhattisgarh

–--Respondents

For Appellant	:	Mr. Rohitasva Singh, Advocate
For Respondents No. 1 to 4	:	Mr. Avinash Chand Sahu, Advocate
For Respondent No.6	:	Mr. A.L. Singroul, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/11/2017

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 22.04.2016, passed by the Motor Accident Claims Tribunal, South Bastar, Dantewada, Chhattisgarh, in Claim Case No. 77/2014.

2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation

of Rs.9,63,500/- with interest @ 6% per annum from the date of application.

3. The counsel for the Insurance Company challenging the impugned award submits that it is a case, where there appears to be typographical error in the calculation of compensation as according to paragraph no.15 of the impugned award on calculation of total compensation comes to Rs.8,63,500/-, however, due to the clerical error, the grand total is reflected at Rs.9,63,500/- instead of Rs.8,63,500/-.

4. This Court on perusal on calculation the compensation as has been reflected in paragraph no.15 finds that sufficient force in the submission made by the counsel for the Insurance Company and orders that the total compensation payable to the claimant shall be read as Rs.8,63,500/- instead of Rs.9,63,500/-.

5. The second ground of contentions put forth by the counsel for the appellant is that the Driver of the offending vehicle did not have valid and proper endorsement in his license for driving the transport vehicle. This issue raised by the Insurance Company also is not sustainable for the reason that the issue stands squarely covered by the recent Larger Bench decision of the Hon'ble Supreme Court in the case of ***"Mukund Dewangan vs. Oriental Insurance Company Limited" AIR 2017 S.C. 3668*** and the grounds so raised stands negated.

6. The third ground of challenge raised by the Insurance Company is that the offending vehicle in the instant case i.e. a Tata Magic Van which is a passenger vehicle did not have proper permit at the time

of accident and submits that since there is a vehicle was being plied without a permit, the liability of payment of compensation should had been fastened upon the Owner and not upon Insurance Company as driving of passenger vehicle without a permit amounts to a clear violation of policy condition as also the provisions of the Motor Vehicles Act.

7. The counsel appearing for the respondents however opposing the appeal submits that there is no any interference with the impugned award as the findings arrived at by the Tribunal is a reasoned award based on the evidence which have come on record.

8. Having considered the contentions put forth on either side and on perusal of the record shows that the admitted factual matrix which have come before the Tribunal is that the vehicle i.e. Tata Magic involved in the accident did not have a permit, though the respondents have taken a ground that the proper permit was not required, since it was a small Light Motor Vehicle, but on going through the provisions under Section 66 of the Motor Vehicles Act, it clearly reflects that any transport vehicle for the operation of it in the public road, it is mandatory for having a permit from the concerned transport authority. In the instant case, admittedly there was no permit at the time of the accident.

9. As far as the legal position in respect of a situation where the vehicle involved in the accident, does not have a permit is concerned, the issue stands squarely covered by the decision of the Hon'ble Supreme Court in the case of ***"National Insurance Co. Ltd. vs. Challa Bharthamma" (2004) 8 SCC 517*** and also the Division Bench's decision of Kerala High Court in the case of ***"Suresh***

Kumar vs. Oriental Insurance Company Limited and Others", 2016 ACJ 679.

10. In the light of the aforesaid decisions, this Court is of the opinion that the present is a case fit for applying the principles of pay and recovery and the impugned award is accordingly modified to the extent that the liability of payment of compensation shall remain be upon the Insurance Company, however, they shall have the liberty of recovering the same from the Owner and Driver of the offending vehicle.

11. The appeal thus stands allowed in part.

Sd/-
(P. Sam Koshy)
Judge

Ved