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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 257 of 2017

National Insurance Company Limited through the Branch Manager, Branch Office Mirjapur, Khajanchi Ka Chauraha Wale Sliganj, Mirjapur (U.P.) Pin Code- 231001 Phone No. 05442253492 Fax No. 05442257973 ....(Non-Applicant No.2/ Insurer of Vehicle No. U.P.-64-H-2881)

---- Appellant

Versus

1. Smt. Manki Bai W/o late Jagarnath Rajwade, aged about 65 years Caste- Rajwar, R/o Village Dugga, Police Station Bhatgaon, Tahsil Bhaiyathan, District Surajpur, Chhattisgarh
2. Uday Rajwade S/o late Jagarnath Rajwade, aged about 50 years Caste- Rajwar, R/o Village Dugga, Police Station Bhatgaon, Tahsil Bhaiyathan, District Surajpur, Chhattisgarh ....(Claimants)
3. Rajkumar S/o Shivprasad, aged about 28 years, Occupation- Driver, R/o Jampani, Police Station- Myorpur, District Sonbhadra (U.P.) .... (Driver of Vehicle No. U.P.-64-H-2881)
4. Ajeet Kumar Jaiswal S/o Bhagwanlal Jaiswal, Occupation- Vehicle owner, R/o Murdhwa, Renukut, District Sonbhadra (U.P.) .... (Owner of Vehicle No. U.P.-64-H-2881)

---- Respondents

For Appellant	:	Shri Goutam Khetrapal, Advocate
For respondents 1 & 2	:	Shri D. N. Prajapati, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

06/07/2017

With the consent of the parties, the appeal has been taken up for final hearing.

2. Challenge in the present appeal is the award dated 21.10.2016 passed by the Additional Motor Accident Claims Tribunal, Pratappur, District - Surajpur (CG) in Claim Case No.46/2015. Vide the impugned award the Claims Tribunal in a case of death of the deceased Purusottam has granted compensation of Rs. 1,87,000/- to the respondents 1 & 2.

3. The solitary ground raised for challenge in the appeal and which has been vehemently argued by the counsel for the appellant is that the driver of the offending vehicle at the relevant point of time did not have a valid driving licence. Since there is a breach of policy condition in as much as the driver not having a valid licence, the fastening of the liability upon the Insurance Company by the Tribunal was not proper and justified. Therefore, the impugned award needs to be modified to the aforesaid extent and the liability may be transferred upon the owner.

4. Counsel for the claimants however opposes the appeal and submits that the finding of the Tribunal is based upon the evidences which have come on record and the same does not warrant any interference.

5. Having heard the counsel for the parties and on perusal of the record what clearly reflects is that the Insurance Company has not led any evidence before the Tribunal to substantiate their contention or to prove the case that there was any sort of breach of policy condition. In the absence of any evidence led by the Insurance Company, the contention raised by the counsel for the appellant is hard to accept and the said contention would therefore not be sustainable.

6. At this Juncture, it would be trite to refer to the decision of this Court in MA No. 2547 of 2000 decided on 12.07.2006 wherein this Court in paragraphs- 1 & 2 has held as under:

> "1. The only ground raised in this appeal by the insurance Company is that it had got the driving licence produced by the

> owner/driver of the truck verified and on verification, the Surveyor obtained reports from the Regional Transport Office, Jhansi and Regional Transport Office, Bilaspur that no such driving licence was issued by them.
>
> 2. The Insurance Company did not summon any officer from Regional Transport Office, Jhansi or Bilaspur. It did not even examine the Surveyor but only examined the official from the office who produced the report of the Surveyor. Mere proof of this document is not the proof of the contents therein. The best evidence was the production of original records of the concerned transport authorities who had allegedly issued the driving licence to the driver of the truck. Since the Insurance Company has not produced the original records, it cannot escape from its liability."

7. In view of the aforesaid legal position and also the fact that there was no evidence adduced whatsoever by the Insurance Company before the Tribunal, the present appeal fails and is accordingly dismissed.

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

Bhola