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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 834 OF 2017

National Insurance Company Limited, through its Branch Manager, Branch Office- Gill Complex, near Gurudwara, Station Road, Durg, District Durg (C.G.)

… Appellant

versus

1. Somnath Verma, S/o Shri Raghu Verma, aged 17 years (minor- through father- Raghu Verma, S/o Motilal Verma), R/o Bajrang Chowk, Krishna Nagar, P.S.- Supela, District Durg (C.G.)
2. Rupesh Kumar Verma, S/o Suraj Ram Verma, R/o Somaikala, P.S. Saja, District Bemetara (C.G.) (Driver of Vehicle No. CG07-CA-3363)
3. Pannalal Benarjee, S/o Santram Benarjee, R/o Jagannathpur, P.O. Parasbod, Tah. Saja, District Bemetara (C.G.) (Owner of Vehicle No. CG07-CA-3363)

… Respondents

For Appellant : Mr. Dashrath Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/12/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, preferred by the appellant-insurance company, assailing the award dated 25.2.2017 passed by the 8th Additional Motor Accident Claims Tribunal, Durg, in Motor Accident Claim Case No. 59/2015.

2. Vide the impugned award, the learned Tribunal, in an injury case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.52,000/- to respondent no.1-claimant with interest thereon at the rate of 9% per annum from the date of presentation of the claim application. While passing the award, the learned Tribunal has fastened the liability for payment of compensation upon the appellant-insurance company indemnifying the respondents no. 2 and 3 i.e. the driver and the owner of the offending vehicle i.e. Swaraj Mazda bearing registration no. CG07-CA-3363.

3. Learned counsel for appellant-insurance company submits that the offending vehicle is Swaraj Mazda, a transport vehicle, and the driver of the offending vehicle i.e. respondent no.2-Rupesh Kumar Verma did not have an effective licence on the date of accident i.e. 21.3.2013 and therefore the appellant-insurance company should have been absolved and the liability, if any, should have been fastened upon the owner of the offending vehicle.

4. Learned counsel for appellant-insurance company further submits that it is a case where two persons received injuries; the respondent no.1-claimant and one person both of whom were the pillion riders, and which shows that there were three persons travelling on the motorcycle and therefore it was a breach of the rules of the Motor Vehicles Act and there is an element of contributory negligence also which had led to the accident.

5. So far as the first ground is concerned, the said issue is no longer *res integra* for the reason that the Hon'ble Supreme Court in a recent Larger Bench's decision in the case of **Mukund Dewangan** v. **Oriental Insurance Company Limited, AIR 2017 SC 3668**, has laid to rest the issue and that there was no requirement of an endorsement for permission to drive a transport vehicle. Undisputedly, the driver of the offending vehicle in the instant case had a licence to drive a Light Motor Vehicle (NT). The vehicle involved was a Light Goods transport vehicle. Thus, in the light of the judgment of the Hon'ble Supreme Court in **Mukund Dewangan** (supra) and also a subsequent decision of the Hon'ble Supreme Court in the case of **Santlal** v. **Rajesh & Others**, **AIR 2017 SC 4054**, the said ground raised by the appellant-insurance company stands negated.

6. So far as the second ground is concerned, that issue also stands decided by a couple of decisions of the Hon'ble Supreme Court in which it has been held that merely because there were three persons riding on a motorcycle by itself would not absolve the insurance company of its liability and the said reason can also not be a ground for the insurance company not to indemnify the owner of the offending vehicle, particularly when there is no evidence by any of the parties to establish that there was some element of contributory negligence on the part of the rider of the motorcycle. Moreover, the said ground would not be applicable in the instant case as the injured in the instant case was a pillion rider and not the person riding the motorcycle.

7. Thus, for the foregoing reasons, the appeal of the insurance company stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/