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HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 704 of 2017**

The Oriental Insurance Co. Ltd. Divisional office, Rama Trade Centre,
1st Floor, Near Old Bus Stand, Bilaspur, Chhattisgarh, Through Its
Sr. Divisional Manager.

---- Appellant**Versus**

1. Purshottam Yadav S/o Shri Raj Bahadur Yadav, aged about 15 Years
2. Ku. Sammat Yadav D/o Shri Raj Bahadur Yadav, aged about 17 Years
Both are minor Represented Through Father Raj Bahadur Yadav, S/o Nankiram, R/o Village Khaada, P.S. Seepat, Distt. Bilaspur, Chhattisgarh.
3. Yugal Kishore Jangde S/o Sukwar Ram Jangde, aged about 29 Years R/o Village Jorha Dabri, Dhatura, P.S. Kushmunda, Distt. Korba, Chhattisgarh, I Ind Address: C/o Devashish Banarjee Truck Owner, S/o H.L.Banarjee Diprapara, Aged 44 Years, Present R/o Qr.No.46, Rama Green City, P.S. Sarkanda, Distt. Bilaspur, Chhattisgarh(Driver/ Res.No.1)
4. Devaseesh Banerjee S/o H.L.Banerjee, aged about 44 Years R/o Diprapara, Present Address: R/o Qr.No.46, Rama Green City, P.S. Sarkanda, Distt. Bilaspur, Chhattisgarh(Owner/ Res.No.2).

---- Respondents**&****MAC No. 705 of 2017**

The Oriental Insurance Co. Ltd. Divisional office, Rama Trade Centre,
1st Floor, Near Old Bus Stand, Bilaspur, Chhattisgarh, Through Its
Sr. Divisional Manager.

---- Appellant**Versus**

1. Smt. Bhagwati Yadav W/o Santosh Kumar Yadav, aged about 47 Years,
2. Santosh Kumar Yadav S/o Late Mangal Sahey Yadav, aged about 52 Years
Both are R/o Village Khaada, Tahsil Masturi, Distt. Bilaspur, Chhattisgarh.
3. Yugal Kishore Jangde S/o Sukwar Ram Jangde, aged about 29 Years R/o Village Jorha Dabri, Dhatura, P.S. Kushmunda, Distt. Korba, Chhattisgarh, I Ind Address: C/o Devashish Banarjee Truck Owner, S/o H.L.Banarjee Diprapara, Aged 44 Years, Present R/o Qr.No.46, Rama Green City, P.S. Sarkanda, Distt. Bilaspur, Chhattisgarh(Driver/ Res.No.1)
4. Devaseesh Banerjee S/o H.L.Banerjee, aged about 44 Years R/o Diprapara, Present Address: R/o Qr.No.46, Rama Green City, P.S. Sarkanda, Distt. Bilaspur, Chhattisgarh(Owner/ Res.No.2).

---- Respondents

For Appellant	:	Shri Ratan Pusty, Advocate.
For respondents No.1&2:		Shri Anant Bajpai, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

13/07/2017

1. By this common award both the appeals are being disposed of as common facts & issues are involved in these appeals and have arisen out of same accident.
2. These are insurer's appeal under Section 173 of the Motor Vehicles Act against the awards dated 20.02.2017 and 08.02.2017 passed by the Additional Motor Accident Claims Tribunal, Bilaspur (in short, the Tribunal) in Claim Case Nos.462/14 and 463/14 respectively.
3. The facts in brief is that, on the fateful day the Truck belonging to the respondent No.4 which was allegedly being driven by the respondent No.3, dashed the claimants (in MAC No.704 of 2017) and one Kishore Yadav (in MAC No.705 of 2017) causing grievous injuries to all of them as a result of which Kishore Yadav died. An FIR was lodged vide crime No.283 of 2009 at Police Station, Seepat, Distt. Bilaspur, for the offence under Sections 279,337,338 and 304-A IPC against the respondent No.3. Subsequently, claim applications were filed by the claimants before the MACT seeking compensation.
4. The Tribunal, on a close scrutiny of evidence led, material placed and submissions made by the parties, vide the aforesaid awards granted

compensation to the tune of Rs.1,15,651/- to the claimants in MAC No. 704 of 2017 and an amount of Rs.2,00,000/- for the death of deceased Kishore Yadav in MAC No.705 of 2017 along with interest @ 7.5 percent per annum from the date of application. It is these award which are under challenge in these appeals.

5. The solitary ground of challenge in these appeals are that the Tribunal has erred in fastening the liability upon the appellant-insurance company. According to counsel for the appellant, the Tribunal has failed to take note of the fact that the driver of offending vehicle at the relevant point of time did not have valid license to operate the Heavy Motor Vehicles. The driver at the time of accident had a license to operate only motorcycle with gear and Light Motor Vehicle whereas, the offending vehicle was a Heavy Goods carrying vehicle. Therefore, it amounts to breach of policy conditions and the liability ought to have been shifted upon the owner and the driver instead of insurance company. According to him, the insurance company had adduced the evidence of witness of insurance company and had also called the officer from the office of RTO, Korba, to prove the license which the respondent No.3 had at the time of accident so as to establish that there was a breach of condition with respect to driver not having a valid driving license to drive the Heavy Motor Vehicle.
6. It is further submitted that the license (Ex.D/1) was also produced before the Tribunal which clearly shows that it was valid only to drive motorcycle with gear and Light Motor Vehicle and not Heavy Motor

Vehicle. In spite of issue being framed in MAC No.705 of 2017, the Tribunal has not properly appreciated the evidence and have fastened the liability upon the insurance company. It was lastly submitted that what is admitted on the part of the owner of the vehicle as well as driver is the fact that the driver at the relevant point of time was having license only to drive light motor vehicle and not heavy motor vehicle. Thus, the Tribunal has committed an error in not relying upon the oral evidence of driver himself while fastening the liability upon the insurance company. He further contended that challan in the criminal case which has been registered against the driver also shows that he has been prosecuted for the said offence under Section 3/181 of Motor Vehicles Act which further strengthens the case of the insurance company.

7. Counsel appearing for the claimants however opposing the appeals submits that the contents of award clearly shows that the Tribunal has applied its mind and taking into consideration the entire evidence which have come on record particularly the documentary evidence to show that the driver at the relevant point of time had a valid license and therefore, the finding of the Tribunal cannot be said to be perverse or contrary to the evidence. It is a case where the respondents themselves have produced the original license of the driver Yugal Kishore with endorsement of authorization to drive light motor vehicle, heavy transport vehicle and heavy goods vehicle. The said license was valid up to 02.07.2011 i.e. it was valid even on the date of accident. The said license has been exhibited as D/5 in Claim

Case No.462 of 2014. Thus, prayed for dismissal of the appeals.

8. Having considered the rival contentions put forth on either side and on perusal of records, what is undisputed is the date of accident; the vehicle being insured by the appellant; the injury being caused to two minor claimants (in MAC No. 704 of 2017) and death of one Kishore Yadav (in MAC No.705 of 2017).
9. The only ground which has been raised by the appellant is in respect of validity of the license which the driver at the relevant point of time was having. So far as availability of original license of driver Yugal Kishore is concerned, it was issued from the office of licensing authority, Korba, and valid till 02.07.2011. The same has been marked as Ex. D/5. The said licence has not been held to be fake or invalid license by the witness who had come from the RTO office at Korba and before the Tribunal the said witness has stated that she has not verified the said license, and the record of the said license is available in the Computer maintained at the office of licensing authority Korba.
10. Thus, the evidence of witness from the RTO office Korba is sufficient to give an inference to be drawn for holding that the driver Yugal Kishore, on the date of accident, had a valid licence. Accordingly, this court is inclined to reject the contention raised by the appellant-insurance company so far as the driver of the vehicle not having valid driving licence is concerned. In addition to this, the insurance company has not raised any other ground.
11. For the foregoing reasons, both the appeals being devoid of merit are

liable to be and are hereby dismissed.

12. In the light of rejection of these appeals, the interim relief granted by this court stands vacated and the claimants shall be entitled for the amount awarded by the Tribunal and they can also claim for disbursement of the same.

Sd/-
(P. Sam Koshy)
Judge

inder