NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1270 of 2017

The National Insurance Company Limited Branch Office, Above Central Bank In front Of R. M. S. Office, Jagdalpur, District Bastar, Chhattisgarh

---- Appellant

Versus

1. Ramuram Markam S/o Chamruram Markam, Aged About 45 Years.
2. Smt. Sumitra Markam, W/o Ramuram Markam, Aged About 40 Years
3. Ku. Chameli, D/o Ramuram Markam, Aged About 15 Years
4. Visheshwar Markam, S/o Ramuram Markam, Aged About 13 Years
5. Smt. Fulbati, W/o Amarsingh Markam, Aged About 45 Years

   Respondent Nos. 3 & 4 are Minor through natural guardian Ramuram Markam.

   All are R/o Sikagaon, Tahsil And Police Station Keshkal, Presently R/o Kulgaon Tahsil And Police Station Kanker, District North Bastar Kanker, Chhattisgarh.
6. Lachchhauram Korram, S/o Pannalal Korram, Aged About 25 Years R/o Pawda, Police Station Badedongar, District Kondagaon Chhattisgarh.
7. Mannuram Korram, S/o Baiharam Korram Aged About 25 Years R/o Pawda, Police Station Badedongar, District Kondagaon Chhattisgarh.

–--Respondents

For Appellant	:	Mr. Raj Awasthy, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

11/09/2017

1. Present is an appeal under Section 173 of the Motor Vehicles Act, assailing the award dated 17.05.2017, passed in Motor Accident Claims Case No.78/2015, passed by the Additional Motor Accident Claims Tribunal, Kanker, North Bastar. Vide the said impugned award the Tribunal in a claim case under Section 166 of the Motor Vehicles Act has allowed the claim case and ordered for payment of

compensation in favour of claimants to the tune of Rs.5,06,000/- with interest @ 7% per annum from the date of application. While passing the said impugned award, the Tribunal has directed the compensation amount paid by the Insurance Company with a condition of recovering the same from the driver and owner of the offending vehicle involved in the accident.

2. The contention of the counsel for the appellant is that the finding of the Tribunal in applying the principle of pay and recover was not called for in the present appeal as there was a clear breach of policy condition, for which the appellant cannot be fastened with the liability of indemnifying the owner of the offending vehicle. He submits that once when there is a clear finding of the driver not having a license at the time of the accident and the order passed by the Tribunal was unwarranted and the same therefore deserves modification to the extent of exonerating the Insurance Company of its liability. As an alternative prayer the counsel for the appellant has also prayed for suitable direction for directing the owner to furnish the appropriate surety commensurate to the amount awarded by the Tribunal which the appellant can use in the event the of recovery proceedings.

3. The perusal of the record and also from the pleadings which has pleaded before the Tribunal it is evidently clear that there is no dispute to the extent of the offending vehicle being insured from the present appellant. The only breach alleged is that the driver of the motor cycle at the relevant point of time was not having a license to drive the motorcycle. Since there is no other allegation of any breach of policy condition, this Court does not find the award to be bad in law where the liability has been fastened upon the owner, driver and the Insurance Company with the direction that the amount awarded be paid by the Insurance Company first and can recover the same from the owner and driver. The appeal thus being devoid of merit, the same is deserves to be and is accordingly dismissed.

4. So far as the furnishing a surety is concerned that is a stage which arises when the recovery proceedings are initiated which cannot be passed at this juncture. The appellant shall have the liberty of making appropriate claim at the time of initiating the recovery proceedings, if they so desire, thus the appeal stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved