NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1465 of 2017

The Oriental Insurance Co. Ltd Through Divisional Manager, Divisional Office No. 1, Jail Road, District Raipur, Chhattisgarh.

---- Appellant

Versus

1. Dhano S/o Owana Vibhar Aged About 50 Years
2. Jamuna, W/o Dhano Vibhar, Aged About 45 Years
3. Krishna Vibhar, S/o Dhano Vibhar Aged About 16 Years

   Krishna Vibhar Represented Through Guardian Ghano Vibhar,

   All are R/o Jagriti Nagar, R. V. H. Colony, Near D. R. M. Office, Police Station Khamtarai, District Raipur, Chhattisgarh
4. Sheikh Hafiz S/o Sheikh Aziz, R/o Pragati Nagar, Near Mova Society, Police Station Mova District Raipur, Chhattisgarh
5. Akashdeep Singh Gill, S/o Lakhwant Singh Gill, R/o New Jeevan Bus Service, New Bus Stand Pandhari, Raipur, Thana Mova, District Raipur, Chhattisgarh

----Respondents

For Appellant	:	Smt. Chitra Shrivastava, Advocate

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

02/11/2017

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 07.07.2017, passed by the 1st Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh, in Claim Case No. 425/2016.

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.4,76,000/- with interest @ 9% per annum from the date of application.

3. The challenge in the present appeal by the Insurance Company is to

the fact that the Driver of the offending vehicle i.e. Bus bearing registration No. CG-04-E-2544 was not having a valid license at the time of accident. It was contended by the counsel for the appellant that the Driver at the relevant point of time did not have proper endorsement in his license so far as the Passenger Service Bus is concerned and therefore there is a clear breach of policy condition and with which the liability should have been fastened upon the Owner and Driver and not upon the Insurance Company and the award be suitably modified.

4. A perusal of the record would show that the appellant- Insurance Company has not led any evidence before the Tribunal in as much as neither was their any witness examined, nor was there any evidence from the Transport Authorities or for that matter any other witness to show that the Driver of the offending vehicle did not have a valid license.

5. The ground of challenge further is on the report of an Investigator, which they have obtained only after the award having being passed. Such document or evidence cannot be taken into consideration at the appellate stage, particularly when the Insurance Company has failed to lead appropriate evidence at the appropriate time before the Tribunal.

6. Even otherwise only because there was no endorsement on the license of the Driver granting permission to drive a P.S.B. by itself would not absolve the Insurance Company, particularly when the fact otherwise is not in dispute that the Driver had a driving license to

drive the vehicle belonging to the same class. For the said reason also, the Insurance Company has failed to make out a strong case for interference with the impugned award.

7. The appeal thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved