NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 640 OF 2016

Branch Manager, Magma General Insurance Company Limited, Address Hotel Amantran, Satya Sai Complex, G. E. Road, Supela Bhilai, At Present 5th Floor, Dainik Bhaskar Press Complex, Police Station Maudahapara, Civil And Revenue District Raipur (Chhattisgarh)...(Insurer Of Veh. Reg. No. C G 07 T 449)

… Appellant

versus

1. Bharat Patel S/o Late Kheduram Patel, Aged About 46 Years
2. Smt. Lata Patel, W/o Bharat Patel, Aged About 40 Years
3. Radhika Patel, D/o Bharat Patel, Aged About 21 Years
4. Ku. Kruti Patel, D/o Bharat Patel, Aged About 16 Years

Respondent No.4 is Minor and hence representing through his father Bharat Patel (Res. No. 1)

All R/o Baigapara, Goverdhan Chowk, Post And Police Station Durg, Civil And Revenue District Durg (Chhattisgarh).....(Claimants)

5. Vijay Kumar Banjare @ Viju Kumar Bajare, S/o Udayram Banjare, R/o Village Pendri, House No. 130, Patel Para, Police Station Bemetara, Civil And Revenue District Bemetara (Chhattisgarh).........(Owner And Driver Of Veh. Regn. No. C G 07 T 4149)

… Respondents

For Appellant	:	Mr. Siddharth Rathod, Advocate.
For Respondents 1 to 4	:	Mr. Goutam Khetrapal, Advocate.
For Respondent 5	:	Mr. GVK Rao, Advcoate, under instructions of Mr. C.P. Lahrey, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/10/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, filed by the Insurance Company, assailing the award dated 17.2.2016 passed by the Seventh Additional Motor Accident Claims Tribunal, Durg, in Motor Accident Claim Case No. 55/2014.

2. Vide the impugned award, the learned Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, in a death case, has awarded a compensation of Rs.5,00,000/- to the claimants with interest thereon at the rate of 9% per annum from the date of filing of the claim application, fastening the liability of payment of compensation upon the appellant-insurance company.

3. The challenge to the impugned award by the Insurance Company is primarily on the ground that the driver of the offending vehicle at the relevant point of time had no endorsement of a permission to drive a transport vehicle. The second ground raised is that the offending vehicle at the relevant point of time did not have a valid permit for operating as a transport vehicle.

4. So far as the first ground is concerned, the same is no longer *res integra* in the light of a recent decision of a Larger Bench of the Hon'ble Supreme Court rendered in the case of **Mukund Dewangan** v. **Oriental Insurance Company Limited**, **AIR 2017 SC 3668**, where it has been categorically held that merely because there is no endorsement of a permission to drive a transport vehicle though the driver has a valid licence for driving a Light Motor Vehicle, would not absolve the Insurance Company of its liability. The said ground thus stands negated.

5. So far as the second ground is concerned, this issue has also been decided by the Hon'ble Supreme Court in a catena of decisions wherein it has been held that even if a vehicle does not have a valid permit, this by itself would not absolve the Insurance Company of its liability and it may at best be a breach of the provisions of the Motor Vehicles Act. The said issue is also not tenable for the reason that the Insurance Company has not led any evidence from the concerned Regional Transport Office to establish the fact that the vehicle at the relevant point of time did not a valid permit. This appeal thus is also not tenable on both the two grounds.

6. Therefore, for the foregoing reasons, the appeal of the Insurance Company being devoid of merits deserves to be and the same is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/