NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 683 of 2012

National Insurance Company Ltd. through Divisional Manager, Division Office, Akash Ganga Complex, Supela, Bhilai District Durg (CG).

---- Appellant

Versus

1. Smt. Gouri Verma Wd/o Late Kundan Verma, aged about 24 years.
2. Master Akshay Verma S/o Late Kundan Verma, aged about 02 years through natural guardian mother Smt. Gouri Verma.
3. Murari Lal S/o Late Sukhlal Verma, aged about 62 years.
4. Smt. Rambai W/o Murara Lal, Verma, aged about 55 years.
5. Ku. Leena Verma D/o Late Kundan Verma, aged about 7 years through mother Smt. Gouri Verma

All R/o Ramnagar, P.S. Supela, Dist. Durg C.G.

6. Fareed Khan S/o Aamin Khan, aged about 55 years, R/o Contractor Colony, Supela, Dist. Durg C.G.
7. Simplex Costing Ltd. 32 Shivnath Complex, G.E. Road, Bhilai, Through Harban Singh S/o Mahanga Singh, R/o Contractor Colony, Supela Bhilai, Dist. Durg C.G.

---- Respondents

For Appellant	:	Shri A.K. Athaley, Advocate.
For respondents 1 to 5	:	Ms. Pragya Pandey, Advocate.
For respondent No.6	:	Shri Atanu Ghosh, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

06.03.2018.

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurance company against the award dated 25.02.2012 passed by the Ist Additional Motor Accident Claims

Tribunal, Durg (in short, the Tribunal) in Claim Case No.165/2010. Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.4,52,000/- with interest @ 6 percent per annum from the date of application. While passing the award, the Tribunal has fastened the liability of payment of compensation upon the appellant-insurance company.

2. The challenge in appeal is only the liability part. The contention of the appellant is that the driver of the offending vehicle-respondent No.6 Fareed Khan was minor on the date of accident as is evident from Ex. D/1, the driving license produced before the Tribunal. He submits that the date of birth mentioned in the license is 01.02.1953. On the basis of date of issuance of license on 27.12.1966, the driver would had been only aged around 13 years of age which was not permissible under the provisions of the Motor Vehicles Act and Rules framed therein. He further submits that the insurance company has also led evidence of officer of the insurance company, so also the witness from the RTO, Durg, to substantiate their contention. Thus, prayed for setting aside of the award to the extent of liability which has been fastened upon the insurance company.

3. Per contra, the counsel appearing for the respondents submit that the findings of Tribunal does not warrant any interference for the reason that the Tribunal has specifically dealt with the issue and has given reasons to disbelieve the contentions raised by the insurance company. The contention of the counsel for the respondents is that even otherwise what is an admitted fact is that on the date of

accident admittedly the driver was major and that he had a valid license in his possession duly renewed from the RTO, Durg. Thus, the insurance company cannot be absolved of its liability, and therefore, the appeal deserves to be rejected.

4. Having heard the contentions put forth on either side and on perusal of records, what is reflected is that during the course of argument the counsel for the driver Shri Atanu Ghosh produced a license of driver Fareed Khan which shows the date of birth of driver to be 01.02.1943. Thus, there appears to be a typographical error in the license originally issued in the name of respondent No.6-Fareed Khan. Even otherwise, no substantive evidence so far as the date of birth of respondent No.6 was produced before the Tribunal to show that on the date of issuance of original license on 27.12.1966 the driver was a minor. Moreover, if we look into the facts, the owner of the vehicle i.e. respondent No.7 cannot be found fault with for having engaged the respondent No.6 as on the date of his engagement he admittedly had a valid license duly renewed from the RTO, Durg. The renewal of the license also stands established from the witness adduced by the insurance company itself.

5. It is also settled position of law that the owner is not expected to get the license threadbare investigated right from the date of initial date of issuance of license before engaging him as a driver. Prima facie, when the document shows that it was a valid license duly renewed and having been tested of his driving skill, the owner has discharged his burden.

6. In the given circumstances, this court does not find any strong case made out by the insurance company for interference with the impugned award. This court is also not inclined to interfere with the award for the reason that the appeal is of the year, 2012, and there was no interim order in favour of the insurance company and as such, in all probability, the entire amount of compensation must have been deposited by the insurance company.
7. The appeal thus fails and is accordingly rejected.

Sd/-
(P.Sam Koshy)
Judge

inder