NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1072 of 2012

1. Ganesh Ram Sahu, Aged about 42 years, S/o. Manbhodhi Ram Sahu, R/o. Village Kampa, Police Station Tumgaon, Tahsil and District Mahasamund, Chhattisgarh (Owner)
2. Goverdhan Dubey, Aged about 40 years, S/o. Jhaduprasad Dubey, R/o. Village Kampa, Police Station Tumgaon, Tahsil and District Mahasamund, Chhattisgarh

---- Appellants

Versus

1. Bajaj Allianz General Insurance Company Limited, Through: Branch Manager, Shivmohan Bhawan Pandri, Police Station Raipur, District Raipur Chhattisgarh
2. Smt. Mongra, Bai, Aged about 40 years, W/o. Late Jawahar Lal, R/o. Subhash Nagar, Ward No.17, Police Station Mahasamund, Tahsil and District Mahasamund, Chhattisgarh (Claimant)

---- Respondents

For Appellants	:	Mr. J.A. Lohani, Advocate
For Respondent No.1	:	Mr. Bhaskar Pyashi, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28/02/2018

1. The present is an appeal by the Owner under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 06.08.2012, passed by the Motor Accident Claims Tribunal, Mahasamund, Chhattisgarh, in Claim Case No. 4/2008.

2. Vide the said impugned award, the Tribunal in a death case under Section 166 of Motor Vehicles Act has awarded a compensation of Rs.4,07,200/- with interest @ 6% per annum from the date of application.

3. While passing the impugned award the Tribunal has exonerated the Insurance Company of its liability and has fastened the liability of payment of compensation upon the present appellants-the Owner and Driver of the offending vehicle.

4. The brief facts of the case is that the deceased in the instant case on 23.11.2007 was walking down the road near the office of Nagar Panchayat Arang, when he was hit with a Dumper bearing registration No. CG/04/JA/6636 owned by the appellant No.1 and driven by the appellant No.2 on the date of accident. As a result of the accident, the deceased sustained grievous injuries, to which he later succumbed. The matter was immediately reported to the Police Station Arang, District Raipur, where Crime No. 253/2007 was registered against the appellant No.2 for the offence under Section 304A of Indian Penal Code.

5. The legal representatives of the deceased filed a claim application which stood decided vide the impugned award. The ground of exoneration of the Insurance Company was on the ground that the offending vehicle on the date of accident did not have a permit and as such there was a clear breach of policy condition. It is this award, which is under challenged in the present appeal.

6. The counsel for the appellants submits that this is the second round of litigation. The Tribunal had on an earlier occasion passed an award on 02.05.2008 wherein also the liability was fastened upon the Owner and Driver, but the said award was challenged in the High Court vide MAC No. 778/2008. The Division Bench of this Court had vide its order dated 27.07.2011 allowed the appeal and had set-aside the award dated 02.05.2008 and remitted the matter back for a fresh adjudication particularly by framing an issue of breach of policy.

7. It was contended by the counsel for the appellants that subsequent to the remand, the Insurance Company has not led any additional

evidence in addition to what was already adduced while the first award was passed on 02.05.2008. Thus so far as the breach of policy is concerned, since the Insurance Company has not led sufficient cogent evidence, the liability should had been automatically fastened upon the Insurance Company as undisputedly the vehicle was duly insured with the respondent No.1-Insurance Company. He further contended that Owner had adduced the evidence to show that he had already taken steps for obtaining the permit and since he had already applied for a grant of permit, it cannot be said to be a breach on the part of the Owner as after an application being made any delay that occurs, the same would be on account of the procedural lapse that occurs and for which the department has to be blamed and not the present appellant. Therefore it has to be presumed that there was no breach of policy condition and the Owner has taken all the necessary steps required under the provisions of the Motor Vehicles Act for plying the said vehicle.

8. Counsel appearing for the respondents opposing the appeal submitted that the appeal is totally devoid of merit in as much as there is no proper evidence led by the present appellants to establish the fact that he had taken prompt steps for obtaining the permit. It was also contended by the counsel for the respondent that bare pleading of the findings of the Courts below while deciding the additional issue No.5 clearly reflects that the Tribunal has taken into consideration all the aspects which were raised by the Owner as well as the Insurance Company in respect of whether the vehicle had a proper license or not, and thus it cannot be said that the finding of

the Tribunal in any manner was either perverse or contrary to evidence and thus prayed for rejection of the appeal.

9. Having heard the contentions put forth on either side and on perusal of record what is reflected is that on behalf of the Insurance Company they had already examined their witnesses Shri Vikas Khande, the Law Officer and had also examined one Omprakash Gupta, the Investigator. The Investigator had given a specific report that the vehicle on the date of accident did not have a permit. At the same time, what also is to be borne in mind is the fact that though the Investigator and the Officer of the Insurance Company have specifically made a statement before the Tribunal that their vehicle did not have a permit which was also the stand of the Insurance Company in their written statement, but there was no rebuttal to such averment by the Insurance Company on the part of the appellants-the Owner and Driver to disprove the contention of the Insurance Company, neither have the appellants been able to produce the permit if they had one before this Court in the present appeal.

10. On the contrary the stand of the appellants is that they had already applied, but had not obtained one. This stand of the appellants by itself is a sufficient evidence to draw an inference that there was no permit on the date of accident. Even if the appellants had applied for before the accident though there is no proof in this regard, yet the legal position would remain the same that of a person not being permitted to drive a commercial vehicle without permit from the competent authority under the Act. This admitted fact is itself sufficient to reach to the conclusion that the Tribunal had rightly

exonerated the Insurance Company on the ground of breach of policy.

11. This Court does not find any strong case made out by the appellants calling for an interference with the impugned award with which the liability could have been shifted upon the Insurance Company-respondent No.1. The view of this Court also stands fortified from a judgment of the Division Bench of this Court in MAC Nos. 268/2011 and 269/2011, both decided on 21.11.2011 by a common order, whereby also it has been held that since the vehicle did not have a permit, the Owner had no occasion to ply the vehicle in the absence of a permit, even if the fee was paid for getting the permit even then the operation of the vehicle was totally at the risk of the Owner himself. Thus, under similar circumstances, the Insurance Company would not be liable to pay compensation.

12. The appeal of the appellants-Owner and Driver thus being totally devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved