NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 748 of 2011

The Oriental Insurance Co. Ltd. through Divisional Manager, Division office, Madeena Manzil, Jail Road, Kutchery Chowk, Raipur (CG).

---- Appellant

Versus

1. Kautuke Yadav S/o Manohar Yadav, aged 25 years R/o Village Kachna Thana, Dharsiwa, Distt. Raipur (CG).
2. Devanand Sona S/o Shyama Sona, R/o Sec- 5 Devendra Nagar, In Front Of Dhan Mandi, Raipur, Through Purushottam Sona, S/o Kajal Sona, R/o Near Holi cross School, Bryon Bazar, Kundrapara, Raipur.
3. Shri Purushottam Sona S/o Kajal Sona, R/o Near Holicross School, Bryon Bazar, Kundrapara, Raipur.

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate.
For Respondent No.1	:	Shri Suresh Tandon, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

23.01.2018

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the appellant-insurance company assailing the award dated 16.03.2011 passed by the IIn Additional Motor Accident Claims Tribunal, Raipur (in short, the Tribunal) in Claim Case No.121/2010. Vide the impugned award, the Tribunal in an injury case has awarded compensation of Rs.45,000/- along with interest @ 6 percent per annum from the date of application.
2. Primarily the insurance company has challenged the award on two grounds, firstly; the driver of the offending vehicle did not have a valid driving license and secondly the Tribunal has failed to appreciate the element of contributory negligence in the accident.
3. So far as the issue of driver not having valid driving license is concerned, this court is of the opinion that the said issue has no force any further in the light of recent larger Bench decision of the Supreme Court in case of

Mukund Dewangan Vs. Oriental Insurance Co. Ltd, AIR 2017 SC 3668, wherein it has been held that merely because there is no endorsement on the licence of the driver who otherwise has a licence to drive the Light Motor Vehicle by itself would not absolve the insurance company of its liability. Indisputably, in the instant case, the driver of the offending vehicle had a license to drive a light motor vehicle, though there was no endorsement. Thus, the said ground raised by the appellant-insurance company stands rejected.

4. So far as the element of contributory negligence is concerned, again if we look into the evidence and the narration of facts by the Tribunal and the findings arrived at, there does not seem to be any substantive material available on record with which it could be safely presumed or assumed that there was a contributory negligence on the part of injured. Moreover, there was no eyewitness examined in this case who could have supported the case of the insurance company.

5. Counsel for the appellant-insurance company only banked upon the FIR which was lodged in respect of the accident, but sufficient evidence was not brought before the Tribunal by leading cogent evidence. Thus, the second ground of the insurance company with regard to contributory negligence also stands negated. Moreover, the amount of compensation awarded also is too meager an amount to interfere after so long a period.

6. Thus, the appeal fails and is accordingly rejected.

Sd/-

(P.Sam Koshy)
Judge

inder