

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1166 OF 2011

United India Insurance Company Limited, through its Divisional Manager,
Divisional Office- Rajendra Nagar Chowk, Bilaspur, District Bilaspur (C.G.)

... Appellant

versus

1. Smt. Vandana Nag, W/o Sonsingh Nag, aged 43 years, Caste-Halba
2. Sonsingh Nag, S/o Laxmi Nath, aged 47 years, Caste-Halba
Both are R/o Rautpara Gadiras, P.S. Garidas, Tah.- Sukma, District Dantewada (C.G.)
3. Rajuram Nag, S/o Thunniram Nag, aged 30 years, R/o Bazarpara, Kookanar, District Bastar (C.G.) (Driver)
4. Shankar Nirmalkar, S/o Late K.P. Nirmalkar, R/o Shastri Bazar, Station Chowk, Raipur, District Raipur (C.G.) (Owner)

... Respondents

For Appellant	:	Mr. Dashrath Gupta, Advocate.
For Respondents No. 1 & 2	:	Mr. Shishir Dixit, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/01/2018

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the appellant-insurance company assailing the award dated 12.8.2011 passed by the Motor Accident Claims Tribunal, South Bastar Dantewada, in Claim Case No. 40/2009.
2. Vide the impugned award, the learned Tribunal, in a death case of a 13 year old minor boy, *i.e.*, deceased Kuldhar Nag, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.2,50,000/- to the respondents no. 1 & 2/claimants with interest thereon at the rate of 7% per annum from the date of presentation of the claim application.
3. Learned counsel for the appellant-insurance company has challenged the impugned award on two grounds. Firstly, that the driver of the offending vehicle did not have a valid driving licence at the time of accident and secondly, that the offending vehicle did not have a proper fitness certificate and permit to operate on the date of accident.

4. So far as the first ground raised is concerned, the same already stands settled by a recent Larger Bench's decision of the Hon'ble Supreme Court in the case of **Mukund Dewangan v. Oriental Insurance Company Limited, AIR 2017 SC 3668**. As such the ground so raised stands negated, for the reason that undisputedly the driver of the offending vehicle had a licence to drive a Light Motor Vehicle and the vehicle involved in the accident also was a Light Motor Vehicle, except for the fact that it was being used for commercial purposes and for which there was no endorsement in the licence. Subsequent to the judgment of the Hon'ble Supreme Court in **Mukund Dewangan** (supra), the said endorsement is no longer required. Thus, the said ground does not have any force and the same stands rejected.

5. So far as the second ground is concerned, perusal of record would show that the owner of the offending vehicle was *ex parte* before the Tribunal and in the present appeal also he has been proceeded *ex parte*. Thus, it appears that the owner has deliberately avoided appearance before the Tribunal as well as before this Court. Considering the fact that there is a specific averment made by the insurance company of the offending vehicle not having valid permit and fitness certificate, this Court is of the opinion that it is a fit case where the principles of 'pay and recovery' can be applied.

6. It is accordingly ordered that the entire compensation awarded by the Tribunal shall be first deposited by the appellant-insurance company, however, they shall be at liberty to recover the same from the owner and driver of the offending vehicle.

7. The appeal thus stands allowed in part.

Sd/-
(P. Sam Koshy)
Judge