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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1056 of 2012

United India Insurance Co. Ltd. through its Divisional Manager, Divisional office, Raipur, Kutchery Chowk, Raipur (CG).

---- Appellant

Versus

1. Smt.Reeta Devi W/o Late Vinod Kumar Tiwari Aged About 35 Years
2. Ritesh Tiwari S/o Late Vinod Kumar Tiwari Aged About 15 Years
3. Ku. Nikki Tiwari D/o Late Vinod Kumar Tiwari Aged About 16 Years
4. Ku. Versha Tiwari D/o Late Vinod Kumar Tiwari Aged About 12 Years
   Respondents No.2 to 4 are minor through their mother Smt. Reeta Devi Tiwari-Respondent No.1.
5. Smt. Dayawati Devi Tiwari S/o Late Ramdas Tiwari Aged About 70 Years
6. Shivprasad Tiwari, S/o late Ramdas Tiwari, aged about 70 years.
   All R/o Bhalotiya Colony, Beergaon, PO and PS Urla, Tah. And Distt. Raipur (CG).
7. Chhotu Nayak S/o Matwali Nayak Aged About 31 Years R/o Way To Veerbhdra Nagar Kabristan Basti Road Tikrapara, P.S. Tikrapara, P.O. Raipur, Tah. And Dist. Raipur (CG).
8. M/s Dayalal Megh Ji & Co., Malviya Road, Raipur, P.O. Raipur, P.S. Moudhapara, Tah. And Dist. Raipur CG.

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
For respondents 1 to 6	:	Shri Shivendu Pandya, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

23.02.2018.

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurance company against the award dated 30.08.2012 passed by the 7th Additional Motor Accident Claims Tribunal, Raipur (in short, the Tribunal) in Claim Case No.74/2006. Vide the said impugned award, the Tribunal has awarded compensation of Rs.7,12,758/- along with interest @ 6 percent per annum from the date of application.
2. The counsel for the appellant submits that the findings of the Tribunal

is erroneous for the reason that on an earlier occasion when the Tribunal has passed award, the insurance company was exonerated of its liability as per award dated 31.08.2007 on the ground that the driver did not have a valid license on the date of accident. According to insurance company, the matter was remitted back by this court in an appeal by the owner for ascertaining the aspect of contributory negligence alone. However, the Tribunal has re-appreciated the entire facts and have passed a fresh award which was not permissible and the same deserves to be set aside.

3. He further submits that when there was already a finding and the matter was remitted on a limited aspect, the Tribunal could not have gone into the merits of the case and to pass a fresh award. Thus, prayed for award to be suitably modified.

4. A perusal of record would show that the Division Bench of this High Court while deciding MAC No.1448 of 2007 had set aside the award dated 31.08.2007 in which the insurance company was exonerated, and had ordered the matter to be decided afresh with liberty to the parties to lead evidence afresh and also to amend their pleadings, if required.

5. Once when the entire award has been set aside and the matter has been remitted back and direction was given to the Tribunal to decide the matter afresh, the Tribunal, if had decided the case on merits as per law and found that the driver on the date of accident had a license to drive light motor vehicle, passing of a fresh award cannot be found fault with. Moreover, the issue of the liability of the

insurance company is concerned, that would not hold good as on date for the reason that the ground of driver not having valid license is no longer sustainable. The vehicle involved in the accident was an Auto Rickshaw which otherwise falls within the ambit of light motor vehicle and indisputably the driver i.e. respondent No.7-Chhotu Nayak, had a license to drive light motor vehicle, except the fact that it did not have an endorsement of permission to drive commercial/transport vehicle.

6. This issue stands squarely covered by the decision of Supreme Court in case of Mukund Devangan Vs. Oriental Insurance Co.Ltd. AIR 2017 SC 3668. Thus, the ground that driver did not have a valid license is no longer sustainable and the appeal of the insurance company on the said ground is not tenable.

7. So far as the issue of contributory negligence is concerned, the Tribunal has considered the said aspect and has also affixed the contributory negligence on the deceased. Thus, the said ground also does not seem to be in any manner erroneous or disproportionate and the same also does not deserve any interference.

8. The appeal of the insurance company thus stands rejected.

9. In the light of the appeal of the insurance company having been rejected, the cross objection filed by the respondent-owner also deserves to be and is accordingly rejected.

Sd/-
(P.Sam Koshy)
Judge

inder