NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 190 of 2016

- Gopal Das Chandak S/o Jeevan Lal Chandak, Aged About 45 Years R/o Balaji Krishi Kendra, Saja Vehicle Owner, Police Station And Tahsil- Saja, District- Bemetara, Chhattisgarh

---- Appellant

Versus

1. Chaituram Lodhi S/o Sahdev Lodhi, Aged About 50 Years R/o Village- Bharda Lodhi, Tahsil- Saja, District- Bemetara, Chhattisgarh ....Claimant
2. Megma H.D.I. Insurance Company, Through Its Branch Manager, Block No. 19, Plot No. 01, South Gangotri, Supela, Bhilai, District- Durg, Chhattisgarh - Insurance Company
3. Nandkumar Gond S/o Awadhram Gond, Aged About 34 Years Occupation- Driver, R/o Ward No.9, Saja, Police Station And Tahsil- Saja, District Bemetara, Chhattisgarh

---- Respondent

For Appellant	:	Shri A.C. Sahu, Advocate.
For Respondent No.1	:	Shri V. Goverdhan, Advocate.
For Respondent No.2	:	Shri Ghanshyam Patel, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

04/10/2018 :

This appeal arises out of the award dated 2.1.2016 passed by Additional Motor Accident Claims Tribunal, Bemetara (in short “the Tribunal”) in Claim Case No.55/2015 whereby in injury case the Tribunal has awarded a total compensation of Rs.7,46,593/- fastening the liability on the appellant/owner.

02. In an accident occurred on 25.7.2014 due to rash and negligent driving of vehicle Pickup bearing No. CG 07 C 7571 by respondent No.3, respondent No.1/claimant suffered grievous injuries resulting in permanent disability. On claim petition being filed under Section 166 of the Motor Vehicles Act, the Tribunal awarded a total compensation of

Rs.7,46,593/- in favour of the claimant fastening the liability on the appellant/owner of the offending vehicle to satisfy the award while exonerating the insurance company on the ground that there was no fitness certificate of the offending vehicle at the relevant time.

03. Learned counsel for the appellant submits that the Tribunal has wrongly fastened the liability on the appellant/owner on the ground that there was no valid fitness certificate in respect of the offending vehicle whereas it does not amount to fundamental breach of insurance policy for exoneration of the insurance company.

04. On the other hand, learned counsel for the insurance company vehemently opposes the submission of the appellant and supports the impugned award.

05. Heard learned counsel for the parties and perused the material available on record.

06. Admittedly, the offending vehicle was insured with the insurance company during the relevant period. The only issue to be considered in this appeal is whether the Tribunal was justified in exonerating the insurance company for want of fitness certificate of the offending vehicle?

07. The Hon'ble Supreme Court in the case of ***Rekha Jain Vs. National Insurance Co. Ltd. (2013) AIR SCW 4597*** has held as under:

> "30. If we permit the insurer to take any other defence other than those specified in sub- section (2) of Section 149, it would mean we are adding more defences to the

insurer in the statute which is neither found in the Act nor was intended to be included.

16. For the aforesaid reasons, we are of the view that the statutory defences which are available to the insurer to contest a claim are confined to what are provided in sub-section (2) of Section 149 of the 1988 Act and not more and for that reason if an insurer is to file an appeal, the challenge in the appeal would confine to only those grounds."

08. This Court also in the matters of ***National Insurance Company Ltd. Vs. Ghanaram Sahu and others, 2018(2) CGLJ 75*** relying upon the decision in *Rekha Jain* (supra) has held that if the offending vehicle does not have the fitness certificate, the same cannot be a ground for exoneration of the insurance company from the liability to satisfy the award. Thus, the appeal preferred by the owner deserves to be allowed and the finding of the Tribunal regarding exoneration of the insurance company on the ground of fitness certificate is liable to be set aside.

09. In the result, the appeal is allowed. The finding of the Tribunal exonerating the insurance company from the liability of paying compensation to the claimant is hereby set aside and it is held that the insurance company, driver & owner of the offending vehicle are jointly and severely liable for paying compensation to the claimant. The impugned award stands modified to the above extent.

Sd/

(Gautam Chourdiya)

Judge

Khan