NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 305 of 2018

Purushottam Singh S/o S/o Shri Swarup Singh Aged About 42 Years Profession- Driver, R/o Village- Chhergarh, P. O. Dudujiya, P. S. Mouk, District- Rangrur (Panjab) At Present- Bhagwanpur, Tahsil And District-Raigarh, Civil And Revenue District- Raigarh (CG).

---- Appellant

Versus

1. Kamal Singh Rathiya S/o Shri Amrud Singh Rathiya Aged About 25 Years R/o Village- Chandrashekharpur (Aidu), P. S. Chhal, Tah- Dharamjaigarh, District- Raigarh, Chhattisgarh.
2. Smt. Meghadevi Bhardwaj W/o W/o Shri Pyari Bhardwaj Aged About 41 Years R/o Village- Aidu Colony, House No. 58, P. O.- Aidu, P. S. Chhal, Tah- Dharamjaigarh, District- Raigarh (CG).
3. The Cholamandlam M. S. General Insurance Company Limited, Through Branch Manager, Officer-Simran Tower, 2nd Floor, In Front Of Lic Building Pandari, Raipur, District- Raipur, Chhattisgarh.

---- Respondents

For Appellant : Shri MK Sinha, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

20.02.2018

1. For the reasons assigned in the application and finding them to be satisfactory, IA No.1 is allowed and 200 days delay in filing the appeal stands condoned.
2. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the claimant against the award dated 11.04.2017 passed by the Motor Accident Claims Tribunal, Raigarh (in short, the Tribunal) in Claim Case No.41/2014. Vide the impugned award, the Tribunal in an injury case has awarded compensation of Rs.6,75,285/- along with interest @ 6 percent per annum from the date of application.
3. While passing the award, the liability of payment of compensation has been fastened upon the respondent driver and owner and has

exonerated the insurance company from its liability. The liability of compensation has been shifted upon the owner and driver on the ground that the vehicle was registered as private vehicle and the policy issued was for the same purpose, however on the date of accident it was established to have been used for commercial purpose. It is this liability part which is under challenge by the claimant.

4. The claimant has not been able to show sufficient material or evidence brought on record by the owner or for that matter the driver to establish the fact that the vehicle was not being used for commercial purpose on the date of accident.

5. Under the given facts and circumstances of the case only because the claimant finds it difficult to get the award executed against the owner and driver by itself would not be sufficient ground for the claimant to prefer an appeal and try to seek shifting of liability from the owner to the insurance company. There has to be cogent, strong and sufficient evidence brought on record for shifting liability from the owner to insurance company.

6. In the absence of any such evidence or material, this court does not find it a strong case made out by the appellant worth admitting the appeal.

7. The appeal therefore deserves to be and is accordingly dismissed.

(P.Sam Koshy)
Judge

inder