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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 339 of 2012

The Oriental Insurance Co. Ltd. Through Divisional Manager, Division Number-1, Kutchery Chowk, Jail Road Dist. Raipur C.G.

---- Appellant

Versus

1. Smt. Mileshwari Bai W/o Rakesh Chakradhari,
2. Kumari Nandani D/o Rakesh Chakradhari, aged about 5 years.
3. Ram Ji S/o Late Khekhdu Chakradhari, aged 55 years.
4. Smt. Raini Bai W/o Ram Ji Chakradhari, aged 50 years.
   All R/o Village Chandni-Dih, Raipur Thana Aamanaka, Dist. Raipur C.G.
5. Punit Ram Mandale S/o Kartik Mandale, R/o Village Kukda, Bharat Nagar, Kumhari, Thana, Kumhari, Dist. Durg C.G.
6. Smt. Sarita Goel W/o Narendra Kumar Through Raipur Auto Mobiles, Ring Road Number- 2 Tatibanch, Dist. Raipur C.G. Other address: Station Chowk, Kumhari, District Durg (CG).

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate.
For Respondent No.6	:	Shri Amiykant Tiwari and Ms. Pragya Pandey, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

21.02.2018

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurer against the award dated 07.01.2012 passed by the 2nd Additional Motor Accident Claims Tribunal, Raipur (in short, the Tribunal) in Claim Case No.07/2011. Vide the impugned award, the Tribunal in a death case has awarded compensation of Rs.4,61,000/-along with interest @ 6 percent per annum from the date of application. While passing the award, the liability of payment of compensation has been fastened upon the present appellant-insurance company.

2. The challenge by the insurance company is only on the ground that the driver of the offending vehicle at the relevant point of time did not have a license and the license which is said to have been produced before the Tribunal was infact a license which has been renewed by RTO, Raipur, but the original license was said to have been issued from the RTO, Alwar (Rajasthan) and the appellant have been able to obtain a document from the office of RTO, Alwar, under Right to Information Act wherein the authority from the RTO, Alwar has verified the alleged license number and found that the alleged original license of the driver was not infact issued from the office of RTO, Alwar.
3. He further submits that the insurance company, in between, had moved two applications for calling upon the witnesses from the office of RTO, Alwar, which stood rejected by the Tribunal. Further, the appellant had also moved an application calling for the driver of the offending vehicle to be examined before the Tribunal which too was rejected.
4. According to Shri Agrawal, the insurance company has made all attempts to prove their case sufficiently before the Tribunal, but the same was not properly appreciated by the Tribunal and in a mechanical manner the Tribunal has saddled the insurance company with liability of payment of compensation. He relied upon the judgment of Supreme Court in case of New India Assurance Company Limited, Shimla Vs. Kamla & Others, (2001) 4 SCC 342 and also judgment of this High Court in case of Nemeshwari Bai &

Ors. Vs. Baliram Sahu & Ors., MAC No.216 of 2010, decided on 27.10.2017, wherein under similar circumstances this court had applied the principle of Pay and Recovery and have partly allowed the appeal of the insurance company.

5. Per contra, Shri Amiykant Tiwari, learned counsel appearing for the respondent No.6 opposing the appeal submits that the insurance company has not led sufficient evidence before the Tribunal and therefore, the appeal deserves to be rejected. He further submits that the insurance company in the instant case was required to prove and establish its case and burden was upon the insurance company and if the burden has not been discharged, the insurance company cannot be absolved of its liability.

6. Given the facts and circumstances of the case, this court is of the opinion that once when there is a document dated 19.07.2011 received under the Right to Information Act from the office of the RTO, Alwar, which specifically holds that license of Punit Ram Mandale, Driver of the offending vehicle, not having been issued from the RTO, Alwar, and subsequently when an application was filed by the insurance company in this regard for calling upon the witness from the RTO, Alwar, to prove and establish this document, it was incumbent upon the Tribunal to have ensured that the parties to the dispute get sufficient opportunity to establish their respective contentions by leading cogent evidence.

7. Unless the court permits the insurance company, it would not have been able to call upon the witness who were posted outside the State

of Chhattisgarh. Moreover, the Tribunal, at best, could have directed the insurance company to move appropriate application for getting the witness from the RTO, Alwar, examined on commission. This also is not reflected in the impugned order. Moreover, the driver and the owner in the instant case have not led any evidence before the Tribunal. Hence, the entire burden stands fastened upon the insurance company to prove and establish its case particularly in respect of the driver of the offending vehicle not having valid license on the date of accident.

8. Under the circumstances, this court is of the opinion that the impugned award as such shall not be sustainable. The same deserves to be and is hereby set aside.

9. The matter is remitted back to the Tribunal for permitting the appellant-insurance company to take necessary steps for examination of the witnesses from the RTO, Alwar. The appellant-insurance company would also be at liberty, if they so feels, to move an application for getting the witnesses examined on commission. Subsequent to any additional evidence which is brought on record by either side in rebuttal to the contentions of the insurance company, the Tribunal concerned shall pass a fresh award within a period of 90 days from the next date of hearing.

10. Since the parties are present before the court, they are directed to remain present before the concerned Tribunal on 15.03.2018.

11. Registry is directed to sent back the records of the case forthwith so that it may reach the concerned Tribunal by 15.03.2018 positively.

12. It is reflected that the awarded amount has already been deposited by the insurance company before the Tribunal and is kept in a fixed deposit. The said amount shall remain deposited in the Bank until further orders and appropriate directions in respect of the said amount would be passed by the concerned Tribunal after disposal of the claim application.
13. The appeal thus stands partly allowed and disposed of.

Sd/-

(P.Sam Koshy)
Judge

inder