NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 531 of 2012

Branch Manager, The Oriental Insurance Company Limited, Raipur (C.G.).

---Appellant

Versus

1. Janiram Yadav S/o Shri Bisauha Ram Yadav, aged about 32 years, R/o Shakti Nagar, Durg, P.S. Mohan Nagar, Tahsil and District Durg (C.G.) (Claimant).
2. Rajpati Yadav S/o Ram Kumar Yadav, aged about 30 years, R/o Raja Talab, Durani Chowk (Near Railway Fatak), Raipur, District Raipur (C.G.) (Driver of Vehicle No. CG-04-E-0377).
3. Amarjeet Singh S/o Not Known, aged Minor, R/o Tatibandh, Raipur, Tahsil and District Raipur (C.G.) (Owner of Vehicle No. CG-04-E-0377).

---Respondents

For appellant/Insurance Company	:	Shri Raj Awasthi, Advocate.
For respondents No. 2 & 3	:	Shri Raja Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/02/2018

1. Present is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 14/11/2011 passed by the learned Fifth Additional Motor Accident Claims Tribunal, Durg, District Durg (C.G.) in Motor Accident Claim Case No.34/2011.

2. Vide the impugned award, the Tribunal in an injury case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.74,777/- with interest @ 7% per annum from the date of application.

3. The facts of the case in brief is that, the accident occurred on 09/05/2007 between the Truck bearing registration No.CG-06-1085 insured

by the present appellant and a Bus bearing registration No.CG-04-E-0377 owned by the respondent No.3 and driven by the respondent No.2. As a result of the said accident, the claimant i.e. respondent No.1-Janiram Yadav, the driver of a Truck sustained certain injuries. He had preferred the claim application under Section 166 of the Motor Vehicles Act which finally stood adjudicated upon vide the impugned award dated 14/11/2011 in Motor Accident Claim Case No.34/2011.

4. The contention of the counsel for the appellant/Insurance Company is that, the appellant was the insurer of the Bus involved in the accident and the driver of the said offending Bus - Rajpati Yadav did not have a valid license on the date of the accident. According to him, the license which the driver was having got expired on 22/03/2003 and was renewed thereafter only on 22/05/2007 i.e. for the intervening period of more than 4 years, there was no license. In the given circumstances, there appears to be a clear breach of policy condition and thus prayed for suitable modification of the award and shifting the liability upon the owner and driver exonerating the Insurance Company of its liability.

5. Perusal of the record would show that, the amount of compensation awarded has already been ordered to be deposited by the Insurance Company as per the order of this Court on 01/08/2012 and which by now must have also been disbursed to the claimant. What is also not in dispute is the fact of there being a clear breach of policy condition in as much as the driver did not have a valid license on the date of accident.

6. Given the facts and circumstances, this Court is of the opinion that the exclusive liability of payment of compensation fixed upon the Insurance Company is not proper and justified and it is here that the doctrine of pay and recovery would apply and thus the order stands modified to the extent that, the amount of compensation shall be paid by the Insurance Company with liberty to recover the same by initiating appropriate recovery proceedings from the respondent No. 2 & 3 i.e. the driver and owner of the offending Bus.

7. The appeal stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit