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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1261 of 2012

Order reserved on 11-7-2018

Order passed on 24--7-2018

Bajaj Allainz General Insur. Comp. Ltd. Thru- Branch Manager, Shiv Mohan Bhawan, Vidhan Sabha Marg, Pandri, Raipur, Tah. And Distt. Raipur C.G., Chhattisgarh

---- Appellant

Versus

1. Smt.Paras Bai W/o Late Vishambhar Das Baghel Aged About 41 Years Village- Bhainsmudi, Post Office- Bhandarpuri, Thana- Kharora, Distt. Raipur C.G., Chhattisgarh
2. Ku. Kamleshwari Bai D/o Late Vishambhar Das Baghel Aged About 24 Years Village- Bhainsmudi, Post Office- Bhandarpuri, Thana- Kharora, Distt. Raipur C.G., District : Raipur, Chhattisgarh
3. Ku. Hemkumari D/o Late Vishambhar Das Baghel Aged About 17 Years Minor, Thru- Natural Guardian Mother- Smt. Paras Bai, R/o Village- Bhainsmudi, Post Office- Bhandarpuri, Thana- Kharora, Distt. Raipur C.G., District : Raipur, Chhattisgarh
4. Sagar S/o Late Vishambhar Das Baghel Aged About 8 Years Minor, Thru- Natural Guardian Mother- Smt. Paras Bai, R/o Village- Bhainsmudi, Post Office- Bhandarpuri, Thana- Kharora, Distt. Raipur C.G., District : Raipur, Chhattisgarh
5. Tirith Bai W/o Late Namdas Baghel Aged About 77 Years R/o Village- Bhainsmudi, Post Office- Bhandarpuri, Thana- Kharora, Distt. Raipur C.G., District : Raipur, Chhattisgarh
6. Mehataru Koshle S/o Lodhiram Koshle R/o Village- Bhainsmudi, Post Office- Bhandarpuri, Thana- Kharora, Distt. Raipur C.G., District : Raipur, Chhattisgarh

---- Respondents

For the appellant	:	Mr. Sachin Singh Rajput, Advocate.
For respondents	:	None

SB: Hon'ble Mr. Ram Prasanna Sharma, J.

CAV Order

1. This appeal is preferred by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (for short, "the Act, 1988") against the award dated 29-10-2012 passed by the 2nd Additional Motor Accidents Claims Tribunal, Raipur (CG) in Claim

Case No. 90 of 2012 awarding compensation of Rs.1,79,500/- for death of Vishambhar Das Baghel in a motor accident.

2. The case, in brief, is that the deceased was going to village Bhainkmudi by driving the motor-cycle bearing registration No. CG 04 CJ 2379 and when he reached near Bhains Khorsi, tyre of the vehicle burst and due to imbalance of the vehicle the accident occurred and Vishambhar Das Baghel succumbed to the injuries. After recording evidence and hearing both sides, the trial Court awarded the compensation as mentioned above.

3. Learned counsel for the appellant would submit that the application filed under Section 163-A of the Act, 1988 by the claimants is not maintainable because the vehicle of the deceased was dashed by an unidentified vehicle.

4. I have heard learned counsel for the appellant and perused the impugned award passed by the Tribunal.

5. In view of this Court, it is pleaded by the claimants that at the time of incident, the motor-vehicle driven by the deceased was imbalanced due to burst of tyre, therefore, the accident took place. In a claim case under Section 163-A of the Act, 1988, the claimants are not required to prove negligence on the part of the driver, therefore, the claim as filed by the claimants is maintainable.

6. It is further contended on behalf of the Insurance Company that the vehicle was insured against third party risk and therefore, driver who is an agent of the owner is not third party and his claim is not maintainable. Learned counsel for the appellant/insurance Company has placed reliance on the decisions of the Hon'ble Supreme Court in the matter of **Oriental Insurance Company Limited Vs. Rajni Devi, reported in (2008) 5 SCC 736 and Nigamma and another vs. United India Insurance Company Limited, reported in (2009) 132 SCC 710.**
7. After going through the record, argument advanced by the appellant/Insurance company is not sustainable. Ex. D/1 is the policy issued by the Insurance Company which is comprehensive policy covering the risk of owner and driver and for the same premium was paid, therefore, the Insurance company cannot be absolved.
8. It is further contended on behalf of the Insurance Company that the deceased was not having a valid and effective driving licence at the time of incident, therefore, breach of policy is committed and the Insurance Company is not liable to pay compensation.
9. In view of this court, burden lies on the Insurance Company to prove breach of insurance contract. No one from the Transport Department was examined by the Insurance Company to

establish that the deceased was not having a valid and effective driving licence for driving the motor-vehicle which is a light motor vehicle. In absence of the evidence it cannot be said that the vehicle was driven without having effective driving licence.

10. Considering all the facts and the material available on record, this court is of the view that the case laws cited by learned counsel for the appellant are distinguishable from the facts of the present case, therefore, the grounds raised by the Insurance Company are not acceptable.

11. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju