NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 936 of 2011

The Oriental Insurance Co. Ltd. Aadarsh Bal Mandir, Behind Amar Talkies, Dhamtari, Distt. Dhamtari (CG).

---- Appellant

Versus

1. Smt. Anjani Bai Markam Wd/o Harikhram, age 45 year.
2. Lekhuram S/o Harikhram, age 26 years.
3. Manohar S/o Harikhram, age 24 years.
4. Mannuram S/o Harikhram, age 22 years.
   All R/o Village Boridkhurd, Tehsil and Thana Dhamtari, Dist. Dhamtari
5. Kachruram Netam S/o Girdheram @ Girdhari Ram Netam, R/o Village Khirgitola, Tehsil and Dist. Dhamtari (CG).

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate.
For Claimants	:	Shri Anil Gulati, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

17.01.2018

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurance company assailing the award dated 04.03.2011 passed by the Additional Motor Accident Claims Tribunal (FTC) Balod, Distt. Durg (as it then was) (in short, the Tribunal) in Claim Case No.36 of 2009. Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.2,14,000/- with interest @ 6 percent per annum from the date of application.
2. The contention of the appellant-insurance company is that, it is a case where the Tribunal has not properly appreciated the efforts made by the insurance company to justify the stand of there being no liability on the insurance company. The driver of the offending vehicle

at the relevant point of time did not have a valid license. Secondly, it was contended that there is no eyewitness examined on behalf of the claimants to prove the accident, so also the negligence. Further, the Tribunal has wrongly imposed penal interest on the amount awarded which also is not sustainable and therefore prayed for setting aside of the award to the extent of liability which has been fastened upon the insurance company or at least be ordered for pay and recover from the driver and owner.

3. A perusal of records would show that the appellant-insurance company had produced a photocopy of the certificate issued by the license authority which would show that the license in favour of the driver of the offending vehicle was issued on 18.09.1984 and the validity period has been shown as 29.04.2012. The vehicle which was being driven by the driver was a motorcycle. Normally, when a license to drive motorcycle is issued, the same is issued for a period of 20 years. In the instant case though the validity of the license is shown to be till 29.04.2012, but there is an endorsement that in between the license was renewed from 17.08.2005 to 16.08.2008 and again from 30.04.2009 to 29.04.2012 and an endorsement is always entered in respect of transport vehicle. So far as non-transport vehicle is concerned, no specific endorsement is given except for the validity period prescribed.

4. The only contention which perhaps on the part of the insurance company is that, they had moved an application for getting the witness from the RTO examined on commission which has been

refused by the court and on summons being issued by the court, the officer of the Transport authority have intimated that due to paucity of sufficient staff, no one could be deputed to the court for proving the document. Further proceeding would show that though the driver has filed written submission before the Tribunal and has admitted the fact that he had a valid license, but he has not produced anything before the Tribunal to establish it, neither is there any deposition or evidence which has been given by the driver to establish this fact. Likewise, the owner also has not led any evidence in this regard.

5. Given the facts and circumstances of the case, this court has no hesitation that the insurance company so far as their part is concerned, has taken all necessary precautions, but it appears that the owner and the driver have deliberately avoided the proceedings before the court to establish the fact that they had a valid license and that they have taken all necessary precautions in getting the license renewed from time to time. Under the said circumstances, this court is of the opinion that it is a fit case where doctrine of "Pay and Recover" could be applied and the insurance company can be directed to deposit the entire awarded amount, if not deposited till date, and to recover the same from the owner and the driver of the offending vehicle. It is ordered accordingly.

6. So far as the ground of no eyewitness having been examined is concerned, the claim has been sufficiently proved by the claimants as also by the other witnesses and only because of non examination of eyewitness by itself would not disprove the claim of the claimants.

Thus, the said ground of the insurance company deserves to be and is hereby rejected. So far as ground of penal interest is concerned, this court while admitting the appeal on 08.11.2011 had directed the insurance company to deposit the entire award amount within a period of four weeks. Therefore, if the insurance company has deposited the award amount within a period of four weeks from 08.11.2011, the operation of penal interest stands waived. However, if the amount is not deposited till date, the said amount shall carry penal interest as awarded by the Tribunal.

7. In view of the above, the appeal thus stands partly allowed and disposed of. The appellant-insurance company shall deposit the entire award amount before the Tribunal, if not deposited, with liberty to recover the same from the driver and the owner of the offending vehicle.

Sd/-
(P.Sam Koshy)
Judge

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