NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 866 of 2011

1. Umashankar Pandey, S/o. Shri Gendlal Pandey, Aged about 38 years,
2. Ram Kishor Pandey, S/o. Shri Chandrika Prasad Pandey, Aged about 37 years,

   Both are R/o. Village Kheda, Police Station Mungeli, District Bilaspur, Chhattisgarh

----Appellants

Versus

1. Smt. Rachna Shrivas, W/o. Late Raj Kumar Shrivas, Aged about 29 years,
2. Kumari Rupali, D/o. Late Raj Kumar Shrivas, Aged about 10 years,
3. Shivani Shrivas, D/o. Late Raj Kumar Shrivas, Aged about 5 years,
4. Sutrika Shrivas, W/o. Late Jeevan Shrivas, Aged about 60 years,
5. Hira Bai, W/o. Late Jeevan Shrivas, Aged about 55 years,

   Respondent No. 2 & 3 are Minors through legal guardian mother Smt. Rachna Shrivas)

   All R/o. Village Kheda, Police Station Mungeli, District Bilaspur, Chhattisgarh
6. Mohammad Tayub, S/o. Gapphar, R/o. Khaparganj, Tahsil and District Bilaspur, Chhattisgarh
7. Branch Manager, Bajaj Alliance General Insurance Company Limited, Branch Office Shop No. OC-2 Chhattisgarh Complex, Raja Hotel, Telephone Exchange Road, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh

----Respondents

For Appellants	:	Mr. Dheerendra Pandey, Advocate
For Insurance Company	:	Mr. S.S. Rajput, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/03/2018

1. The present is an appeal by the Owner and Driver under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 10.05.2011, passed by the Additional Motor Accident Claims Tribunal, Mungeli, District Bilaspur, Chhattisgarh, in Claim Case No. 41/2011.

2. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.4,41,500/- with interest @ 6% per annum from the date of application.

3. Vide the impugned award the Tribunal had exonerated the Insurance Company of its liability and has fastened the liability of payment of compensation upon the present appellants- the Owner and Driver of the offending motorcycle bearing registration No. CG/10/BC/4635. The solitary ground for exonerating the Insurance Company was that the Driver of the motorcycle at the time of accident i.e. the appellant No.1 Umashankar Pandey son of Gendlal Pandey did not have a license to drive a motorcycle.

4. Along with the present memo of appeal, the appellants have also produced a document, which was a copy of the license belonging to Umashankar Pandey, which shows that he had a valid license bearing the endorsement No. CG/10/DLD/0001805/2011, which authorized the appellant No.1 Umashankar to drive the Non-Transport Light Motor Vehicle and motorcycle with gear. The license is said to have issued from the R.T.O. Bilaspur. The date of issuance of the license was also reflected as 01.06.1998. This Court had ordered the counsel appearing for the Insurance Company to get the license verified from the concerned R.T.O. as to whether the license was genuine or not, so as to determine the liability which has been fastened upon the present appellants. Though inspite of the sufficient opportunity being granted to the respondents, the Insurance Company has not been able to make a positive statement before the Court so far as the genuinity of the license is concerned.

There is also no document or averment brought by the Insurance Company to doubt the genuinity of the said license also.

5. Under the circumstances, since the document produced before this Court by way of an application contains all relevant details of a driving license so far as the appellant No.1 is concerned, it has to be presumed that on the date of accident, the appellant No.1 had a valid license to drive the motorcycle.

6. Given the circumstances, the exoneration of the Insurance Company of its liability indemnifying the appellant No.2 does not seem to be proper and justified and the impugned award to that extent deserves to be set-aside/modified and it is ordered accordingly that the liability of payment of compensation shall jointly and severally fall upon the present appellants and the respondent no.7 and the responsibility of payment of compensation shall be that upon the respondent no.7 i.e. Bajaj Allianz General Insurance Company Limited.

7. Any amount, which has been deposited by the appellants at the time of filing of the appeal, shall be refunded to the appellants upon the Insurance Company depositing the entire amount before the Tribunal.

8. The appeal thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved