NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1236 of 2011

National Insurance Co. Ltd. Through: its Divisional Manager, Bilaspur Branch, Taha Complex, Vyapar Vihar Road, Bilaspur, Chhattisgarh

---- Appellant

Versus

1(a) Amrauti Bai, W/o. Late Deocharan Sahu, Aged about 38 years,

(b) Basant Sahu, S/o. Late Deocharan Sahu, Aged about 10 years,

(c) Ku. Agan Sahu, D/o. Late Deocharan Sahu,

(d) Santram S/o. Late Deocharan Sahu, Aged about 6 years,

Sl.No. (b) to (c) Minor through: their mother applicant (a) Amrauti Bai)

All R/o Ayyaoppa Mandir, Bharitya Nagar, P.S. Civil Line, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh

2. Rammilan Yadav S/o Murli Yadav, Aged about 30 years, R/o Tifra Through Vishal Motors, Green Park, Raipur Road, Tahsil and District Bilaspur, Chhattisgarh

3. Vishal Motor, Green Park, Raipur Road, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh

----Respondents

For Appellant	:	Mr. Qamarul Aziz, Advocate
For Respondents No.1 (a,b,c&d)	:	Mr. Samir Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/01/2018

1. The present is an appeal by the Insurance Company assailing the award dated 13.09.2011, passed by the 4th Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh, in Claim Case No.112/2011.

2. It is a case where the Tribunal vide the impugned award in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.4,06,000/- with interest @ 6% per annum from the date of application. The liability of payment of compensation has

been fastened upon the present appellant-Insurance Company jointly and severally indemnifying the Owner.

3. The contention of the counsel for the appellant is that it is a case where an accident occurred on 04.08.2008, wherein the deceased, who was hit by the offending vehicle bearing registration No. CG/10/A/9236 owned by the respondent No.3 and was driven by the respondent No.2. As a result of the accident, the deceased sustained grievous injuries, to which he was hospitalized, where he later on succumbed to the injuries.

4. The counsel for the appellant submits that it is a case where the offending vehicle was being driven by the respondent No.2 without any valid license in his favour. He submits that during the course of the evidence at the first instance, two licenses were produced one from the R.T.O. Ajamgarh, Uttar Pradesh and the other by the R.T.O. Gorakhpur, Uttar Pradesh. Both of which were found to be fake as per the evidence, which has been led by the Insurance Company. The Insurance Company in support of their contention had examined one Bharat Bhushan Das, the administrative officer of the Insurance Company as also Mr. Ramesh Chand Shrivashtava, an investigator of the Insurance Company, who had got the license verified from the R.T.O. Ajamgarh so also from the R.T.O. Gorakhpur.

5. The counsel for the Insurance Company further relied upon the evidence of Rammilan Yadav, the Driver of the vehicle, who has categorically stated that the license which was issued from the R.T.O. Gorakhpur was not belonging to him. Thus, from the given factual matrix of the case itself, Tribunal should have reached to the

conclusion that the Driver at the relevant point of time did not have a valid license.

6. Another relevant material to be taken note is that the Tribunal on an earlier occasion on 06.03.2010 had decided the case exonerating the Insurance Company and fastened the liability upon the Owner. The said order was put to challenge in an appeal before the Division Bench of this Court in MAC No. 652/2010. The said appeal was challenged by the Driver and Owner, which was finally allowed on 08.11.2010 and the award was set-aside and the matter was remitted back for a fresh adjudication.

7. However, though the matter was remitted back to the Tribunal, no fresh evidence whatsoever was led by the either the Owner or that the claimant to establish the fact that the Driver at the relevant point of time had a valid license.

8. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that there was sufficient evidence produced before the Tribunal to show that that the Driver at the relevant point of time did not have a valid license and that the Owner or Driver had not produced enough evidence in support of their contentions.

9. Given the facts and circumstances of the case, this Court is of the opinion that the ends of justice would meet if the Insurance Company, who has been fastened with the liability to pay the compensation, is ordered to deposit the compensation and recover the same from the respondents No.2 & 3 applying the principles of “Pay and Recover” in the light of the decision of the Hon'ble

Supreme Court in the case case of ***"Manuara Khatun and others vs. Rajesh Kumar Singh and others",*** reported in ***2017 (4) SCC 796.***

10. The appeal, thus, stands allowed in part. The Insurance Company shall deposit the entire amount with liberty to recover the same from the respondents No. 2 & 3.

Sd/-
(P. Sam Koshy)
Judge

Ved