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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1246 of 2018

- The Oriental Insurance Co. Ltd, Through the Divisional Manager, Through its Branch Manager, Local Office- Rahul Complex, Opp. Axix Bank 3rd Floor, Dhimrapur Road, Raigarh (C.G.) 496001.

---- Appellant

Versus

1. Chamreen, Wd/o Late Ram Singh, aged about 62 years,
2. Jagar, S/o Late Ram Singh, aged about 45 years,
3. Bagar, S/o Late Ram Singh, aged about 36 years,

   Note: Respondent No. 1 to 3 are by Caste Gaada (Chouhan), R/o Village Pandri Mahua, P.S. & Tahsil Dharamjaygarh, Distt. Raigarh (C.G.).

4. Aseem Roy, S/o Kartik Roy, aged about 42 years, Occupation Vehicle Driver,
5. Rooplal Roy, S/o Kartik Roy, aged about 49 years, Occupation Vehicle Owner,

Note: Respondent No. 4 & 5 are R/o Dharamjaygarh Colony, P.S. & Tahsil Dharamjaygarh, Distt. Raigarh (C.G.).

---- Respondents

For Appellant : Shri R. N. Pusty, Advocate and Shri Pallav Mishra, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

26.10.2018

Heard on motion hearing stage.

2. This is appellant/insurer’s appeal against the award dated

30.04.2018, passed by the Motor Accident Claims Tribunal, Raigarh (for short 'the Tribunal') in claim case No. 37/2017.

3. Brief facts of the case are that on 19.11.2016, Ramshingh Chauhan aged about 65 years and earning 5,000/- per month was going for buying milk, at that time respondent No. 1-Aseem Rai driving the pickup vehicle engine No.GLG4K84381 & Chassis No. MA1ZT2GLKG2K36593 in a rash and negligent manner dashed Ramshingh as a result of which, he sustained multiple injuries. While he was being taken to Raigarh Hospital, on the way he died.

4. As against the compensation of Rs. 12,50,000/- claimed by unfortunate wife and son of the deceased by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') for the death of deceased in the motor accident on 19.11.2016, the Tribunal awarded a total sum of Rs. 1,90,000/- as compensation along with interest @ 8 percent per annum from the date of application till its actual payment.

5. In the award, the Tribunal has held that the breach of policy is proved as at the time of accident the driver of offending vehicle namely Aseem Rai was not having a valid and effective driving licence. However, since the offending vehicle was insured with Insurance Company during the relevant period the Tribunal directed the Insurance Company to first pay the compensation and then recover the same from the owner and driver.

6. Learned counsel for the appellant/Insurance Company has duly proved before the Tribunal that there was breach of policy conditions as the driver of the offending vehicle was not having a valid

and effective driving licence on the date of accident. The Tribunal considering the above aspect of the matter, exonerated the Insurance Company and fastened the liability on the driver and owner of the offending vehicle. However, the Tribunal was not justified in directing the appellant/Insurance Company to pay the compensation to the claimants and then recover the same from the owner and driver of the offending vehicle. Lastly he submits that the Tribunal while passing the order of pay and recover ought to have issued appropriate direction to the owner/respondent No. 5 and driver/respondent No. 4 for furnishing adequate security so that the interest of the Insurance Company could be safeguarded.

7. I have heard learned counsel appearing for the party and perused the record of Claims Tribunal including the award impugned.

8. It is not in dispute that there has been breach of Insurance policy as the driver of the offending vehicle was not having valid and effective driving licence on the date of accident, thus, the Tribunal has fastened the liability upon the owner and driver while exonerating the Insurance Company. So far as the order of pay and recover is concerned, the same can not be faulted with in view of the decision of Hon'ble the Supreme Court in the case of **Oriental Insurance Co. Ltd. V. Nanjappan** reported in **(2004)13 SCC 224.** However, the Tribunal while passing the order of pay and recover ought to have directed the owner of the vehicle to furnish adequate security to safeguard the interest of the Insurance Company.

9. In the result the appeal is allowed in part while upholding the direction of the Tribunal regarding pay and recover it is directed that before release of the amount to the claimants the owner of the vehicle shall be issued a notice and shall be required to furnish security for the entire amount of compensation which the insurer will pay to the

claimants. The offending vehicle may be attached as a part of the security. It is made clear that for the purpose of recovering the compensation amount from the owner, the Insurance Company shall not be required to file a suit. It may initiate a proceeding before the concerned executing Court as if the dispute between the insurer and the owner was subject matter of determined before the Tribunal and the issue is decided against the owner and in favour of the insurer. In case there is any default, it shall be open to the executing Court to direct realisation by disposal of the security to be furnished or from any other property or properties of the owner of the vehicle.

Sd/-

(Gautam Chourdiya)
Judge

Amita