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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.221 of 2015

1. National Insurance Company Ltd., Branch Office Kamthi Line Rajnandgaon, tahsil & District- Rajnandgaon-(C.G.)

---- Appellant

Versus

1. Jagtu Ram S/o Jhagru Netam, aged about 48 years,
2. Inder Bai W/o Jagtu Ram, aged about 45 years,
3. Suraj S/o Jagtu Ram netam, aged about 22 years,

   All are R/o Village Banspahad, P.S.- Bortalav, Dongargarh, District- Rajnandgaon- (C.G.)
4. Baisakhu Lidhi, R/o Dongargarh, District- Rajnandgaon- (C.G.)
5. Kayam Ali S/o Rahmat Ali R/o Dongargarh Roadways Dongargarh, District- Rajnandgaon-(C.G.)
6. Triveni Bai W/o Uttam Netam, aged about 30 years, R/o Village Meregaon, Post- Merha, Tahsil- Dongargarh, District- Rajnandgaon- (C.G.)

---- Respondents

For Appellant	:Shri Raj Awasthi, Advocate.
For Respondent Nos. 1 to 3	:Shri Parag Kotecha, Advocate
For Respondent No. 6	:Shri Samir Singh, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

23.01.2019

This appeal is by the Insurance Company under Section 173 of the Motor Vehicle Act against the award dated 06.09.2014, passed by Additional Motor Accident Claims Tribunal, Khairagarh, Link Court

Dongargarh District Rajnandgaon (for short 'the Tribunal') in Claim case No. 46/2012, awarding total compensation of Rs. 4,28,000/-with interest @ 6% from the date of filing of claim petition till its reliazation, fastening liability on non-applicants jointly & severally.

02. As per claim petition, on 05.05.2012, at about 10.00am Uttam Netam, 33 years, earning Rs.800/- per day working at poultry farm and Rs. 250/-per day as mason, died in the motor vehicular accident caused due to rash and negligent driving of vehicle (bus) bearing No. CG04ZA/0559 by respondent No. 4/Non-applicant No. 1- Baishakhu Lodhi, which was owned by respondent No. 5/non-applicant No. 2 and insured with appellant/non-applicant No. 3. Non-applicant No. 4/respondent No. 6 is the wife of deceased-Uttam Netam.

03. On claim petition being filed by the claimants/parents & brother of the deceased- Uttam Netam under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellant/Insurance Company submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailling the award on the sole ground that at the time of accident, the deceased had licence to drive the light motor vehicle but the learned Tribunal has committed a gross error by overlooking the fact that at the time of accident, driver of offending vehicle was not having valid & effective licence to drive the offending vehicle which is a passenger carrying commercial vehicle.

05. Learned counsel for the respondents opposes the contention made by learned counsel for the appellant and submits that no any evidence regarding breach of policy has been adduced by the Insurance Company before the Tribunal, therefore, the Tribunal

considering all the relevant aspects of the matters has rightly awarded compensation and liability fastened upon the Insurance Company which needs no interference by this Court.

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

07. So far as the breach of policy is concerned, the Insurance Company contended in its written statement that on the date of accident, respondent No. 4/non-applicant No. 1was not having valid & effective driving licence to drive the passenger carrying vehicle. As per para 13 of the award, non-applicant No. 1 was having licence which was valid from 31.05.2011 to 30.05.2014 for transport vehicle. As per seizure memo Ex.P/6 the licence seized from non-applicant No. 1 was valid till 03.08.2028 and as such it was for LMV. Thus, on the date of accident non-applicant No. 1 was having a valid & effective driving licence to drive the offending vehicle. Admittedly the accident occurred in this case on 05.05.2012 and the offending vehicle is mini-bus i.e. passenger carrying vehicle. No evidence has been adduced by the Insurance Company to prove that there was any breach of policy conditions on the part of the respondent No. 4/non-applicant No. 1 & Non-applicant No. 2/Owner. In these circumstances, the Tribunal was fully justified in holding that the offending vehicle was not being driven in violation of any of the policy conditions.

08. On the basis of aforesaid discussions this Court finds no illegality or infirmity in the impugned award requiring any interference by this Court. Accordingly, there is no substance in the arguments advanced on behalf of the appellant/Insurance Company. Accordingly, the

miscellaneous appeal being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

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