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HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (C) No. 562 of 2010**

The Oriental Insurance Company Limited, Branch Office, Aadarsh Bal Mandir, Main Road, Dhamtari, Tehsil and Thana Dhamtari, District Dhamtari, Chhattisgarh.

---- Appellant**Versus**

1. Laxmi Bai, D/o Late Sadhram, Aged About 40 years, R/o Bhattipara, Shantinagar, Kanker, District Kanker, Chhattisgarh.
2. Vehicle Driver/Vehicle Owner Rupendra Jain, S/o Fulchand Jain, Caste-Kalar, R/o Village Kanapod, Thana and Tahsil Charama, District Kanker, Chhattisgarh.

---- Respondents

For Appellant	: Shri Sudhir Agrawal, & Shri Prasanjeet Dutta, Advocates.
For Respondent No. 1	: None, though served.
For Respondent No. 2	: Shri Shalvik Tiwari, Advocate.

Hon'ble Shri Justice Sanjay Agrawal**Award On Board****19.07.2019**

1. This Miscellaneous Appeal has been preferred by the Non-Applicant No.2/The Oriental Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') questioning the legality and propriety of the award dated 23.05.2009 passed by the Motor Accident Claims Tribunal Kanker, District North Bastar, Kanker (C.G.) (for short 'the Claims Tribunal') in Claim Case No. 95/2008, by which the learned Claims Tribunal while allowing the claim in part has fastened the liability upon the Insurance Company.

2. Briefly stated the facts of the case are that on 22.04.2008 at about 12:30 pm deceased Santosh Kumar Sahu was returning by offending vehicle (Jeep) bearing its Registration No. C.G. 19-T/0274, which was being driven rashly and negligently by its driver, Rupendra Kumar, as a result of which, it struck against a road side *Neem* Tree in front of Dhruv Petrol Pump, Kanker, resulting in the sad demise of said Santosh Kumar Sahu. At the relevant time, as many as 16 to 17 persons were travelling in the alleged vehicle, which was insured by the Appellant/Insurance Company and on account of the alleged accident the brother and sister of the said deceased namely, Mohan Sahu and Laxmi Bai, both instituted a separate claim petitions under Section 166 of the Motor Vehicles Act 1988, which were registered respectively as Claim Case No.92/2008 and Claim Case No.95/2008.
3. The aforesaid claims were contested by the Non-Applicant No.1, the owner-cum-driver of the said offending vehicle by submitting *inter alia* that at the relevant time, he was holding the effective and valid driving license and was authorized to drive the said vehicle and since the vehicle in question was insured with the Appellant/Insurance Company, therefore, in case of any liability being fastened, he would be entitled to be indemnified by Non-Applicant No.2/Insurance Company. While Non-Applicant No.2/Insurance Company contested the claim mainly on the ground that the driver of the offending vehicle was not holding the effective and valid driving license, and therefore, the Insurance Company cannot be held liable to indemnify the insured.
4. After considering the evidence led by the parties, it has been held

by the learned Claims Tribunal that the alleged accident occurred due to rashness and negligent driving of its driver and held further that driver was holding the effective and valid driving license and Insurer has failed to establish the fact that the alleged offending vehicle was being used in violation of the insurance policy. In consequence, both the claims have been decided jointly and allowed in part while fastening the liability upon the Insurance Company.

5. Being aggrieved, the Non-Applicant No.2/Insurance Company has preferred two separate appeals. The appeal preferred against the Claim Case No.95/2008 is registered as MAC No.562/2010 (Instant Appeal), while appeal registered as MAC No.337/2010 was against the Claim Case No.92/2008 instituted by deceased's, brother Mohan Sahu. At the outset, Shri Sudhir Agrawal, learned counsel for the Appellant while inviting the attention of this Court with regard to the decision of the Division Bench of this Court passed in MAC No.337/2010 i.e., the appeal preferred against the Claim Case No.92/2008 in the matter of "The Oriental Insurance Company Limited Vs. Mohan Sahu and Others" decided on 04.04.2011 submits that the said appeal was considered along with others' i.e., as many as 7 appeals, which were remanded for ascertaining the genuineness of the alleged driving license as to whether the driver of the offending vehicle was holding the valid and effective license or not at the time of accident. Shri Agrawal, therefore, submits that this matter be also remanded as per the terms and conditions as observed therein in the said common order passed by the Division Bench of this

Court.

6. Shri Shalvik Tiwari learned counsel for Respondent No.2, on the other hand while supporting the award impugned submits that the concerned Tribunal has decided the other matters as per the said directions contained in the order dated 04.04.2011 by holding that the driver of the offending vehicle was holding the effective and valid driving license, and as such, the matter does not require to be remanded.
7. I have heard learned counsel for the parties and perused the said order dated 04.04.2011 passed by the Division Bench of this Court alongwith the record of the concerned Tribunal, carefully.
8. Perusal of the record would show that as many as 7 appeals were preferred by the insurer against the award passed by the Claims Tribunal in relation to the accident occurred on 22.04.2008. It appears from perusal of the said remand order dated 04.04.2011 that out of those 7 appeals, 6 appeals, except the present one, were disposed of while remanding the matter in order to ascertain the genuineness of the alleged driving license of the driver of the offending vehicle. It appears further from the record that the instant appeal i.e., MAC No.562/2010 was dismissed for non-compliance of the direction contained in the order dated 16.06.2010 and which, was subsequently got restored by this Court vide order dated 11.01.2018 passed in MCC No.08/2018. As such, the present appeal was not in existence when the appellant's earlier appeals were remanded vide order dated 04.04.2011.
9. In view of the aforesaid circumstances and particularly, when

appeals preferred by the Appellant/Insurance Company questioning the genuineness of the driving license, as contended herein, were remanded, it would be just and proper to remand this matter also as per the terms and conditions stipulated therein.

10. Consequently, I allow this appeal in part and set aside the impugned award dated 23.05.2009 passed by the Motor Accident Claims Tribunal, Kanker, District North Bastar, Kanker (C.G.) in Claim Case No.95/2008 in the same line as observed by the Division Bench of this Court vide its remand order dated 04.04.2011. The Appellant (The Oriental Insurance Company Limited) and Respondent No.2 (Rupendra Jain) are hereby directed to appear before the concerned Claims Tribunal on 16.09.2019, who in turn, shall issue a fresh notice to Respondent No.1/Claimant (Laxmi Bai) and thereafter decide the claim petition i.e., Claim Case No.95/2008, in accordance with law.
11. Needless to mention here further that the parties shall be allowed to amend their pleadings and adduced further evidence again in support of their pleadings and may file further documents and get the documents verified thereafter and the decision shall be made by the concerned Tribunal on merits, as soon as possible. No. order as to costs.
12. Registry is directed to transmit the entire file to the concerned Claims Tribunal forthwith.

Sd/-
(Sanjay Agrawal)
Judge