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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 442 of 2014

- The United India Insurance Co. Ltd. Through Branch Manager, Branch Office, Paras Complex, Behind S.B.I., Gurudwara Station Road, Durg

---- Appellant/Insurer/Non-applicant No.3

Versus

1. Smt. Teshu Bai Shuryawanshi W/o Late Kamal Singh, Aged about 47 years **(Claimant)**
2. Satya Vijay Shuryawanshi S/o Late Kamal Singh, Aged about 27 years **(Claimant)**
   Both are resident of Dumardhih, Thana- Utai Zilla- Durg
3. Rikhi Ram S/o Mayaram Chandrakar, Aged about 27 years, Resident of Parsahi, Thana Utai, Zilla Durg
   (Driver)/Non-applicant No.1
4. Rohit Kumar S/o Arjun Singh Chandrakar, aged about 32 years, Resident of Ward No.5, Nagar Palika Utai, Thana- Utai, Zilla Durg
   (Owner)/Non-applicant No.2

---- Respondents

And

Miscellaneous Appeal (Civil) No. 443 of 2014

- The United India Insurance Co. Ltd. Through Branch Manager, Branch Office, Paras Complex, Behind S.B.I., Gurudwara Station Road, Durg

---- Appellant/Insurer/Non-applicant No.3

Versus

1. Rajendra Kumar S/o Late Shri Sadaram Newra, Aged about 49 years, Resident of building No. 65, Naya-Para, Ward No.-13, Utai Zilla Durg
   (Claimant)
2. Rikhi Ram S/o Mayaram Chandrakar, Aged about 27 years, Resident of Parsahi, Thana Utai, Zilla Durg
   (Driver)/Non-applicant No.1
3. Rohit Kumar S/o Arjun Singh Chandrakar, aged about 32 years, Resident of Ward No.5, Nagar Palika Utai, Thana- Utai, Zilla Durg
   (Owner)/Non-applicant No.2

---- Respondents

For Appellant/Insurer	:	Smt. Chitra Shrivastava, Advocate
For Claimants	:	Shri Pravin Dhurandhar, Advocate
For Owner	:	Shri B.P. Singh and Shri Shikhar Baktayar, Advocates

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Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

28.01.2019

1. By this common judgment, M.A.(C) No. 442 of 2014 arising out of Claim Case No. 74/2012 and M.A.(C) No.443 of 2014 arise out of Claim Case No. 9/2013 are being disposed of as they relate to the same accident.

2. These are insurer's appeals under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') against the common award dated 31.1.2014 passed by the First Additional Motor Accident Claims Tribunal, District Durg in Claim Cases No. 74 of 2012 and 09 of 2013.

3. Facts of the case, in brief, are that on 24.04.2012 at about 6.00 a.m. deceased- Kamal Singh and injured- Rajendra Kumar were going for morning walk, when they reached at Utai ATM, Rikhi Ram- driver of the offending vehicle School Bus bearing registration No. CG-07/ZA/0511 (hereinafter referred to as the 'offending vehicle'), driving the said vehicle in a rash and negligent manner, dashed both Kamal Singh and Rajendra Kumar and as a result thereof, Kamal Singh died during treatment and Rajendra Kumar sustained grievous injuries. At the time of accident, Rikhi Ram/non-applicant No.1 is the driver, Rohit Kumar/non-applicant No. 2 is the owner and Insurance Company/Appellant is the Insurer of the offending vehicle.

4. In Claim Case No. 74/2012, Claimants are unfortunate wife and son of deceased- Kamal Singh claimed Rs.17,45,000/- as compensation by filing claim petition under Section 166 of the Act for death of Kamal Singh in the motor accident. The Tribunal considering all the relevant aspects of the matter has awarded compensation of Rs.6,04,500/- in favour of the Claimants.

5. In Claim Case No. 9/2013, Claimant/injured claimed Rs.15,50,000/- as compensation by filing claim petition under Section 166 of the Act for injury sustained by him in the motor accident. The Tribunal considering all the relevant aspects of the matter has awarded compensation of Rs.1,01,137/- in favour of the injured-Claimant.

6. In both above claim cases, the Tribunal has awarded compensation with interest @ 6% per annum from the date of applications till realizations respectively and has fastened liability on the Insurance Company alongwith driver and owner jointly and severally.

7. Learned counsel for the Appellant/Insurance Company submits that the learned Tribunal committed error by considering the offending vehicle as school bus even though it was not registered in the name of education institution, but it was registered in the name of individual. She further submits that the Tribunal also committed error by not appreciating the provisions of Section 66 of Act which stipulates that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted by competent authority. She submits that the Tribunal was no justified in fastening liability on the Insurance Company by placing reliance on the decision of Delhi High Court in the matter of ***Oriental Insurance Company Ltd.*** Vs. ***Baby Komal & Anr., I (2013) ACC 167*** and by observing that since the offending vehicle was a school Bus, no permit is required for plying the same. She submits that in the instant case, the accident occurred on 24.04.2012 and by virtue of amendment in Section 66 of the Act made on 11.08.2000, Clause (h) of Sub-section (3) of Section 66 of the Act has been omitted and as such permit was required for plying the vehicle, whereas on the date of accident the offending vehicle was being plied without any permit. She also submits that before Tribunal, Appellant filed its separate written statement stating the driver of the offending vehicle was not having valid and effective licence to ply the said vehicle, therefore, the Insurance Company is not liable to pay compensation to the Claimants in both the claim cases. In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matter of ***Amrit Paul Singh and Another*** Vs. ***Tata AIG General Insurance Company Limited and Others, (2018)***

7 SCC 558.

8. On the other hand, learned counsel for the Owner supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

9. Heard learned counsel for the parties and perused the material available on record.

10. So far as issue of permit is concerned, Clause (31) of Section 2 of the Act contemplates that "permit" means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorising the use of a motor vehicle as a transport vehicle. Clause (47) of Section 2 of the Act says that "transport vehicle" means a public service vehicle, a goods carriage, an educational institution but or a private service vehicle. Its mean the service vehicle is a private vehicle under the proviso. As per Ex.-D/4, R.C. Book, is proved by the Insurance Company as the offending vehicle is a Mini Bus seating capacity of carrying passengers as 28+1 and as such, the offending vehicle was involved as transport vehicle for carrying passenger.

11. Prior to amendment on 11.08.2000 in Section 66 of the Act, Section 66(3)(h) reads as under:

> "**66. Necessity for permits.-** (1) xxxx xxxx xxxx
>
> (2) xxxx xxxx xxxx
>
> (3) The provisions of sub-section (1) shall not apply –
>
> (a) xxxx xxxx xxxx
> (b) xxxx xxxx xxxx
> xxxx xxxx xxxx
> (h) to any transport vehicle owned by, and used solely for the purposes of, any educational institution which is recognised by the Central or State Government or whose managing committee is a society registered under the Societies Registration Act, 1960 (21 of 1960) or under any law corresponding to that Act in force in any part of India."

However, after amendment Clause (h) of Sub-section (3) of Section 66 of the

Act has been omitted. The judgment relying upon by the Tribunal in *Baby Komal* (supra) is not applicable to the facts of the present case because the said judgment was delivered in the respect of the accident occurred on 20.08.1999 i.e. prior to amendment in Section 66 of the Act. However, in the instant case admittedly accident occurred on 24.04.2012 i.e. about 12 years after the amendment.

12. Since in the present case, the offending vehicle was a transport vehicle for carrying passengers and permit was required for the same, the Tribunal has not justified in fastening the liability on the Insurance Company.

13. Considering the facts and circumstances of the case and particularly the fact that on the date of accident, the offending vehicle was duly insured with the Insurance Company and that the deceased and injured were the third party, keeping in view of the decisions of the Hon'ble Supreme Court in the matters of *Amrit Paul Singh* (supra) and ***Manuara Khatun and others*** Vs. ***Rajesh Kumar Singh and others, (2017) 4 SCC 796***, this Court feels it proper to order for pay and recover in this case. Hence, the Appellant/United India Insurance Company Limited is directed to pay the awarded sum to the Claimants within a period of two months from today and then recover the same from the owner (Rohit Kumar) as per law laid down in ***Manager, National Insurance Company Limited*** Vs. ***Saju P. Paul & Anr., (2013) 2 SCC 41***.

14. In the result, the appeals are allowed in part. The award is modified to the above extent. Rest of the conditions of the award shall remain intact.

15. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

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