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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1540 of 2017

- The New India Assurance Company Limited Through Divisional Manager, Division No. 03, 2nd Floor, R. D. A. Building Bajrang Market, G. E. Road, Raipur, Chhattisgarh. Insurer Of Hvya Truck No. C. G. 04/ L C /1044

---- Appellant/insurer

Versus

1. Smt. Bharti Netam Wd/o Late Dwarkia Prasad Netam, Aged About 26 Years.
2. Ku. Devshri Netam, D/o Late Dwarika Prasad Netam, Aged About 3 Years Minor Through Natural Guardian Mother Smt. Bharti Netam,

   Both are R/o Village Sakri, Post Chandi, Police Station And Tahsil Abhanpur, District Raipur, Chhattisgarh.
3. Mannilal, S/o Makhan Prajapati, R/o Village Chhatakund, Police Station Ketar, District Gadhwa Jharkhand, Presently Residing At Suraj Upadhyay, S/o Onkarnath Upadhyay, Near Swarj Tractor Showroom, Ring Road No. 01, Kushalpur Chowk, Police Station D. D. Nagar, District Raipur, Chhattisgarh. Driver Of Hvya Truck No. C. G. 04/ L C /1044
4. Suraj Upadhyay, S/o Onkarnath Upadhyay, Near Swarj Tractor Showroom, Ring Road No. 01, Kushalpur Chowk, P. S. D. D. Nagar, District Raipur, Chhattisgarh. Owner Of Hvya Truck No. C. G. 04/ L C /1044

---- Respondents

For Appellant	:	Shri Raj Awasthi, Advocate.
For Respondent Nos.1 & 2	:	Shri AD Kuldeep, Advocate.
For Respondent Nos. 3 & 4	:	None though served.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

12/03/2019

Heard on admission.

2. The appeal being arguable on merits is admitted for hearing.

3. With the consent of the parties, the matter is heard finally.

4. This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 13.9.2017 passed by 6th Additional Motor Accident Claims Tribunal, Raipur (CG) in Claim

Case No. 249/2016 awarding total compensation of Rs.25,32,600/- with interest @ 7.5% per annum from the date of application till realization, fastening liability on the non-applicant No.3/insurance company jointly and severally along with non-applicants No. 1 & 2/driver & owner. Further, the Tribunal directed that in case the amount of compensation is not deposited within a month from the award, it shall carry interest @ 9% per annum from the date of award till its payment.

5. As per averments in the claim petition, on 12.1.2016 Dwarika Prasad Netam, aged about 30 years, earning Rs.13,000/- per month as a teacher in Govt. Primary School, Datrenga, was riding motorcycle Honda Twister bearing No.CG 04/CT/3550 with a moderate speed and returning to his home at Sakri. However, on the way, non-applicant No.1 Mannilal by driving Hyva truck bearing No. CG 04 LC 1044 (offending vehicle) in a rash and negligent manner dashed the motorcycle of Dwarika Prasad as a result of which Dwarika Prasad fell down and suffered grievous injuries and died on the spot itself. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

6. On claim petition being filed by the claimants, wife and daughter of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

7. Learned counsel for the appellant/insurance company submits that the Tribunal was not justified in fastening liability on the insurance company as the offending vehicle was a heavy goods carrying commercial vehicle, for which permit is required as provided under Section 66 of the Motor Vehicles Act, 1988 (in short “the Act”) but at the time of accident, the offending vehicle was being plied without any permit. Further, non-applicant No.1 was also not having a valid and effective licence to drive the offending vehicle. Lastly, he submits that the imposition of penal interest by the Tribunal is also against the law and same is required to be set aside.

8. None for respondents No.3 & 4/driver & owner though served.

9. Learned counsel for the respondents No. 1 & 2/claimants supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly fastened liability on the insurance company. He submits that if this Court exonerates the insurance company of its liability, then considering the facts and circumstances of the case, order of pay and recover may be passed in this case. Reliance has been placed on the decisions of the Hon'ble Supreme Court in ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796*** and ***Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another, (2018) 5 SCC 762.***

10. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

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

12. It is not in dispute that the offending vehicle was a heavy goods carrying commercial vehicle. As per Ex.NA-3/2, the gross weight of the vehicle is 25,000 kg. As per Ex.NA-3/1 (permit) also, the offending vehicle was a heavy goods vehicle and validity of the permit is 21.1.2016 to 20.1.2021. As per Ex.P/10 i.e. seizure memo, registration certificate, insurance policy, fitness certificate, permit and driving licence pertaining to the offending vehicle were seized. In the said seizure memo, validity of the permit is mentioned as upto 6.1.2016. However, as per evidence of NAW-1 Ramchandra Kunjam, the owner of the offending vehicle had paid Rs.2000/- online on 6.1.2016 for grant of permit and before that no such application was made by him to RTO. Even otherwise, admittedly, the accident occurred on 12.1.2016 and as such, on the date of accident, the offending vehicle was being plied without any permit whereas Section 66 of the Act mandates that permit is required for plying of such vehicle at any public place. Driver & owner of the offending vehicle remained ex-parte before the Tribunal and did not file any document in relation to permit. Further, since the

offending vehicle was a heavy goods carrying commercial vehicle, the fact whether on the date of accident it was loaded with goods or not, is immaterial for the purpose of permit and permit is required for plying such vehicles at a public place.

In the matter of ***Amrit Paul Singh and another Vs. Tata AIG General Insurance Co. Ltd. and others, (2018) 7 SCC 558***, while dealing with identical issue, the Hon'ble Supreme Court considering the provisions of Section 66(1) of the Act which prescribes 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 or countersigned by a Regional or State Transport Authority or any prescribed authority, held that use of a vehicle as a transport vehicle in public place without a permit is a fundamental statutory infraction. Though Section 66(3) of the Act carves out certain exceptions to Section 66(1), in order to invoke those exceptions, the same must be pleaded and proved, the said exceptions cannot be taken aid of in the course of argument to seek absolution from liability.

13. In the present case, as observed above, the offending vehicle was being plied without any permit and as such, there was specific breach of policy conditions on the part of the owner of the offending vehicle. This apart, as mentioned in para-17 of the impugned award, on the date of accident, non-applicant No.1 was not having a valid and effective driving licence. No such licence has been produced before the Tribunal. Therefore, in view of the above fact that the offending vehicle was being plied without any permit in contravention of provisions of Section 66 of the Act and the driver was not having a valid and effective licence to drive the same in violation of Section 3 of the Act, the Tribunal was not justified in fastening liability on the insurance company.

14. So far imposition of penal interest by the Tribunal is concerned, the said finding of the Tribunal is also against the settled principle of law and therefore, is liable to be set aside.

15. However, considering the facts and circumstances of the case, the fact that on the date of accident, the offending vehicle was duly insured with the appellant/insurance company and the deceased was the third party, in view of principles of law laid down by the Hon'ble Supreme Court in ***Manuara Khatun and others*** and ***Shivawwa and another*** (supra), this Court feels it proper to order for “pay and recover” in this case, meaning thereby that the insurance company shall first pay the amount of compensation to the claimants and then recover the same from non-applicants/owner & driver in accordance with law.

16. In the result, the appeal filed by the insurance company is allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge

Khan