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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 744 of 2018

1. M/s Pepsi Foods Ltd. Plat No. 26 And 30 Urla Industrial Area State Complex District Raipur, Through Manager Shri Diwakar Awasthi Aged About 50 Years, S/o Late Shri S.N. Awasthi, R/o Flat No. 301, Barsana Inclave, Tatiband, Raipur Chhattisgarh.

2. Naresh Lal Agrawal S/o Late Shri Lakhan Lal Agrawal Aged About 41 Years R/o Village Birgaon, Police Station Urla, District Raipur Chhattisgarh.

----Appellants

Versus

1. Ku. Mahima Toppo Aged About 8 Years Through Natural Guardian Mother Smt. Filomina W/o Shri Bhagtu, R/o Vill.- Mudhapara Pathalgaon, Presently Resided In Village Navatoli, Kunkuri, Tahsil Kunkuri, District Jashpur Chhattisgarh.

2. The New India Insurance Co. Ltd., Divisional (Divisional Office) Office-2 Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Appellants	Shri Shashi Bhusan Tiwari, Advocate.
For Respondent No.1	Shri P.K. Saxena, Advocate.
For Respondent No.2	Shri Anil Gulati, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

07.01.2019

1. Heard on **I.A. No.1**

2. This is an application for condonation of delay of 687 days in filing the MAC.

3. The aforesaid application is opposed by non-applicant no.2. He has also filed reply to the said application.

4. Considering the facts and circumstances of the case, reasons,

assigned in the application for condonation of delay as also reply of the same, this Court is of the opinion that the present is a fit case to condone the delay and the same is hereby condoned.

5. This appeal by the owner under Section 173 of the Motor Vehicle Act against the award dated 29.02.2016 passed by the Additional Motor Accident Claims Tribunal, Kunkuri, District Jashpur, C.G. in claim case No.57/09, whereby the Tribunal has fastened the liability on the appellant no.1 Driver & appellant no.2 owner, while exonerating the Insurance Company on the ground of breach of policy conditions.

6. Brief facts of the case are that on the date of accident i.e. 03.06.2008, while injured claimant Ku. Mahima Toppo along with her mother was crossing the main road, a vehicle bearing registration no. CG04-ZB-2298, which was being driven by non-applicant No.1 in a rash and negligent manner, dashed the claimant, as a result of which she suffered grievous injuries on her body. It is not is dispute that on the date of accident vehicle in question was owned by non-applicant No.2 and insured with Non-applicant No.3.

7. The claimant filed a claim petition under Section 166 of Motor Vehicle Act for compensation of Rs.7,75,000/- against the injuries caused to her in the said Motor Vehicle Accident.

8. Learned Tribunal considering the evidence available on record and the pleadings of the respective parties by the impugned

award granted a total compensation of Rs.3,12,500/- with interest at the rate of 6% per annum from the date of application till its realization, fastened the liability upon non-applicant Nos. 1 & 2 jointly and severely, while exonerating the Insurance Company of the same on the ground of breach of policy conditions. Hence, this appeal by the appellant/owner.

9. Learned counsel for the appellant submits that Naresh Lal Agrawal, Driver of the vehicle has categorically stated on oath that the vehicle in question was being plied in accordance with the terms and conditions of the Insurance policy. The non-applicant No.3 Insurance Company has failed to prove that there was breach of policy condition on the part of non-applicant No.1 Driver. In these circumstances, the Tribunal was not justified in exonerating the Insurance Company of its liability and fastening the same upon the driver and owner of the vehicle.

10. On the other hand, counsel for the Insurance Company supports the impugned award and submits that the Tribunal has rightly fastened the liability upon the Owner and Driver of the vehicle.

11. Learned counsel for the respondent no.1/claimant has duly assisted the Court. However, he submits that no appeal has been filed by the claimant for enhancement.

12. Heard learned counsel for the parties and perused the material available on record including the impugned award.

13. So far as liability is concerned, the appellant/non-applicant No.2

owner of the vehicle has stated in his evidence that on the date of accident non-applicant No.1 Driver Naresh Lal Agrawal was driving the vehicle, he was having a valid and effective licence. According to Insurance company also the Driver was having a valid licence but it was for LMV only and there was no endorsement to drive the offending vehicle. From perusal of the document of D-2 i.e. Insurance Policy of the vehicle, it is evident that the gross weight of the vehicle was 7000 kg and the said fact has not been disputed by the respondents. Further, as per the Ex.D-1 i.e. a particular of the driving licence of non-applicant no.1, he was having a licence to drive LMV which was valid from 24.09.1995 to 23.05.2015 and the accident occurred on 03.06.2008 as such on the date of accident he was having a valid licence to drive the LMV. Therefore, in view of decision of the Hon'ble Supreme court in the matter of **Mukund Dewangan Vs Oriental Insurance Company Ltd.** Reported in **2017 Volume 14 SCC 663**, wherein it has been held that no endorsement is required in the driving licence for driving the vehicle unladen weight of which does not exceed 7,500 Kg, it cannot be said that the non-applicant No.1 driver was not having a valid and effective licence to drive the vehicle in question.

14. Thus, considering the pleadings of the respective parties and the evidence adduced thereon, this Court is of the opinion that the Tribunal was not justified in exonerating the Insurance Company on the ground that the vehicle in question was being used in contravention of the policy conditions and saddling the

owner of the vehicle with the liability.

15. In the result, the appeal is allowed in part. The impugned award is hereby modified to the extent that it is the Insurance Company which is to indemnify the owner and satisfy the award. In other words, the Insurance Company along with Driver and Owner of the vehicle are jointly and severely held liable for satisfying the impugned award. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
Gautam Chourdiya
Judge

Akhilesh