AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 684 of 2014

- The Oriental Insurance Company Ltd. Address- Gittanjali Building, Main Road, Old Bus Stand, Korba, Distt. Korba C.G.

---Appellant

Versus

1. Aaju Khan S/o Abdul Rasheed Khan Aged About 38 Years R/o Om Nagar, Jarahabhata, Tasil and District Bilaspur C.G.

2. Harishankar Shrivas S/o Ramjhul Shrivas Aged About 28 Years R/o Paona, Thana- Pamgarh, Distt. Janjgir-Champa C.G.

3. Chandrahas Sharma S/o R. Sudan Sharma R/o Balajee Rice Mills, Petrol Pump Chowk, Akaltara, Distt. Janjgir-Champa C.G.

---- Respondents

For Appellant	Smt. Chitra Shrivastava, Advocate.
For Respondent No.1	Shri Nalin Soni, Advocate.
For Respondent No.2	None.
For Respondent No.3	Shri A.L. Singroul, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

12/03/2019

1. This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 21.04.2014 passed by 6th Additional Motor Accident Claims Tribunal, Bilaspur, (CG) in Claim Case No. 132/13 awarding total compensation of Rs.3,86,108/- 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.

2. As per averments in the claim petition, on 27.01.2011 Claimant/injured Aaju Khan aged about 38 years, earning Rs.15,000 to 20,000/- per month as Carpenter, was riding motorcycle Honda Twister bearing No. CG10-E-8603 with a moderate speed and was going to Vyapar Vihar to Maharana Pratap Chowk. However, on the way, non-applicant No.1 Harishankar by driving Truck bearing No. CG10-A-2890 (offending vehicle) in a rash and negligent manner dashed the motorcycle of Aaju Khan as a result of which Aaju Khan fell down and suffered grievous injuries on his body. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.
3. On claim petition being filed by the claimant under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.23,56,333/-, the Tribunal considering the evidence led by the parties passed an award as mentioned in para 1 of this judgment.
4. 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.
5. Learned counsel for the respondents No. 1/claimant 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.***

6. Counsel for the respondent no.3/Owner opposes the contention made by the appellant's counsel.

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

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

9. It is not in dispute that the offending vehicle was a heavy goods vehicle as per Ex.D-1C i.e. permit valid from 02.12.05 to 01.12.2010. As per Ex.D-2 the unladen weight of the offending vehicle is 6000 kg and the gross weight of the offending vehicle is 16200 kg. As per Ex.D-3 i.e. Insurance Policy (liability only policy), looking to the terms and conditions of the policy the vehicle being a heavy goods vehicle, permit under Section 66 of the Motor Vehicles Act is required. As per seizure memo Ex.P-5 the permit seized by the police was having validity till 01.12.2010 whereas the accident occurred in this case on 27.01.2011. As such on the date of accident, the offending vehicle was being plied without any valid permit. Non-applicant nos. 1 & 2 driver

and owner of the offending vehicle remained *ex-parte* before the Tribunal and did not adduce any evidence to prove that the offending vehicle was having valid and effective permit on the date of accident.

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.

10. 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. Therefore, in view of the fact that the offending vehicle was being plied without any permit in contravention of provisions of Section 66 of the Act, the Tribunal was not justified in fastening liability on the insurance company.

11. 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 claimant 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 claimant and then recover the same from non-applicants/owner & driver in accordance with law.

12. 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

Akhilesh