AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 733 of 2014

- The Oriental Insurance Company Ltd. Laxman Avenue Hotel Parisar, Jagdalpur C.G.

----Appellant

Versus

1. Golak Mallik S/o Shricharan Mallik Aged About 58 Years
2. Premila Mallik W/o Golak Mallik Aged About 55 Years
3. Sumitra Mallik Wd/o Nikhil Mallik Aged About 28 Years
4. Ku. Vaishali Mallik D/o Nikhil Mallik Aged About 9 Years
5. Ku. Sujata Mallik D/o Nikhil Mallik Aged About 7 Years
6. Navind Mallik S/o Nikhil Mallik Aged About 5 Years

   Respondent Nos.4, 5 & 6 are minor, through natural guardian mother Smt. Sumitra Mallik, All R/o Parchipara, Raigarh Orissa, Presently R/o West Borgaon, Tah. Farasgaon, Distt. Kondagaon C.G.

7. Rajkumar S/o Raveru Aged About 34 Years Thru- Mohanlal Khatri, In Front Of F.C.I. Godown, Jagdalpur C.G.
8. Mohanlal Khatri S/o Shivdaram Khatri R/o In Front Of F.C.I. Godown, Jagdalpur C.G.

---- Respondents

For Appellant	Shri Raj Awasthi, Advocate.
For Respondent Nos.1 to 6	Shri Praveen Dhurandhar, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

13/02/2019

01. This appeal is by the Insurance Company/non-applicant no.3 against the award dated 30.04.2014 passed by the Motor Accident Claims Tribunal, Kondagaon, District Kondagaon, C.G. in Claim Case

No.25/2013 awarding total compensation of Rs.5,17,000/- with interest @ 6% 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.

02. As per claim petition, on 17.04.2012 deceased Nikhil Mallik, aged about 35 years, earning Rs.8,000/- as Driver, died in the motor vehicular accident caused due to rash and negligent driving of Truck bearing no.CG17-GA-1620 by non-applicant No. 1. At the time of accident, the offending vehicle was owned by non-applicant nos.2 and insured with non-applicant no.3.

03. On claim petition being filed by the claimants i.e. Wife, Parents and Children of deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.30,50,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

04. Learned counsel for the appellant submits that in this case no permit was produced by owner of the offending vehicle either during investigation or before the Tribunal. As per the Statement of non-applicant witness no.1 Abhay Kumar Sinha no permit was seized by the Police Officer and not produced before the Tribunal by owner, therefore, there was specific breach of policy as the permit was not produced before Tribunal. Though the Insurance tried its level best to examine the owner of the vehicle as a witness but the summons issued to the owner remained unserved on account of owner having gone to Rajasthan at the relevant time and, therefore, the owner could not be

examined in this case. Hence, there being breach of policy conditions, the Insurance Company is not liable to pay compensation.

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

06. Heard both the parties and perused the material available on record.

07. It is not disputed by both the parties that Ex.D-1 Insurance Policy was issued by the Insurance Company. As per Ex.P-2 permit was not seized during investigation by the police. NAW-1 examined on behalf of Insurance Company, he admitted in his statement that after receipt of notice from the Tribunal neither the Insurance Company nor himself issued any notice to non-applicant no.2 owner of the vehicle for production of permit, fitness etc. He has admitted that the Insurance Company has not made any correspondence with the concerned RTO for obtaining the information regarding permit, fitness of the offending vehicle. The Tribunal in para 13 has observed that on the request of Insurance Company summons was issued to non-applicant no.2 owner but the same remain unserved on account of non-applicant no.2 having gone to Rajasthan and thereafter it was submitted on behalf of the Insurance Company that the Insurance Company does not want to adduce any evidence. In the given facts and circumstances of the case, the nature and quality of evidence adduced by the Insurance Company, in absence of any specific evidence to prove that the offending vehicle

was being driven on the date of accident without any permit, this Court is of the opinion that Tribunal was fully justified in fastening liability on the Insurance Company and the said finding needs no interference by this Court.

08. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh