(2021) 11 JH CK 0009

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 82 Of 2009

Oriental Insurance Company Ltd APPELLANT

Vs

Josophine Jojo And Others RESPONDENT

Date of Decision : 18-11-2021

Acts Referred:

Citation : (2021) 11 JH CK 0009

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Prashant Vidyarthy, D.K. Chakraverty

Judgement

Gautam Kumar Choudhary, J

Heard learned counsel for the parties.

The instant appeal has been preferred by the appellant-Oriental Insurance Company Ltd. against the award of compensation made in favour of the claimant who happens to be the mother of the deceased who died in a motor vehicle accident involving a truck bearing Registration No. BPU-9877 regarding which Balidih P.S. Case No. 18/2000 was registered.

The compensation case has been filed against the owner, insurer and the driver of the offending vehicle. The claim was allowed on contest against defendant no. 2-the Oriental Insurance Co. Ltd. and ex-parte against defendant nos. 1 and 3.

The judgment of the learned court below has been assailed mainly on the ground that the driver of the vehicle was not holding a valid driving license and all steps were taken on behalf of Insurance Company during trial for directing the owner and the driver to produce the valid driving license which was not produced deliberately. Considering these facts, learned court below by passing the award for compensation against the Insurance Company held that it was at liberty to recover the compensation so paid from the owner of the offending vehicle as per law. The main contention of the Insurance Company is that there was a breach of condition of insurance policy by permitting the vehicle to be driven by the driver without a valid driving license. In view of breach of condition, the Insurance Company was not liable to pay the compensation amount. Therefore, the order to pay and recover should not have been passed by the learned Tribunal.

Learned counsel appearing on behalf of the respondents submits that even if it is accepted that there was a breach of condition as the driver was not holding a valid driving license at the relevant time of accident, the Insurance Company has been given right of recovery, but the Insurance Company cannot escape from third party liability with regard to the accident which took place more than 20 years ago and it will be travesty of justice to further delay the matter.

Having gone through the judgment passed by the learned Tribunal and having considered the rival submissions, I do not find any infirmity in the impugned order. There is a long line of judicial precedent where the Insurance Companies have been directed to make payment of the compensation amount to the claimant with a right to recover in favour of the Insurance Company against the owner of the vehicle. The principle of pay and recover has been reiterated by the Hon'ble Apex Court in the case of Kurvan Ansari Vs Shyam Kishore Murmu passed in Civil Appeal No 6902 of 2021.

Under the aforesaid facts and circumstances the award passed by the Learned Tribunal is upheld.

Under the aforesaid facts and circumstances, this misc. appeal stands dismissed. The Insurance Company is directed to make complete payment as per the award within a period of four weeks from today. Consequently, let the statutory amount deposited by the Insurance Company be remitted to the Tribunal for being paid to the claimant within a period of four weeks from the order.

