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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 756 of 2007

1. Santosh Kumar Yadav, S/o. Mahru Ram Yadav, aged about 27 years, R/o. Lakhe Nagar Dhal Tudrapriya Travels Lakhenagar Chowk, Tahsil and District – Raipur (C.G.) (Owner of the Vehicle)

----Appellant

Versus

1. Smt. Vasugi Sahu, W/o. Late Loknath Sahu, aged about 38 years, R/o. Changora Bhata, Shiv Nagar, Raipur, Tahsil and District Raipur (C.G.)

2. Krishna Kumar Kadra, S/o. Bishakhu Ram Kadra, aged about 27 years, C/o Through Santosh Kumar Yadav, S/o. Mahru Ram Yadav, Lakhenagar Dhal Rudrapria Travels, Lakhe Nagar Chouk, Tah & Distt. Raipur (Driver Of The Vehicle)

3. The Oriental Insurance Company, through Divisional Manager Divisional Office, Kachhari Chowk, Madina Building, Jail Road, Raipur, Tahsil and District Raipur (C.G.) (Insurer Of The Vehicle)

---- Respondents

And

M.A.(C) No. 1167 of 2007

1. Santosh Kumar Yadav, S/o. Mahru Ram Yadav, aged about 27 years, R/o. Lakhe Nagar Dhal Tudrapriya Travels Lakhenagar Chowk, Tahsil and District – Raipur (C.G.) (Owner of the Vehicle)

----Appellant

Versus.

1. Smt. Vasugi Sahu, W/o. Late Loknath Sahu, aged about 38 years,

2. Yogesh Kumar Sahu, S/o. Late Loknath Sahu, aged about 15 years, (Respondent No. 1 & 2 are Claimants)

   Both R/o. Changora Bhata, Shiv Nagar, Raipur, Tahsil and District Raipur (C.G.)

3. Krishna Kumar Kadra, S/o. Bishakhu Ram Kadra, aged about 27 years, C/o Through Santosh Kumar Yadav, S/o. Mahru Ram Yadav, Lakhenagar Dhal Rudrapria Travels, Lakhe Nagar Chouk, Tah & Distt. Raipur (Driver Of The Vehicle)

4. The Oriental Insurance Company, through Divisional Manager Divisional Office, Kachhari Chowk, Madina Building, Jail Road, Raipur, Tahsil and District Raipur (C.G.) (Insurer Of The Vehicle)

And

M.A.(C) No. 757 of 2007

1. Santosh Kumar Yadav, S/o. Mahru Ram Yadav, aged about 27 years, R/o. Lakhe Nagar Dhal Tudrapriya Travels Lakhenagar Chowk, Tahsil and District – Raipur (C.G.) (Owner of the Vehicle)

----Appellant

Versus

1. Smt. Vasugi Sahu, W/o. Late Loknath Sahu, aged about 38 years,
2. Yogesh Kumar Sahu, S/o. Late Loknath Sahu (Respondent No. 1 & 2 are Claimants)

   Both R/o. Changora Bhata, Shiv Nagar, Raipur, Tahsil and District Raipur (C.G.)
3. Krishna Kumar Kadra, S/o. Bishakhu Ram Kadra, aged about 27 years, C/o Through Santosh Kumar Yadav, S/o. Mahru Ram Yadav, Lakhenagar Dhal Rudrapria Travels, Lakhe Nagar Chouk, Tah & Distt. Raipur (Driver Of The Vehicle)
4. The Oriental Insurance Company, through Divisional Manager Divisional Office, Kachhari Chowk, Madina Building, Jail Road, Raipur, Tahsil and District Raipur (C.G.) (Insurer Of The Vehicle)

------ Respondents

For Appellant	:	Mr. Ankit Singhal Advocate with
		Mr. Romir Sumit Goyal, Advocate
For Respondent/Insu.Company	:	Mr. Sudhir Agrawal, Advocate.
For Respondents/claimants	:	Mr. K.K. Dewangan, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

10/07/2015

1. The following appeals are being heard and decided together by this common order as they are arising out of the same accident and award passed by the XIth Additional Motor Accident Claims Tribunal, Raipur, dated 27.01.2007 and common question of law is involved

in these appeals.

2. M.A.(C) No.756/2007 is arising out of the Claim Case No.64/2006, was filed by Smt. Vasugi Sahu for the injury sustained by the her. M.A.(C) No.1167/2007 is arising out of the Claim Case No.65/2006 was filed by Smt. Vasugi Sahu & Yogesh Kumar Sahu for death of Loknath Sahu, the husband and the father of the claimants. Whereas M.A.(C) No.757/2007 is arising out of the Claim Case No.66/2006 was filed by Smt. Vasugi Sahu and Yogesh Kumar Sahu for death Pooja Sahu, the daughter and sister of the claimants.

3. The accident occurred on 15.04.2006, while the deceased Loknath Sahu was traveling on his motor cycle bearing No.C.G.-02/CL/9450 alongwith wife, Vasugi Sahu and daughter Pooja Sahu. They were going from a place known as Raipura Chowk towards Pachpedi Naka. At that time, near Siddheshwar Temple, Bhatagaon a Minibus bearing No.C.G.-04-ZA-0592, driven by the original non-applicant No.1, Krishna Kumar Kadra in rash and negligent manner dashed the motor cycle, whereby Loknath Sahu and her daughter Pooja Sahu died on the spot, whereas Smt. Vasugi Sahu sustained severe injuries.

4. On the different claim cases having filed, the award was passed and the learned Claims Tribunal has held that at the time of the accident, the original non-applicant No.1 i.e. driver, Krishna Kumar Kadra was not having valid and effective license, therefore, held that the insurance company is not liable to pay the amount as there has been a breach of policy. The learned Claims Tribunal further

ordered that initially the amount of compensation to be paid by the insurance company, which would be recoverable from the driver and the owner of the vehicle i.e. Krishna Kumar Kadra and Santosh Kumar Yadav.

5. All the appeals are by the Santosh Kumar Yadav, the owner of the offending vehicle against the finding that the amount of compensation is directed to be recovered from him.

6. The learned counsel appearing on behalf of the owner/appellant Santosh Kumar Yadav would submit that the Tribunal has misdirected itself to interpret the section of Motor Vehicle Act and has held that there has been breach of policy for the reason that on the date of the incident, the driver of the offending Minibus was not holding the valid license to drive the vehicle. He would further submit that the said finding is against Section 147 of the Motor Vehicle Act as the entire liability can not be saddled on the owner. He further submits that admittedly the vehicle in this case was less than 7500 kg and therefore, it would come within the definition of light motor vehicle as per sub-section 21 of Section 2 of the Motor Vehicle Act and since the driver of the offending vehicle was holding a license to drive the light motor vehicle, consequently, it can not be held that the driver was not possessed with the valid license. He would submit that the order with respect to the part that the insurance company is given right to recover the amount after payment is made, can not be sustained. The counsel placed his reliance in case law reported in 2015 (2) SCC 186 and would submit that under the similar circumstances, in absence of endorsement

over the license, the Hon'ble Supreme Court has held that the liability can not be fastened over the owner, consequently prays that the appeal be allowed.

7. Per contra learned counsel appearing on behalf of the insurance company would submit that the license in this case was of private motor vehicle, which was not meant to drive transport vehicle. Since the offending vehicle was Minibus used as transport vehicle, consequently it lead to breach of terms of the policy and the license can not be held to be valid. He therefore, submits that in view of this, the award passed by the learned Claims Tribunal is well merited, which do not call for any interference.

8. I have heard the learned counsel for the parties at length, perused the documents and the evidence on record.

9. The only question which falls for consideration in this case is as to whether on the date of accident, the driver of offending vehicle was holding the valid driving license or not? In order to ascertain, the same, the statement of Rajesh Kumar (NAW-1), examined on behalf of the non-applicant, insurance company from RTO was perused. This witness has proved the license which is marked as Ex.NA-4. Perusal of the document Ex. NA-4 would go to show that it is a license granted for motor cycle and LMV to Krishna Kumar Kadra, the driver of the offending vehicle for a period of 10.02.2004 to 09.02.2024. The registration of the offending vehicle is marked as Ex. NA-1C, wherein the weight of the vehicle is shown as 5300 kg. If the definition of the light motor vehicle is seen as per sub-section 21 of Section 2 of the Motor Vehicle Act, the vehicle would come

under the light motor vehicle as the weight of the vehicle does not exceed 7500 kg. Now whether the license was valid or not, in order to ascertain the same, few sections of the Motor Vehicle Act are relevant, which are quoted herein below.

10. Transport Vehicle is defined under sub-section 47 of Section 2, which reads as under :-

> "(47). "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;"

Reading of the definition of transport vehicle would show that it includes public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

11. Public service vehicle is defined in sub-section 35 of Section 2 of the Motor Vehicle Act, which reads as under :-

> "(35) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage;"

Reading of the definition of the public service vehicle would show that the vehicle used for carriage of passengers for hire or reward.

12. Admittedly, as per policy Ex.NA-3, the vehicle was for passenger vehicle, it would be evident from the said certificate, therefore, the offending vehicle was within the vehicle of transport vehicle as defined under sub-section 47 of Section 2 of the Motor Vehicle Act, which includes a public service vehicle. Since it is a transport

vehicle, different form of license was required to be issued by the RTO as per Sub-section (2) of Section 10 of the Motor Vehicle Act. The Section 10 of M.V. Act is reproduced herein below:-

> "**10. Form and contents of licences to drive.** - (1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.
>
> (2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-
> (a) motor cycle without gear;
> (b) motor cycle with gear;
> (c) invalid carriage;
> (d) light motor vehicle;
> (e) transport vehicle;
> (i) road-roller;
> (j) motor vehicle of a specified description."
>
> In this section, transport vehicle is separately defined.

13. Now coming back to the Section 14 of the Motor Vehicle Act, which speaks about currency of licences to drive motor vehicles. Section 14 (2) (a) is relevant, which reads as under :-

> "**14. Currency of licences to drive motor vehicles.** - (1) A learner's licence issued under this Act shall, subject to the other provisions of this Act, be effective for a period of six months from the date of issue of the licence.
>
> (2) A driving licence issued or renewed under this Act shall,-

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

{Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus;"

14. Reading of this section would show that in case, a driver wants to drive transport vehicle, the license would be effective for a period of three years. The license Ex.NA-4, shows that license is issued to the driver of offending vehicle for a period of 20 years i.e. 10.02.2004 to 09.02.2024. Therefore, irrespective of the fact that whether the vehicle was a light motor vehicle or heavy vehicle in the instant case, the license admittedly was for other than transport vehicle as otherwise the period would not have been more than three years.

15. Since the vehicle was being driven as a transport vehicle under the license Ex.NA4, therefore, it substantiate the fact that on the date of accident, the driver of the offending vehicle was not holding the valid driving license to drive the transport vehicle, consequently, the breach was committed with respect to the terms of policy.

16. However, with respect to the satisfy the liability towards third party, the Hon'ble Supreme Court in case of ***S. Iyyapan Vs. United India Insurance Company Limited and another***, reported in ***(2013) 7 SCC 62*** at Para-16 & 17 has held as under :-

“16. The heading “Insurance of Motor Vehicles against Third-Party Risks” given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of the 1939 Act) itself shows the intention of the legislature to make third-party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third-party insurance is in force.”

17. Reading the provisions of Section 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,

(i) the vehicle was not driven by a named person,

(ii) it was being driven by a person who was not having a duly granted license, and

(iii) person driving the vehicle was disqualified to hold and obtain a driving licence.

Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive

> commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy."

17. Applying the aforesaid principle in this case, admittedly in this case, the driver of the offending vehicle was holding a license other than transport vehicle and was driving a transport vehicle. Consequently it will lead to breach of policy and therefore, applying the aforesaid principle, the direction given by the learned Claims Tribunal that the insurance company has to first satisfy the quantum to the third party thereafter has a right to recover the same from the owner i.e. the appellant herein can not be faulted with.

18. Consequently, the appeals have no merit and are dismissed accordingly.

19. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge

Balram