NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.151 of 2016

Lakhan Lal Gandharv S/o Fatte Lal Gandharv, Aged About 50 Years R/o Village Jamsarar Khurd, Police Station & Dongargaon, District Rajnandgaon (Chhattisgarh).......(Non Applicant No. 2)

---- Petitioner

Versus

1. Saraswati Bai W/o Late Nirbhay Patel, Aged About 28 Years R/o Village Aari, Dongargaon, District Rajnandgaon (Chhattisgarh)

2. Ku. Neha D/o Late Nirbhay Patel, Aged About 10 Years Minor, Represented Through Legal Guardian Mother Smt. Saraswati Bai, R/o Village Aari, Dongargaon, District Rajnandgaon (Chhattisgarh)

3. Nikil @ Nikhil S/o Late Nirbhay Patel, Aged About 8 Years (Wrongly Mentioned As 28 Years) Minor, Represented Through Legal Guardian Mother Smt. Saraswati Bai, R/o Village Aari, Dongargaon, District Rajnandgaon (Chhattisgarh)

4. Beselal S/o Brijlal, Aged About 50 Years R/o Village Aari, Dongargaon, District Rajnandgaon (Chhattisgarh)

5. Ghasnin W/o Biselal, Aged About 45 Years R/o Village Aari, Dongargaon, District Rajnandgaon (Chhattisgarh).......(Claimants)

6. Rakesh Kumar Gandharv S/o Lakhanlal Gandharv, Aged About 27 Years R/o Village Jamsarar Khurd, Post Tappa, Dongargaon, District Rajnandgaon (Chhattisgarh)

7. Branch Manager, The Oriental Insurance Company , Near Railway Station, Near L. I. C. Office, Rajnandgaon, Tahsil And District Rajnandgaon (Chhattisgarh).......(Non Applicants)

---- Respondents

For Petitioners : Shri Basant Dewangan, Advocate
For Respondent No.7: Shri Ratan Pusty, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

09/05/2016

Heard.

2. A short issue arising for consideration in this appeal as to whether the

insurance company has been rightly exonerated on the ground that the Driver was not having proper endorsement in the licence to use the vehicle as goods vehicle.

3. Relying upon the judgment of Supreme Court in the case of ***Kulwant Singh and others vs. Oriental Insurance Company Limited***[1]***,*** learned counsel for appellant argued that the driver was having a licence to drive light motor vehicle. The vehicle in question in the present case, which was being used as goods vehicle, met with an accident. Though, use of the vehicle for the time being of accident, was for carrying goods, nevertheless it was classified as light motor vehicle only. Therefore, only on the ground that appropriate endorsement was not there, the insurance company is not absolved from its liability.

4. On the other hand, learned counsel for the respondent-Insurance company, though does not dispute the legal position as adumbrated in the case of ***Kulwant Singh*** (supra), submits that in such a case, the insurance company would be entitled to recovery.

5. Legal position in a case where light motor vehicle is used for commercial purposes and the consequent liability of the insurance company has been considered by the Supreme Court in the case of ***Kulwant Singh*** (supra). Earlier decisions in the case of ***S. Iyyapan v. United India Insurance Co. Ltd,*** [2] and ***National Insurance Company Limited vs. Annappa Irappa Nesaria***[3] were considered by the Supreme Court in a following manner:-

> **8.** We find the judgments relied upon cover the issue in favour of the appellants. In Annappa Irappa Nesaria (supra), this Court referred to the provisions of Section 2(21) and (23) of the Motor Vehicles Act, 1988, which are definitions of 'light motor vehicle' and 'medium goods vehicle' respectively and the rules prescribing the forms for the licence, i.e. Rule 14 and Form 4. It was concluded:
>
> > "20. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well."

1 (2015) 2 SCC 186
2 (2013) 7 SCC 62
3 (2008) 3 SCC 464

9. In S. Iyyapan (supra), the question was whether the driver who had a licence to drive 'light motor vehicle' could drive 'light motor vehicle' used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed :

> "18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment (Civil Misc. Appeal No.1016 of 2002, order dated 31.10.2008 (Mad) is, therefore, liable to be set aside."

The kind of breach as alleged by the insurance company was taken note by the Supreme Court and on facts, which are similar to the present case, it was held that there was no breach of any condition of the insurance policy, entitling the Insurance company to recovery rights.

6. In view of above, the appeal is allowed. The liability for payment of compensation is awarded by the Claims Tribunal shall be on the respondent-insurance company.

SD/-
Manindra Mohan Shrivastava
Judge

Tumane