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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 152 OF 2011

1. Peela Singh, S/o Inder Singh Gond, aged about 27 years, Occupation- Driver, R/o Manjhitola, Police Station- Ambagarh Chowki, Thana, Tahsil- Ambagarh Chowki, District Rajnandgaon (C.G.)
2. Jagadu Ram, S/o Danee Ram Salame, aged about 63 years, occupation- Agriculture, R/o- Manjhitola, Police Station- Ambagarh Chowki, Thana, Tahsil- Ambagarh Chowki, District Rajnandgaon (C.G.)

… Appellants

versus

1. Dileep Kumar, S/o Kangalu Ram Dhankar, aged about 29 years, occupation- Service, R/o Village- Harratola, Police Station- Gandatola, Tahsil- Chhuria, District- Rajnandgaon (C.G.)
2. Branch Manager, National Insurance Company Limited, Kamthi Line, Rajnandgaon, Tahsil & District Rajnandgaon (C.G.)

… Respondents

MISC. APPEAL (C) NO. 1221 OF 2010

1. Peela Singh, S/o Inder Singh Gond, aged about 27 years, Occupation- Driver, R/o Manjhitola, Police Station- Ambagarh Chowki, Thana, Tahsil- Ambagarh Chowki, District Rajnandgaon (C.G.)
2. Jagadu Ram, S/o Danee Ram Salame, aged about 63 years, occupation- Agriculture, R/o- Manjhitola, Police Station- Ambagarh Chowki, Thana, Tahsil- Ambagarh Chowki, District Rajnandgaon (C.G.)

… Appellants

versus

1. Dumendra @ Domendra, S/o Firangi Dhankar, aged about 20 years, occupation- Service, R/o Village- Boyeerdeeh, Post Office- Tilayee, Police Station- Lalbag, District- Rajnandgaon (C.G.)
2. Branch Manager, National Insurance Company Limited, Kamthi Line, Rajnandgaon, Tahsil & District Rajnandgaon (C.G.)

… Respondents

- Mr. R.N. Jha, Advocate, for the Appellants.
- Mr. Shobhit Koshta and Mr. Abhishek Sharma, Advocates, for Respondent No.1.
- Mr. R.N. Pusty and Mr. Qamrul Aziz, Advocates, for Respondent No.2.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/11/2017

1. The present two appeals under Section 173 of the Motor Vehicles Act, 1988, have been filed by the driver and owner of the offending vehicle, assailing the common award passed on 27.9.2010 by the Additional Motor Accident Claims Tribunal (F.T.C.), Rajnandgaon, in Motor Accident Claim Case Nos. 136/2009 and 137/2009.

2. Vide the impugned award, the learned Tribunal, in an injury case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.1,02,700/- to the claimant-Dumendra @ Domendra in Claim Case No.136/2009 and Rs.2,30,300/- to the claimant-Dileep Kumar in Claim Case No.137/2009, with interest thereon in both the cases at the rate of 6% per annum from the date of presentation of the claim application. While passing the award, the learned Tribunal has exonerated the insurance company of its liability and fastened the same upon the driver and owner of the offending vehicle.

3. The sole ground of exonerating the insurance company raised by the learned counsel for the appellants/driver and owner was that the driver of the offending Tractor, i.e., appellant no.1-Peela Singh, at the time of accident, was having only a learner's licence and that there was no person with a valid licence, as an instructor, available on board when the accident took place. Learned counsel for the appellants submits that it is a case where there is no proof adduced by the respondents to show that it was a breach on the part of the appellants while the offending vehicle was being driven at the time of accident and that there is only the evidence of one Shri Kishan Lal Rajak, the Manager of the Insurance Company, and whose evidence has been relied upon by the learned Tribunal. He further submits that the award deserves to be modified to the extent of at least applying the principle of 'pay and recovery'. He thus prayed for the award to be set aside and modified suitably.

4. Learned counsels appearing for the insurance company however opposing the appeals submit that it is a case where definite evidence has come before the learned Tribunal in respect of the fact that the driver-Peela Singh at the time of accident only had a learner's licence and this aspect of the driver having only a learner's licence also stands established from his conviction that was made in the criminal case registered against him. It was further submitted on behalf of the insurance company that no evidence whatsoever have been produced by the appellants to disprove the fact that the driver was not having a valid licence and only a learner's licence and thus there is no scope of interference nor can the finding of the learned Tribunal be said to be erroneous or bad in law. They thus prayed for the rejection of the appeals.

5. At this juncture, it would be relevant to refer to a decision of the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd.** v. **Swaran Singh & Others**, **2004 (3) SCC 297**, wherein it has been held in paragraph 94 as under:-

> **"94.** The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Section 3(2) and 6 of the Act provides for restriction in the matter of grant of driving licence, Section 7 deals with such restrictions on granting of learner's licence. Section 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence. Learner's licences are granted under the rules framed by the Central Government or the State Governments in exercise of their rule making power. Conditions are attached to the learner's licences granted in terms of the statute. A person holding learner's licence would, thus, also come within the purview of "duly licensed" as such a licence is also granted in terms of the provisions of the Act and the rules framed thereunder. It is now a well-settled principle of law that rules validly framed become part of the statute. Such rules are, therefore, required to be read as a part of main enactment. It is also well-settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage.**"**

6. Based on the decision in **Swaran Singh** (supra), this Court also in a couple of decisions in similar set of facts has held that in the event of the vehicle being driven by a person having learner's licence without being accompanied by a person with a valid licence it would amount to fundamental breach of policy condition and under such circumstances the insurance company shall not be liable for payment of compensation, rather it shall be the liability of the owner to pay the compensation.

7. In **Vikas Kumar Verma** v. **Lachiya Devi & Others**, **2012 (3) C.G.L.J. 585**, this Court in paragraph 15 has under as under:-

> **"15.** The combined effect of provisions of the Motor Vehicles Act, 1988 along with Rule 3 of the Central Motor Vehicles Rules, 1989, is that if the driver of the vehicle was holding learner's licence, then he must be accompanied by an instructor holding a valid and effective driving licence to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle. In the absence whereof, it cannot be said that the driver of the vehicle was possessing valid and effective driving licence.**"**

8. Similarly, in **M/s Anaal Automobiles** v. **Ashish Kumar Shukla & Others**, **2008 (2) C.G.L.J. 41**, it was held as under:

> **"8.** The case law cited by the learned counsel for the appellant is clearly distinguishable on facts and does not help the appellant in any manner. In that case, the driver was holding a license to drive a tanker but there was no endorsement on his licence to show that he was authorized to drive a goods carriage carrying goods of dangerous or hazardous nature to human life. Such endorsement was required to be made under Rule 9(3) of the Rules, 1989. It was held that the endorsement or its absence <u>had no effect on the efficiency of the driver</u>(underlined by me) and, therefore, there was no fundamental breach of the terms and conditions of the policy so as to exonerate the insurance company or to fasten liability on the owner of the vehicle to pay compensation.**"**

9. This Court is also inclined to accept the same analogy applied in the aforementioned two decisions and holds that the finding of the learned Tribunal cannot be found fault with and the insurance company in the instant case has been rightly exonerated of its liability.

10. As regards the contention of the award to be modified applying the principle of 'pay and recovery', this Court is of the opinion that such order of modification cannot be passed in an appeal preferred by the owner, particularly when the learned Tribunal has not applied the principle of 'pay and recovery'. The same analogy could had been applied if it had been an appeal preferred by the claimants.

11. In the instant case, all that this Court is forced to consider is, whether the finding of exoneration of the insurance company is justified or not. Since this Court has found that the learned Tribunal has based its finding on the principles laid down by the Hon'ble Supreme Court in the case of **Swaran Singh** (supra) and which further stands fortified from the aforementioned two decisions of this Court, it is difficult to hold that the said finding is contrary to the evidence or is contrary to the statutes i.e. the Motor Vehicles Act.

12. The two appeals thus being devoid of merits deserve to be and the same are accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/