

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 779 of 2010**

Abdul Rashid Khan S/o Hamid Ali, caste-Musalman, R/o Ambikapur,
Tahsil-Ambikapur, Distt.-Sarguja (CG).

---- Appellant

Versus

1. Mahipal Singh S/o Nanka Singh Caste Gond, aged about 43 years, occupation Agricultural.
2. Ghanshyam Singh S/o Mahipal Singh, aged about 13 years.
3. Ram Chandra Singh S/o Mahipal Singh, aged about 10 years.
No.2&3 are minors through their natural guardian Mahipal Singh S/o Nanka Singh
All are Gond by caste, R/o village Arjunpur (Madhavpur) PS & Tehsil Ramanujnagar, Distt. Surguja (CG).
4. New India Insurance Company Ltd. Divisional Office-1, Raipur, Distt. Raipur (CG).
5. Vinod Kumar Dewangan, S/o Shri Dilrakhan Dewangan, caste Panika, occupation Driver, aged about 30 years, R/o village Navapara, PS Janjgir Chowki Karangi, Distt. Surguja (CG).

---- Respondents

For Appellant	:	Shri BL Dembra, Advocate.
For respondent No.4	:	Smt. Chitra Shrivastava, Advocate.
For respondent No.5	:	Shri Sunil Sahu, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

27.10.2017.

1. The present is an appeal filed by the owner under Section 173 of the Motor Vehicles Act (for short, the MV Act) against the award dated 13.04.2010 passed by the IInd Additional Motor Accident Claims Tribunal, Surajpur (for short, the Tribunal) in Claim Case No.12 of 2009. Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV Act has awarded a compensation of Rs.2,68,800/- to the claimants along with interest @

7.5 percent per annum from the date of application.

2. The liability of payment of compensation has been fastened upon the appellant-owner of the offending Bus bearing registration No.CG-15-A/4650 and has exonerated the insurance company of its liability. However, the Tribunal has applied the principle of pay and recover ordering the insurance company to deposit the amount first and then to get the amount recovered from the present appellant-owner. It is this award which is under challenge in this appeal.
3. The only ground of exoneration of the insurance company was that the driver of the Bus at the relevant point of time was not having proper endorsement of permission to drive the heavy passenger motor vehicle whereas, on the said date the driver had valid licence to drive heavy goods vehicle, light motor vehicle and motorcycle with gear w.e.f. 13.01.2006.
4. Learned counsel appearing for the appellant submits that the present is a case which is squarely covered by the principles laid down by the Supreme Court in the case of Mukund Dewangan Vs. Oriental Insurance Co. Ltd, AIR 2017 SC 3668 wherein it has been held that merely because there is no endorsement on the licence of the driver who otherwise has a licence to drive the a vehicle of the same class by itself would not absolve the insurance company of its liability. Therefore, prayed for the award to be suitably modified.
5. Counsel for the respondents-insurance company opposing the appeal submits that the award was just and proper and that the principles laid down in Mukund Dewangan (Supra) may not be applicable in the

present case for the reason that the category of vehicle in the said judgment of Supreme Court was a light motor vehicle whereas, the vehicle involved in the present case is a heavy passenger motor vehicle and thus prayed for rejection of the appeal.

6. Having heard the rival contentions put forth on either side and on perusal of records, what is reflected from the records is that the insurance company has not challenge the impugned award directing it to pay the amount first and then to recover it from the owner. Therefore, this court has only to consider whether the direction of pay and recover against the owner was justified or not?.
7. At this juncture it would be relevant to mention that in addition to recent larger Bench decision of Supreme Court in case of Mukund Dewangan (Supra) the Supreme Court has also in a recent decision in case of Sant Lal Vs. Rajesh & Ors., AIR 2017 SC 4054 in relation to the use of tractor and trolley has applied the judgment of Mukund Dewangan (Supra) and have held that only because on the date of accident if the driver does not have proper endorsement of driving a transport vehicle though had a licence to drive the vehicle of the same category i.e. light motor vehicle, the liability of payment of compensation under the said circumstances would be upon the insurance company. This court is inclined to apply the same analogy in the instant case also where the driver indisputably as per Ex. D/1-C produced before the Tribunal had a valid licence to drive the heavy goods vehicle, light motor vehicle and motorcycle with gear. The vehicle involved in the instant case was of the same category i.e.

heavy passenger vehicle. Only because the driver did not have proper endorsement of licence to drive a heavy passenger motor vehicle by itself would not absolve the insurance company of its liability of indemnifying the owner.

8. Keeping in view the aforesaid two decisions of the Supreme Court, this court is of the opinion that the instant case is squarely covered by the aforesaid two decisions and therefore, the findings of the Tribunal exonerating the insurance company is set aside and the award is modified and ordered that the liability of payment shall be jointly and severally upon the owner, driver and the insurer of vehicle involved in the accident. The observation of the Tribunal with regard to pay and recover thus stands set aside.
9. Any amount of compensation which has already been deposited by the appellant herein before the Tribunal, the same shall be refunded by the insurance company and the balance amount shall have to be deposited by the insurance company before the concerned Tribunal.
10. The appeal thus stands allowed.

Sd/-
(P.Sam Koshy)
Judge

inder