

NAFR

HIGH COURT of CHHATTISGARH AT BILASPUR

Misc. Appeal (C) No. 895 of 2017

Rajesh Kumar Patel S/o Pilasingh Patel, aged about 40 years, R/o Village Samtarai, Tahsil Narharpur, District North Bastar Kanker, Chhattisgarh(Owner)

---- Appellant

Versus

1. Amar Singh Netam S/o Ramprasad Netam, aged about 45 years, R/o Village Dhanora, Tahsil Narharpur, District North Bastar Kanker, Chhattisgarh
2. Smt. Rohidasin Netam W/o Amar Singh Netam, aged about 42 years, R/o Village Dhanora, Tahsil Narharpur, District North Bastar Kanker, Chhattisgarh(Claimants)
3. Kamdev Bhaskar S/o Hari Ram Bhaskar, aged about 24 years, R/o Village Dhanora, Tahsil Narharpur, District North Bastar Kanker, Chhattisgarh(Driver)
4. The Oriental Insurance Company Limited, Branch Office near Adarsh Bal Mandir Main Road Dhamtari, District Dhamtari, Chhattisgarh (Insurer)

---- Respondents

Misc. Appeal (C) No. 890 of 2017

Rajesh Kumar Patel S/o Pilasingh Patel, aged about 40 years, R/o Village Samtarai, Tahsil Narharpur, District North Bastar Kanker, Chhattisgarh(Owner)

---- Appellant

Vs

1. Mansaram Bhaskar S/o Thukelram Bhaskar, aged about 42 years, R/o Village Dhanora, Tahsil Narharpur, District North Bastar Kanker, Chhattisgarh
2. Smt. Devali Bai W/o Mansaram Bhaskar, aged about 40 years, R/o Village Dhanora, Tahsil Narharpur, District North Bastar Kanker, Chhattisgarh(Claimants)
3. Kamdev Bhaskar S/o Hari Ram Bhaskar, aged about 24 years, R/o Village Dhanora, Tahsil Narharpur, District North Bastar Kanker, Chhattisgarh(Driver)
4. The Oriental Insurance Company Limited, Branch Office near Adarsh Bal Mandir Main Road Dhamtari District Dhamtari, Chhattisgarh (Insurer)

---- Respondents

For Appellant	:	Shri Pravin Ku. Tulsyan, Advocate.
For Respondent no.4	:	Shri Deepak Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgement on Board

16/08/2017

These are the two appeals arising out of a common judgment dated 04.04.2017 passed by the Motor Accident Claims Tribunal North Bastar, Kanker (CG) in Claim Case Nos. 61 of 2016 and 60 of 2016, this Court also proceeds to decide the two appeals by a common judgment.

2. The challenge in the present appeals is to the award dated 04.04.2017 whereby the Claims Tribunal on the applications under Section 166 of the Motor Vehicles Act has awarded compensation of Rs.5,11,000/- to the claimants in both the claim cases. While passing the award, the Tribunal has directed that the payment of compensation shall be made by the Insurance Company with the rider of getting the amount recovered under the doctrine of “pay and recovery.”

3. It is this award which is under challenge by the owner of the offending vehicle.

4. Counsel for the appellant submits that the issue involved in the present case stands squarely covered by the larger Bench decision of the Supreme Court in the case of Mukund Dewangan Vs. Oriental Insurance Company Limited in Civil Appeal No. 5826 of 2011 and the other analogous appeals decided on 3rd of July, 2017. He submits that the sole ground on which the Tribunal has applied the doctrine of pay and recovery is the driver not having a proper endorsement in respect of the vehicle that he was driving at the time of accident. According to the counsel for the appellant, the offending vehicle involved in the accident was a light transport vehicle and the licence which the driver was having at the relevant point of time was that of light motor vehicle. In the light of the decision of the larger Bench in the case of Mukund Dewangan (supra) no such endorsement is required for the person having a licence to drive a light motor vehicle if he intends to drive light transport vehicle also.

5. Counsel for the Insurance Company has not been able to convince this Court to take a different view than what has been addressed by the counsel for the appellant or to show that the finding of the Supreme Court in the case of Mukund Dewangan (supra) is distinguishable in the facts of the present case.

6. For the aforesaid reasons, this Court is of the opinion that the finding of the Claims Tribunal in the aforesaid two claim cases i.e. Claim Case Nos. 61/2016 and 60/2016 decided on 04.04.2017 is bad in law to the extent of passing the order of pay and recovery against the owner of the offending vehicle in the light of the authoritative decision of the Supreme Court in the case of Mukund Dewangan (supra).

7. Accordingly, the two appeals are allowed and it is held that the liability of payment of compensation shall be upon the Insurance Company and the impugned order of the Claims Tribunal so far as direction of pay and recovery is concerned stands expunged. The finding of the Tribunal while deciding the issue regarding the breach of policy condition, as there was no proper endorsement in the license, also stands set aside.

Sd/-

(P. Sam Koshy)
Judge