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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 866 of 2013

1. Kamta Prasad S/o Punaram Sahu Aged about 35 years R/o Nangaldah, P.S. Ghumka, Distt. Rajnandgaon C.G.

---- Appellant

Versus

1. Uttam @ Ujeshwar Manikpuri S/o Late Bhagwat Das Manikpuri Aged about 48 years R/o Singarpur, Tah. Khiaragarh, Distt. Rajnandgaon C.G.
2. Smt. Anusuiya W/o Uttam @ Ujeshwar Manikpuri Aged about 45 years R/o Singarpur, Tah. Khiaragarh, Distt. Rajnandgaon C.G. .... (Claimants)
3. Branch Manager Iffco Tokio General Insurance Co.Ltd., Branch Office, Rajnandgaon, Distt. Rajnandgaon C.G.

---- Respondents

For Appellant – Shri H.S.Ahluwalia, Advocate.
For Respondents 1 and 2 – Shri Abhishek Pandey, Advocate
For Respondent No.3 – Shri Abhishek Sinha and Shri Ghanshyam Patel, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18-01-2017

1. The present appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred assailing the judgment dated 25-06-2013 passed by the Addl. Motor Accident Claims Tribunal Khairagarh, District Rajnandgaon in Motor Vehicle Claim Case No.67/2011. Vide the said impugned order the Court below on a claim application under Section 166 of the Motor Vehicles Act, 1988 by respondents 1 and 2/claimants allowed the same and granted compensation of Rs.1,90,000/- to be paid to the claimants/respondents 1 and 2. While passing the said judgment, the Court below has however exonerated the liability of payment of compensation of the insurance company and saddled the responsibility upon the owner and driver of the said vehicle. The exoneration of the insurance company was on the limited issue that the driver of the vehicle which met with the accident on the date of accident was not

having valid licence. According to the finding of the Tribunal the vehicle involved in the accident was a commercial vehicle and the driver at the relevant point of time did not have a valid licence for driving the commercial vehicle. The challenge before the Court below was that the vehicle involved in the accident was a Tata Magic bearing registration No.CG 04 T 5390 and dashed against the deceased Digvijay on 03-06-2011 resulting in grevious injuries and to which he later succumbed.

2. Counsel for the appellant, at this juncture, submits that issue involved in the present case is squarely covered by the decision of the Supreme Court in the case of **Kulwant Singh and others Versus Oriental Insurance Company Limited** [(2015) 2 SCC 186]. He also sumitted that the said judgment of the Supreme Court is based upon the earlier decision of the Supreme Court in this regard, i.e., **S.Iyyapan V. United India Insurance Co. Ltd.** [(2013) 7 SCC 62]. According to the counsel for the appellant, the undisputed fact is that the driver of the vehicle involved in the accident at that time was having the licence for driving the light motor vehicle. Also not in dispute is the fact that the vehicle involved in the accident, i.e., Tata Magic also is a vehicle which with its laden weight would fall within the ambit of light motor vehicle. The only dispute was that the said Tata Magic was a vehicle which was used exclusively for commercial purposes for carrying goods, thus it would be goods carrying vehicle, i.e., transport vehilce and for driving the said vehicle, there has to be endorsement of the transport office on the licence of the driver permitting him to also drive a transport vehicle.

3. The counsel for insurance company submits that if it had been a light motor vehicle, perhaps the view of the Supreme Court recorded in the aforesaid judgments would have been applicable in the instant case. Since it is a transport vehicle, two judgments referred by the appellant would not be applicable to the factual matrix of the present case. Counsel for the insurance

company also states that the judgment of the Supreme Court referred by the counsel for the appellant would be applicable in those cases where the licence have been issued prior to the amendment which has been incorporated on 24-03-2001 in the Motor Vehicles Act. That for licences which have been issued subsequent to amendment, the said judgment of the Supreme Court would not be applicable. He further relies upon the decision of **Oriental Insurance Company Limited vs. Angad Kol and others** (2009 AIR SCW 2747).

4. For better appreciation of the facts, it would be relevant to refer to para 9 of Kulwant Singh's case (supra):-

> "**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 :
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> > "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."

5. Perusal of the record, particularly the reply filed by the driver before the Tribunal clearly reflects that the licence in the present case in respect of the driver was one which was issued in the year 1999 and was valid till 2019 and thus the licence issued in this case was prior to the amendment made in the year 2001 and therefore the contention put forth by the insurance company would not be applicable in the facts of the present case and the ratio laid down by the Supreme Court in the two judgments referred to in the preceding paragraphs would be applicable and thus the exoneration of the insurance

company by the Tribunal in the given facts was not proper, legal and justified.

6. Accordingly the impugned order dated 25-06-2013 stands modified to the extent that the liability of payment of compensation in the given facts of the case would be jointly upon the owner as well as insurance company, i.e., respondent No.3. With the aforesaid modification, the appeal is allowed.

Sd/-

(P. Sam Koshy)
JUDGE

Aadil