**NAFR**

## HIGH COURT OF CHHATTISGARH, BILASPUR

**Misc. Appeal (C) No. 672 of 2017**

Shankar Lal Dewangan S/o late Murarilal Dewangan, aged about 30 years R/o Main Road Narayanpur P.S. Tahsil and District Narayanpur, Chhattisgarh ................(Owner)

**---- Appellant**

**Versus**

1. Smt. Bharati Bhoyar Wd/o Mahendra Kumar Bhoyar, aged about 24 years R/o Taariyapara Sambalpur, P.S. and Tahsil Bhanupratappur, District North Bastar Kanker, Chhattisgarh
2. Chahesh Bhoyar S/o Late Mahendra Kumar Bhoyar, aged about 07 Months, R/o Taariyapara Sambalpur P.S. and Tahsil Bhanupratappur District North Bastar Kanker, Chhattisgarh
3. Dauram @ Sohan S/o Somaru Ram Bhoyar, aged about 52 years R/o Taariyapara Sambalpur P.S. and Tahsil Bhanupratappur District North Bastar Kanker, Chhattisgarh
4. Smt. Kalita Bai W/o Dauram Bhoyar, aged about 50 years R/o Taariyapara Sambalpur P.S. and Tahsil Bhanupratappur District North Bastar Kanker, Chhattisgarh ...............(Claimants)
5. Narayan Yadav S/o Mangaluram, aged about 40 years, R/o Bhakharupara Narayanpur P.S. Tahsil and District Narayanpur, Chhattisgarh.......(Driver)
6. Shriram General Insurance Company Limited, Regional Office Plot No.1 Fourth Floor Maruti Heights Beside R. K. Mall G. E. Road Raipur, Chhattisgarh 492009, Head Office Shriram General Insurance Co. Ltd. E-8 EPIER RICO Industrial Area Seetapura, Jaipur (Rajasthan) ........(Insurer)

**---- Respondents**

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| For Appellant | : | Shri Praveen Ku. Tulsyan, Advocate |
| For Respondent No.6 | : | Shri Raghvendra Verma under instruction of Shri Deepak Gupta, Advocate |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order On Board**

**07/09/2017**

Heard on I.A. No.01/2017 for condonation of delay in filing the appeal.

**2.** For the reasons assigned in the said application and finding them to be satisfactory, I.A. No.01 is allowed and the delay of 633 days in filing the appeal stands condoned.

**3.** Also heard the appeal on admission.

**4.** Present is an appeal by the owner under Section 173 of the Motor Vehicles Act assailing the award dated 08.05.2015 passed by the Additional Motor Accident Claims Tribunal, Bhanupratappur, District North Bastar, Kanker (CG) in Claim Case No. 06/2014. Vide the impugned award the Tribunal in a proceeding under Section 166 of the MV Act has granted compensation of Rs. 4,62,000/- to the claimants with interest @ 6% per annum from the date of application.

**5.** While passing the impugned award the Tribunal has exonerated the Insurance Company of its liability on the ground that there was a breach of policy condition and has fastened the liability of payment of compensation upon the appellant owner. The finding of exoneration has been provided in paragraph-11 of the impugned judgment. The undisputed fact is that the vehicle involved in the present case is a Tata 709 bearing registration No. CG 04 ZD 0519 which is a light transport vehicle as per the definition of Section 2(21) of the MV Act, 1988.

**6.** The only ground on which the liability has been shifted upon the owner was that the offending vehicle belonging to the appellant was a commercial transport vehicle whereas the driver of the offending vehicle did not have a licence to drive a commercial transport vehicle. Except for this ground, there is no dispute in respect of there being a valid policy at the time of accident. It is also not a case where the driver did not have a licence at all. Rather it is a case where the driver had a valid licence at the relevant time to drive a light motor vehicle. The finding of exoneration was based on the decision of the Supreme Court in the case of National Insurance Company Limited Vs. Kusum Rai and others in Civil Appeal No. 1731/2006 decided on 24.03.2006 whereas much water has since flown on the subject and the issue involved in the 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. The larger Bench has taken into consideration all the recent decisions on the issue till date and has reached to the conclusion that merely because there was no endorsement on the driver's licence permitting him to drive a commercial vehicle by itself would not be a sufficient ground for exonerating the Insurance Company of its liability when the driver does have a licence for driving a light motor vehicle.

**7.** In view of the decision of the larger Bench of the Supreme Court in the case of Mukund Dewangan, this Court is of the opinion that the finding of the Tribunal so far as the exoneration of the Insurance Company of its liability is concerned was not just and proper and the same deserves to be and is accordingly set aside. Similar view has also been taken by this Court in two earlier appeals decided on 16.08.2017 in MAC Nos. 895/2017 and 890/2017 which all the more fortifies the decision of this case. Thus, it is held that the liability of payment of compensation shall be jointly and severally upon the Insurance Company, the driver and the owner. It shall be the responsibility of the Insurance Company to indemnify the owner and pay the compensation as awarded by the Tribunal to the claimants.

**8.** With the aforesaid observation, the appeal stands allowed.

**Sd/-**
(**P. Sam Koshy)**
**JUDGE**

Bhola