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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 373 of 2012

- The Oriental Insurance Co. Ltd., Through Divisional Manager, D. O. No. 3, Madina Manzil, Kutchery Chowk, Tahsil and Distt.- Raipur (C. G.).

---- Appellant

Versus

1. Smt. Shyam Bai, W/o Reshamlal Banjare, aged about 40 years,
2. Reshamlal Banjare, S/o Darchand Banjare, aged about 43 years,

Note: Both Respondents No. 1 and 2 are r/o Village Pachera, Tahsil and Distt.- Mahasamund (C.G.).

3. Nandu Yadav, S/o Itwari Ram Yadav, aged about 27 years, R/o Near Lalpur Bajrangbali Mandir, P.S. tikrapara, Distt.- Raipur (C.G.).
4. M/s. C. G. Hearbals, Through Proprietor/Competent Authority, S-12 Green paradise, Vishal Nagar, Telibandha, Raipur, Distt.- Raipur (C.G.).

---- Respondents

For Appellant	:	Shri Pallav Mishra, Advocate on behalf of Shri R. N. Pusty, Advocate.
For Respondent.	:	Shri R. K. Pali, on behalf of S. P. Sahu, Advocate.

And

MAC No. 669 of 2012

1. M/s. C.G. Hearbals, Through: Proprietor/Competent Officer, Address S-12, Green Paradise, Vishal Nagar, Telibandha, Raipur district- Raipur (C.G.).
2. Nandu Yadav, S/o Itwari Ram Yadav, aged about 27 years, R/o Village Lalpur, Near Bajrang Bali Mandir, Police Station Tikrapara District- Raipur (C.G.).

---- Appellants

Versus

1. Smt. Shyam Bai, W/o Reshamlal Banjare, aged about 40 years,
2. Reshamlal Banjare, S/o Darchand Banjare, aged about 43 years,

Both are r/o Village Pachera, Tahsil and Distt.- Mahasamund (C.G.).

3. The Oriental Insurance Company Ltd. Through: Divisional Manager, Division Office No. 3, Madina Manjil, Kachhari Chowk, Tahsil and District- Raipur (C.G.).

---- Respondents

For Appellant : Shri R. K. Pali, on behalf of S. P. Sahu, Advocate.

For Respondent. : Shri Pallav Mishra, Advocate on behalf of Shri R. N. Pusty, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Order On Board

27.09.2018

1. M.A. (C) No. 373 of 2012 filed by the Oriental Insurance Company Limited and M.A. (C) No. 669 of 2012, filed by the owner & driver are being disposed of by this common award as both the appeals arise out of same accident and are directed against the award dated 04.01.2012 passed by IVth Additional Motor Accident Claims Tribunal, Raipur (For short, 'the Tribunal') in claim case No. 125/2011.

2. As against the compensation of Rs.5,50,000/- claimed by the unfortunate parents of deceased Sushil Banjare, aged about 8 years by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') for his death in the motor accident on 23.09.2010, the Tribunal awarded a total sum of Rs. 4,47,000/- as compensation along with interest @ 7.5% percent per annum from the date of application till its actual payment.

3. The Tribunal, on a close scrutiny of the evidence led by the parties, held : the accident had occurred due to rash and negligent driving of Pick-up vehicle bearing registration No. CG-04-G-9103 by

its driver respondent No. 1 – Nandu Yadav, Sushil Banjare died on account of injuries sustained by him in the said accident; the Oriental Insurance Company Limited not liable for payment of compensation as the driver of the offending vehicle did not have valid and effective driving licence at the time of accident; and assessed and awarded aforesaid sum as compensation to the claimants and directed the Oriental Insurance Company Limited to first pay the award amount to the claimants and then to recover it from driver and owner of the offending vehicle.

4. Learned counsel for the appellant/Insurance Company in MAC No. 373/2012 argues that the Tribunal has rightly held that since the driver of the offending vehicle did not have valid and effective driving licence at the time of accident, the appellant/Insurance Company is not liable to pay compensation to claimants, but has erred in directing it to first pay the award amount to the claimants and then recover it from driver and owner of the offending vehicle.

5. Learned counsel for the appellants/owner & driver in MAC No.669/2012 would submit that while passing the award impugned, the Claims Tribunal has committed an illegality in holding that the driver of the offending vehicle was not holding valid driving license of the commercial vehicle merely on the ground that an endorsement authorizing him to drive the transport vehicle is not

mentioned in his driving license and, thereby erred in exonerating the insurance company from its liability to pay compensation. He further argued that the vehicle in question is a light motor vehicle and therefore, even in absence of endorsement as such, he is entitled to drive the said transport vehicle as unladen weight of the vehicle in question is not exceeding 7500 kg as provided under Section 2(21) of the Act. In support, he placed his reliance upon the decision rendered in "***Mukund Dewangan Vs. Oriental Insurance Company Limited"*** reported in (2017) 14 SCC 663.

6. I have heard learned counsel appearing for the parties and perused the record of claims Tribunal including award impugned.

7. In order to ascertain the fact as to whether the driver of the offending vehicle possessed the valid driving license or not, I have examined the driving licence on record and perusal of it shows that he was authorized to drive the light motor vehicle. The vehicle in question is, admittedly, a "light motor vehicle" as defined under Section 2(21) of the Act. It is true that there is no endorsement in the said driving license authorizing the driver of the offending vehicle to drive the transport vehicle, but, undisputedly as observed herein above that the vehicle in question is a light motor vehicle as per the provision prescribed under Section 2(21) of the Act as its unladen weight does not exceed 7500 kg. Therefore, merely for want of endorsement in this regard in the alleged driving license authorizing the driver of the offending vehicle to drive the said transport vehicle,

it cannot be said that he was not possessing the valid and effective driving license to drive the said offending vehicle, as held by the learned Claims Tribunal.

8. At this juncture, the principles laid down in *"Mukund Dewangan Vs. Oriental Insurance Company Limited"* (supra) is to be noted as the question involved herein, as to whether a driver who is having a license to drive the "light motor vehicle" is competent to drive "transport vehicle" of that class in absence of such an endorsement, was considered and it was held therein as under:-

> "Held, the effect of amendment of Form 4 by insertion of "transport vehicle" related only to categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same – There was no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect – Further held, even otherwise the Form could not control the substantive provisions carved out in Ss. 10(2)(d) and 10(2)(e) and the interpretation of the Form has also to be in tune with the Statement of Objects & Reasons and the provisions of the Act inserted by virtue of the amendment – Interpretation of Statutes – Basic Rules – Harmonious Construction – Subordinate/Delegated Legislation/Rules Under the Act – Central Motor Vehicles Rules, 1989, Form 4 and R.14 (before and after 28.03.2001)"

9. Applying the ratio of law laid down by the Supreme Court in the matter of **Mukund Dewangan (supra)**, it is apparent that the driver of the offending vehicle was holding the valid and effective driving license and even in absence of any endorsement as such in his driving license authorizing him to drive the said transport vehicle, it cannot be held that he was not possessing the valid and effective

driving license at the relevant time. The finding so recorded by the learned Claims Tribunal in this regard is, therefore, liable to be and is hereby set aside. It is accordingly held that the driver of the offending vehicle was holding the valid and effective driving license and was not driving the same in violation of the terms and conditions of the insurance policy and, appellant/The Oriental Insurance Company Limited (MAC No.373/2012) cannot be exonerated from its liability to pay compensation to the claimants. Consequently, the insurance company is liable to pay compensation to the claimants.

10. As a fallout and consequence of the aforesaid discussion, the MAC No. 669/2012 filed by the driver and owner of the offending vehicle is allowed whereas MAC No. 373/2012 filed by the Oriental Insurance Company is hereby dismissed. The impugned award stands modified to the above extent.

Sd/-
(Gautam Chourdiya)
JUDGE

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and the appellants/owner and driver is entitled to recover the amount, if any, within two months which is deposited before the learned Claims Tribunal in compliance of this Court order. The claimants are entitled to recover the award of compensation passed by the Claims Tribunal i.e. Rs.1,75,000/- per annum with 6% interest per annum from the date of claim petition from the Respondent No.4/The Oriental Insurance Company within two months.