NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 420 of 2014

1. Universal Sompo General Insurance Co. Ltd., Main Branch, Head Office 204-208, Crystal Plaza, Behind Infinitive Mall, Link Road, Andheri (West), Mumbai, Maharashtra.

---- Appelllant

Versus

1. Smt. Chameli Bai, wife of Late Shri Ajit Ram Patel, aged about 40 years,
2. Bhisham Patel, son of Late Shri Ajit Ram Patel, aged about 22 years.
3. Prakash Patel, son of Late Shri Ajit Ram Patel, aged about 20 years.
4. Smt. Sukwaro Bai, wife of Ledgu Ram Patel, aged about 60 years.

All above resident of Village- Chichalgodi, P.S. Gundardehi, Tehsil-Gundardehi, District- Balod, Chhattisgarh

5. Gulshan Kumar Sahu, son of Hemlal Sahu, resident of Bhothipar, P.S.- Bhakhara, Tehsil and District- Dhamtari, Chhattisgarh
6. Virji Dama, son of Dhanji Dama, resident of Jalampur, near Vardhman Rice Mill, Dhamtari, P.S.- City Kotwali, Dhamtari, District- Dhamtari, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Amrito Das, Advocate & Shri P. Acharya, Advocate
For Respondents No. 1 to 4	:	Shri P. R. Patankar, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

29.11.2018

1. The instant appeal has been preferred by the appellant/insurance company against the award dated 11.11.2013, passed by the 6th Addi-

tional Motor Accident Claims Tribunal, Durg (for short 'the Tribunal') in claim case No. 74/2013, awarding Rs. 8,41,400/- as compensation along with interest @ 7.5% per annum from the date of filing of claim petition till its actual payment in favour of the respondents/claimants and as against the appellant/insurance company.

2. Brief facts of the case are that accident occurred on 02.12.2012 while deceased was going on his bullock cart, the respondent No. 5 while driving offending vehicle (Tata Ace) bearing registration No. C.G.-05.C. 5297 coming from opposite direction in a rash and negligent manner dashed the deceased, as a result of which deceased sustained multiple injuries and died on 03.12.2013 during treatment.

3. As against the compensation of Rs. 15,97,000/- claimed by unfortunate widow, children & mother of deceased by filing application under Section 166 of Motor Vehicles Act, 1988 (for short 'MV Act') for his death on 03.12.2013 in the motor accident occurred on 02.12.2013, the Tribunal awarded a total sum of Rs. 8,41,400/- as compensation along with interest @ 7.5 percent per annum from the date of application till its payment, holding the appellant/Insurance Company alongwith driver and owner of the vehicle responsible for its payment.

4. The Tribunal, on a close scrutiny of evidence led, material placed and submissions made by the parties, held : the accident had occurred due to rash and negligent driving by driver of offending vehicle (Tata Ace) bearing registration No. C.G.-05C /5297; deceased died on account of the injuries sustained by him in the accident occurred on 2.12.2012; appellant/insurance company liable for payment of compen-

sation to the claimant as it could not establish violation of policy conditions, assessed and awarded aforesaid sum in favour of the claimant and as against the appellant/insurance company.

5. The appellant – Insurance Company has filed the instant misc. Appeal on the ground that at the time of accident, the driver of the offending vehicle i.e. respondent No. 5 did not have valid & effective driving licence, therefore, the Insurance Company is not liable for payment of compensation to the claimants.

6. Learned counsel for the appellant-Insurance Company would submit that on the date of accident driver of the offending vehicle did not have valid and effective driving licence to drive the offending vehicle and he has only driving licence to drive the light motor vehicle and in which there is no endorsement authorizing him to drive the transport vehicle is not mentioned in his driving license therefore, Insurance Company is not liable to pay compensation to the claimants. Learned counsel for the appellants also challenged the quantum of compensation awarded by the Tribunal particularly on the conventional heads.

7. Learned counsel for the respondents No. 1 to 4/claimants would submit that learned Tribunal has rightly fastened the liability of payment of compensation upon the appellant/Insurance Company in view of the judgment of the Supreme Court in the matter of **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in **(2017) 14 SCC 663,** there is no endorsement is required to drive the transport vehicle who has below the 7500. He further submits that Tribunal has rightly awarded the compensation to the claimants for the death of deceased in view of the judgment rendered by the Supreme Court in matter of **Rajesh & others Vs. Rajbeer Singh & others** reported in **2013 (2) ACCD 969**

(SC), which was applicable at that time when the accident had occurred.

8. I have heard learned counsel appearing for the parties and perused the record of the case and impugned award.

09. 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" and who is driving the "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)"

10. By applying the aforesaid principles to the case in hand, it is clear that the driver of the offending vehicle was holding the valid and effective driving license and even in absence of any endorsement 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. 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, therefore, I am of the view that appellant/Universal Sompo General Insurance Company has rightly been held liable to pay compensation to the claimants and amount of compensation awarded by the Tribunal, in view of the judgment of the Supreme Court in the matter of **Rajbeer (Supra),** prevalent at that time, is also just & proper, which also does not call for any interference.

11. For the foregoing reasons, the appeal, being devoid of merit, is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

Amita