NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 151 of 2012

Murli Manohar Markam, S/o late M. Markam, aged about 45 years R/o Siliyari, PO Siliyari, PS Dharsiwa, Distt .Raipur (CG).

---- Appellant

Versus

1. Santosh Kumar S/o Shri Kushwaram Sahu, R/o Mangla, PO Siliyari, PS Dharsiwa, District Raipur (CG).
2. Premin Bai Verma Wd/o Teepu Verma, aged about 54 years, R/o Pathri, PO Pathri, PS Dharsiwa, District Raipur (CG).
3. Reliance General Insurance Company Limited through Officer in charge Reliance General Insurance Company Limited, Ravi Bhawan, Jai Stambh Chowk, Raipur, Tehsil and District Raipur (CG).

---- Respondents

For Appellant	:	Shri Shrawan Agrawal, Advocate.
For respondent No.1	:	Shri Suresh Tandon, Advocate.
For respondent No.2	:	Shri Amiykant Tiwari, Advocate.
For respondent No.3	:	Shri Tarkeshwar Nande, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

06.02.2018

1. The present is an appeal filed by the owner under Section 173 of the Motor Vehicles Act (for short, the MV Act) against the award dated 10.10.2011 passed by the Chief Motor Accident Claims Tribunal, Raipur (for short, the Tribunal) in Claim Case No.70/2009. Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV Act has awarded a compensation of Rs.2,00,458/- to the claimants along with interest @ 6 percent per annum from the date of application. The liability of payment of compensation has been fastened upon the appellant-owner exonerating the insurance company of its liability. The liability of the

insurance company has been exonerated only on the ground that the driver of the offending vehicle i.e. Mahindra & Mahindra Omni Bus bearing registration No.CG-04-H-9024 did not have a valid license to drive commercial vehicle.

2. Learned counsel appearing for the appellant submits that the present is a case which is squarely covered by the decision of the Supreme Court in case of Mukund Dewangan Vs. Oriental Insurance Co. Ltd, AIR 2017 SC 3668 wherein it has been held that merely because there is no endorsement on the licence of the driver who otherwise has a licence to drive the Light Motor Vehicle by itself would not absolve the insurance company of its liability. Therefore, prayed for the award to be suitably modified.

3. Counsel for the respondent-insurance company opposing the appeal submits that the award was just and proper on the basis of law as it stood in the year, 2011, and therefore, the appeal deserves to be rejected.

4. Having heard the rival contentions put forth on either side and on perusal of records, indisputably the vehicle involved in the accident was Mahindra & Mahindra Omni Bus. The unladen weight of the vehicle was 1640 kg and as such it would fall within the definition of light motor vehicle. The driver of the offending vehicle i.e. respondent No.1 had a license to drive light motor vehicle which is also not in dispute. What is further undisputed is that the vehicle was duly insured with the respondent No.3 as commercial vehicle. In addition to the larger Bench decision of Supreme Court in case of Mukund Dewangan

(Supra) the Supreme Court has also in a recent decision in case of Sant Lal Vs. Rajesh & Ors., AIR 2017 SC 4054 in relation to the use of tractor and trolley has applied the judgment of Mukund Dewangan (Supra) and have ordered that the liability of payment of compensation under the said circumstances would be that on the insurance company.

5. Thus, keeping in view the aforesaid two decisions of the Supreme Court, this court is of the opinion that the instant case is squarely covered by the aforesaid two decisions and therefore, the findings of the Tribunal exonerating the insurance company is set aside and the award is modified and ordered to the extent that the liability of payment shall be jointly and severally upon the owner, driver and the insurer of vehicle involved in the accident. That, the responsibility of payment of compensation shall be upon the respondent-insurance company.

6. Whatever amount deposited by the appellant while filing the appeal and subsequently, the same shall be refunded to it by the insurance company and the balance amount, if any, shall be paid by the insurance company before the Tribunal.

7. Accordingly, the appeal of the owner stands allowed and disposed of.

Sd/-
(P.Sam Koshy)
Judge

inder