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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 565 of 2012

Amrik Singh S/o Shyam Singh, aged about 65 years, R/o Village Godkhamhi, Tahsil Lormi, P.S. Lormi, District Bilaspur C.G.

---- Appellant

Versus

1. Vishram Khande S/o Koula Khande, aged about 65 years.
2. Sakura Bai Kande W/o Vishram Khande, aged about 60 years.
   Both R/o Village Sonbandha, P.S. Takhatpur, Tahsil Takhatpur, Dist. Bilaspur C.G. At Present Gembopara, PS & Tehsil, Mungeli, Dist. Bilaspur C.G.
3. Tulsiram Gandharv S/o Anil Kumar Gandharv, aged about 24 years, R/o Ravanbhatha Mungeli, P.S. And Tah Mungeli, Dist. Bilaspur C.G.
4. The Oriental Insurance Co. Ltd. Bilaspur, Dist. Bilaspur C.G.

---- Respondents

For Appellant	:	Shri RK Pali on behalf of Shri SP Sahu, Advocate.
For respondent No.1&2	:	Shri Atanu Ghosh, Advocate.
For Respondent No.4	:	Shri NK Malviya, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

07.03.2018.

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the owner against the award dated 24.04.2012 passed by the Additional Motor Accident Claims Tribunal, Mungeli (in short, the Tribunal) in Claim Case No.121/2011. Vide the said impugned award, the Tribunal has awarded a compensation of Rs.1,92,500/- with interest @ 6 percent per annum from the date of application.

2. While passing the award, the Tribunal has exonerated the insurance company of its liability of payment of compensation and has fastened the same upon the present appellant-owner. The ground of exoneration of insurance company was that the vehicle involved in

the accident being Swaraz Mazda bearing registration No. CG-10-A-7284 owned by the appellant was being driven by respondent No.3 and he did not have a license to drive the transport vehicle.

3. According to appellant, 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.

4. Counsel for the respondents opposing the appeal submits that it is a case where the award was passed as early as in the year, 2012 and as such the award was just and proper on the basis of law as it stood in the year, 2012, and therefore, the appeal deserves to be rejected.

5. Having heard the rival contentions put forth on either side and on perusal of records, this court is of the opinion that in addition to recent 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.

6. The admitted facts of the present case is that the vehicle involved in

the accident was Swaraz Mazda. The said vehicle indisputably is a transport vehicle but it falls within the category of light motor vehicle when the laden weight of the vehicle is compared. The respondent No.3-driver of the offending vehicle on the date of accident was having a license to drive light motor vehicle (non-transport).

7. In the given facts and circumstances of the case and also 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.

8. The responsibility of payment of compensation shall now stands shifted upon the respondent No.4-insurance company. Any amount deposited by the appellant-owner be refunded back to him on the entire amount of compensation being deposited by the insurance company before the concerned Tribunal.

9. The appeal thus stands allowed and disposed of.

Sd/-
(P.Sam Koshy)
Judge

inder