AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 973 of 2012

- Satya Narayan Jayaswal, aged about 55 years, S/o Ram Prasad, resident of Village Karsi, P.S. and Tahsil – Pratappur, District Sarguja (C.G.)

---- Appellant

Versus

1. Jagarnath Manikpuri, aged about 45 years, S/o Shri Rupchand, Caste – Panika.
2. Smt. Hirondiya, W/o Shri Jagarnath Manikpuri, aged about 44 years, Caste – Panika.

   Both are R/o Village Markadand, Tahsil Rajpur, District Sarguja (C.G.) presently resident at Pauradhar, Rajnagar, Colliery, District Anuppur (M.P.)
3. Duhan, aged about 50 years, S/o Joothan, Caste – Gond, R/o Village Karsi, P.S. and Tahsil Pratappur, District Sarguja (C.G.)
4. The Oriental Insurance Company Limited, Manendragarh Road, Ambikapur, District Sarguja (C.G.)

---- Respondents

For Appellant	:	Sushil Dubey, Advocate.
For Respondent Nos.1 to 3	:	None.
For Respondent No.4	:	Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

19.09.2018

1. This miscellaneous appeal has been preferred by the appellant/owner under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') against the award dated 06.08.2012 passed by 3rd Additional Motor Accident Claims Tribunal, Ambikapur (hereinafter referred to as 'Claims Tribunal') in Claim Case No. 100/2012 by which, the claim petition, filed by the applicants/claimants, was allowed

while awarding them amount of compensation to the tune of Rs.6,61,000/- with 6% interest per annum from the date of claim petition till its realization.

2. The case in brief is that on the fateful day i.e. 18.12.2007, the deceased Bholadas who was on the way to Rajpur for meeting their relatives and when he reached near Gopalpur pond at Rajpur, at that point of time, a pick-up vehicle bearing registration no. UP 66 B 8793, being driven by one Heeralal very rashly and negligent and dashed the motorcycle of Bholadas. In the alleged incident, Bholadas received grievous injuries on his different parts of bodies. Thereafter, Bholadas was admitted to hospital for treatment at Government Hospital, Rajpur and thereafter he was shifted to Ambikapur. The claimants being the parents of the deceased filed an application for compensation under Section 166 of Motor Vehicles Act, 1988.

3. Accordingly, the learned Claims Tribunal after hearing the parties, perusal of records, finally came to conclusion that the Appellant is liable to be pay the compensation of Rs.6,61,000/- and exonerating the insurance company from the liability.

4. Shri Sushil Dubey, learned counsel for the appellant/owner submits 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. It is contended by him 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.

5. On the other hand, Smt. Chitra Shrivastava, learned counsel for the Respondent No.4/The Oriental Insurance Company Limited, while supporting the award impugned submits that the driver of the offending vehicle was authorized to drive the light motor vehicle only and, in absence of any endorsement authorizing him to drive the transport vehicle in his driving license, it cannot be held that he was holding an effective and valid driving license to drive the same and as such, the learned Claims Tribunal has not committed any illegality in exonerating the Insurance Company from its liability.

4. I have heard learned Counsel for the parties and perused the entire record carefully.

5. A claim enumerated under Section 166 of the Act has been made by the claimants by submitting *inter-alia,* that on 18.12.2007, he was on the way to Rajpur for meeting their relatives by his motorcycle and when he reached near Gopalpur pond at Rajpur, at that point of time, his vehicle was dashed from the opposite side by the offending vehicle a pick-up vehicle bearing registration no. UP 66 B 8793. It is pleaded further in the claim petition that the said vehicle was owned by the appellant which was insured with the Oriental Insurance Company Limited, the Respondent No.4 herein, and was being driven rashly and negligently by Heeralal. As a result of which, he (Bholadas) sustained grievous injuries and on during treatment he died. A case was, thereafter, registered before the Police

Station - Rajpur against the driver of the said offending vehicle under Section 304-A of IPC. According to the claimants, deceased suffered grievous injuries to the alleged accident and was admitted immediately into the hospital and operated by the doctor and he was died during treatment, thus, the claimants total claimed amount of compensation to the tune of Rs. 55,40,000/- before the learned Claims Tribunal.

6. The aforesaid claim was contested by the driver and owner of the offending vehicle by submitting *inter-alia,* that on the date of incident, the driver was carrying a seriously ill person and at the relevant point of time, the deceased himself drove his motor cycle rashly and negligently and dashed the said offending vehicle, therefore, deceased himself was liable for the alleged accident. It is pleaded further that the vehicle in question was insured with Respondent No.4/The Oriental Insurance Company Limited, therefore, in case of any liability being fastened, the insured would be indemnified by the said Insurance Company.

7. While opposing the claim, it is pleaded by Respondent No.4/The Oriental Insurance Company Limited that the deceased himself was responsible for the alleged accident and pleaded further that since the driver of the offending vehicle was not holding a valid and effective driving license of the commercial vehicle, but he was holding the effective and valid licence of the light motor vehicle, therefore, the insurance company cannot be held liable to indemnify the insured.

8. After considering the evidence led by the parties, learned Claims Tribunal has come to the conclusion that the alleged accident has occurred due to rash and negligent driving of the driver of the offending vehicle and observed further that in absence of any endorsement

authorizing the driver to drive the transport vehicle in the alleged driving license, it cannot be held that the driver of the offending vehicle has possessed the effective and valid driving license and in consequence, exonerated the Insurance Company from its liability while awarding the compensation to the claimants to the tune of Rs.6,61,000/- with 6% interest per annum from the date of filing of the claim petition till its realization.

9. While assailing the aforesaid findings, it is contended by learned counsel for the appellant/owner that the driver of the offending vehicle was holding a valid and effective driving license and merely for want of endorsement as such in the alleged driving license, it cannot be held that he was not holding an effective and valid driving license, irrespective of the fact that it was being used as a transport vehicle at the relevant time particularly when the vehicle in question was a light motor vehicle.

10. In order to ascertain the said fact as to whether the driver of the offending vehicle possessed the valid driving license or not, I examined the alleged driving license and perusal of it would show that he was authorized to drive the light motor vehicle. The vehicle in question is, therefore, a "light motor vehicle" as defined under Section 2(21) of the Act. It is true that there is no endorsement in the alleged 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.

11. 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)”

12. 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 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, deserves 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, Respondent No.4/The Oriental Insurance Company Limited cannot be exonerated from its liability. In consequence, the insurance company is liable to indemnify the insured/appellant and, the appellant/owner is entitled to recover the amounting of Rs.3,55,500/- within two months which is deposited before the learned Claims Tribunal in compliance of this Court order. The claimants is entitled to recover the award of compensation passed by the Claims Tribunal i.e. Rs.6,61,000/- per annum with 6% interest per annum from the date of claim petition i.e. 29.03.2008 from the Respondent No.4/The Oriental Insurance Company within two months. In case the amount is not paid within stipulated time then the interest @ 9% per annum from the date of claim petition i.e. 29.03.2008 shall also be payable till its realization.

13. The appeal is allowed with the aforesaid direction. No order as to costs.

Sd/-
(Gautam Chourdiya)
JUDGE

Brijmohan