NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 620 of 2013
Reserved on 27/09/2018

Delivered on. 16.11.2018

1. Vijay Kumar Jain, S/o Ashok Agrawal, Proprietor Ashok Agencies aged about 30 years, R/o. Bhaiyathan Road, Surajpur, Police Station & Tahsil Surajpur, Police & Civil District Surajpur (C.G.).

---- Appellant

Versus

1. Smt. Nitu Yadav, Wd./o. Late Rajesh Kumar Yadav, aged about 23 years,

2. Aryan Kumar S/o Late Rajesh Kumar Yadav, aged about 03 months through his natural guardian mother Smt. Nitu Yadav, Wd./o. Late Rajesh Kumar Yadav, aged about 23 years.

3. Tejram S/o Late Kandru Ram, aged about 55 years.

4. Smt. Basanti W/o Late Tejram, aged about 52 years.

   All above are R/o Village Neelkanthpur, Police Station Kushmi, Tahsil Samri, Kushmi District Balrampur, Civil District Surjuga, Police Distirct Balrampur Chhattisgarh.

5. Branch Manager, United India Insurance Company Ltd. Bramha Road, Ambikapur, District- Surguja (C.G.).

---- Respondents

For Appellant	:	Shri Rahul Bhawani, Advocate on behalf of Shri Manoj Paranjpee, Advocate,
For Respondent No. 3 :	:	Shri H. B. Argawal, Sr. Advocate with Ms. Deepali Dubey, Advocate

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Hon'ble Shri Justice Gautam Chourdiya
CAV Judgment

1. This is owner's appeal against the award dated 29.04.2013 passed by

third Additional Motor Accident Claims Tribunal, Ambikapur, Surguja (for short 'the Tribunal') in claim case No. 133/2012.

(2) Brief facts of the case are that on 26.03.2012 at about 7.50 pm at grampanchayat Parsagudi near Dhaba, Ambikapur road, due to rash and negligent driving of vehicle bearing registration No. CG15-AC/0640 by its driver Jeevan Tigga, which was owned by appellant/owner - Vijay Kumar Jain, dashed the motorcycle bearing registration No. CG15CA/1937 which was driven by deceased Rajesh Kumar Yadav and three other persons sitting in the said motorcycle as pillion rider. Due to this collusion, Rajesh Kumar Yadav sustained multiple injuries and he died on the spot itself.

(3) The claimants, who are wife, daughter and parents of deceased Rajesh Kumar Yadav filed the application under Section 166 of the Motor Vehicles Act, 1999 seeking compensation for the death of the deceased in the motor accident occurred on 26.03.2012.

(4) After considering the evidence of both the parties learned Tribunal awarded 7,02,000/- alongwith 6% of interest in favour of claimants and exonerated the insurance company from its liability for payment of compensation to the claimants on the ground that at the time of incident driver of the offending vehicle was not holding a valid and effective driving license of the commercial /transport vehicle, but he was holding the effective and valid licence of the light motor vehicle and fastened the liability of payment of compensation to the claimants upon the appellant/owner of the offending vehicle.

(5) Learned counsel for the appellant/owner submits that the learned Tribunal has erred in exonerating the Insurance Company from its liability to pay compensation and fastening the liability to pay compensation to the claimants upon the owner of the offending vehicle as driver of the vehicle was having valid and effective driving licence to drive only light motor vehicle and it is not made to drive the commercial or transport vehicle. In support of his contention, he placed his reliance upon the decision rendered by the Supreme Court in "***Mukund Dewangan Vs. Oriental Insurance Company Limited"*** reported in (2017) 14 SCC 663.

(6) Per contra, learned counsel for the Insurance Company submits that the learned Tribunal has rightly fastened the liability upon owner of the offending vehicle, which does not call for any interference in the instant appeal.

(7) I have heard learned counsel appearing for the parties and perused the impugned award.

(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" 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)"

9. 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.6/The United India Insurance Company Limited cannot be exonerated from its liability. In consequence, the insurance company is liable to pay compensation to the respondents/claimants. Now, the claimants are entitled to recover the award of compensation passed by the Claims Tribunal i.e. Rs.7,02,000/- per annum with 6% interest per annum from the date of claim petition from the Respondent No. 5/The United Insurance Company within one month from the date of judgment.

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

Sd/-

(Gautam Chourdiya)
Judge

Amita