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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 193 of 2014

1. Cholamandalam MS General Insurance Company Ltd., through Office Incharge, In-fron of Jeevan Beema Office, Pandri PS Pandri, Civil & Revenue Dist. Raipur (C.G.)

---- Appellant

Versus

1. Smt. Santrin Bai W/o Late Nankudas Jangde, aged about 45 years,
2. Lalaram S/o Nankudas Jangde aged about 22 years,
3. Dileshwar S/o Nankudas Jangde aged about 20 years,
4. Ku. Yugalkishori D/o Nankudas Jangde aged about 16 years(minor)
5. Ku. Santwantin D/o Nankudas Jangde aged about 14 years(Minor)
6. Mangaldas S/o Gangaram Jangde aged about 70 years

   Minor Res. No. 4 and 5 through their mother Smt. Santrin Bai, Permanent Address Vill. Kusmi PS Palari, Civil & Revenue Distt. Baldoabazar, C.G. At present Vill. & Post Kharora, PS Kharora, Civil & Revenue Dist. Raipur C. G. (Claimants).

7. Dhanesh Kumar S/o Firataram Sahu R/o Rohasi, PS Palari, Civil & Revenue Dist. Balodabazar, (C.G.)

   (Dirver of Veh. CG-04-G-8252)

8. Daduram S/o Shobhit Sahu R/o Rohasi, PS Palari, Civil & Revenue Dist.- Balodabazar, (C.G.).

   (Owner of Veh. CG-040G-8252)

---- Respondents

For Appellant : Shri Shokie Yadav, Advocate on behalf of Shri N. K. Thakur Advocate

For Respondents No. 1 to 5 : Shri Amiyakant Tiwari, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

03.12.2018

1. The instant appeal has been preferred by the appellant/insurance company against the award dated 31.10.2013, passed by the 7th Additional Motor Accident Claims Tribunal, Raipur (for short 'the Tribunal') in claim case No. 88/2013, awarding Rs. 10,92,130/- as compensation along with interest @ 6% 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. As per averments made in the claim petition when on 25.06.2012 at about 2.30 PM, one Dhaniram was driving the cycle in which deceased Nanku Das was sitting as pillion rider, near village- Kushmi Police Station -Palari respondent No. 1 –Dhanesh Kumar while driving the offending vehicle (Picu-up) bearing registration No. CG04G/8252 rashly and negligently, dashed the deceased, as a result of which Nanku Das sustained grievous injuries and during treatment he died on 27.06.2012. After due investigation, criminal case No. 234/2012 was registered against the driving of the offending vehicle under Section 279, 337 & 304-A of the Indian Penal Code.

3. The appellant – Cholamandalam MS General Insurance Co. Ltd. the instant misc. appeal on the ground that at the time of accident, the driver of the offending vehicle i.e. respondent No. 1 did not have valid & effective driving licence to drive the goods vehicle, therefore, the Insurance Company is not liable for payment of compensation to the claimants.

4. 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 appellant also submits that the quantum part is also on higher side, particularly salary of the deceased/employee assessed by the Tribunal is also on higher side, which deserves to be suitably reduced.

5. Learned counsel for the respondent/ claimants while supporting the impugned would submit that Tribunal is absolutely justified in awarding amount of compensation to the claimants and fastening the liability of payment of compensation to the claimants, which does not call for any interference in the instant appeal.

6. I have heard learned counsel appearing for the parties and perused the material available on record with utmost circumspection.

7. So far as first contention raised by learned counsel for the appellant/Insurance Company, according to the evidence adduced by the parties, it is undisputed fact that driver of the offending vehicle did have licence to drive the light motor vehicle at the time of occurrence; as per Ex. D2C RC book the gross weight of the offending vehicle was 1690kg and in view of the judgments rendered by the Supreme Court ***Mukund Dewangan Vs. Oriental Insurance Company Limited reported in (2017) 14 SCC 663,*** 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)"**

8. 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, learned Tribunal has rightly fastened the liability upon the Insurance Company to pay compensation to the claimants.

9. So far as second contention raised by the learned counsel for the appellant/Insurance Company regarding quantum of compensation is concerned; as per salary shown in the pay slip (Ex. P/22) of the deceased/employee, the income of the deceased has rightly assessed by the learned Tribunal for the purpose of computation of compensation, therefore, it cannot be held to be on higher side.

10. Upon both the submissions made on behalf of appellant/Insurance Company and keeping in view the judgment rendered by the Supreme Court in the ***"Mukund Dewangan Vs. Oriental Insurance Company Limited"*** **(supra)**; this Court is of the opinion that the learned Tribunal has rightly awarded the compensation amount in favour of the claimants and rightly fastened the liability upon the Insurance Company.

11. Consequently, the appeal filed by the appellant/Insurance Company being devoid of merit is liable to be and is hereby dismissed.

Sd/-

Gautam Chourdiya
Judge

Amita