NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 248 of 2014

The National Insurance Co. Ltd. through the Branch Manager, Branch Office Jagdalpur, in front of Head Post Office, Jagdalpur, District Bastar (CG).

---- Appellant

Versus

1. Suman Baghel S/o Sudershan Baghel, aged about 45 years, R/o Ravindranath Tagore Ward, behind Kalibadi School, Post Office Jagdalpur, Distt. Bastar (CG).
2. Manikram Nag S/o late Shivcharan Nag, aged about 43 years, R/o Ravindranath Tagore Ward, Jagdalpur (CG).

---- Respondents

For Appellant	:	Shri Goutam Khetrapal, Advocate.
For Claimants	:	Shri Kunal Das, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

29.01.2018

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurance company assailing the award dated 03.09.2013 passed by the 1st Additional Motor Accident Claims Tribunal, Bastar (in short, the Tribunal) in Claim Case No.24 of 2012. Vide the said impugned award, the Tribunal in an injury case has awarded a compensation of Rs.96,680/- with interest @ 6 percent per annum from the date of application.
2. Learned counsel for the appellant assails the award on the ground that the driver in the instant case i.e. respondent No.2-Manikram Nag was not having a valid license at the time of accident. The vehicle involved in the accident which was being driven by the respondent No.2 was a motorcycle and the driver at the relevant point of time did not have a license to drive motorcycle. The license which he was having was

effective for driving light motor vehicle and therefore it is to be construed as if that at the relevant point of time the driver did not have a license to drive motorcycle and thus prayed for exoneration of the insurance company from its liability.

3. Learned counsel for the respondent-claimants however opposing the appeal submits that it is a case where the driver at the relevant point of time have a license to drive light motor vehicle which by itself means that he had a license to drive and therefore the insurance company as such cannot be absolved of its liability.

4. This Court recently in the case of Somarsai & Anr. v. Jagdish Rajwade & Anr.(MAC No. 284 of 2017, decided on 12.07.2017) has held as under:

> "7. Having heard the rival contentions put forth on either side and on perusal of the record what clearly strikes the mind of this Court is the admitted facts regarding the accident, the date of accident, the offending vehicle involved in the accident, the driver and the owner of the offending vehicle being the present appellants and as a result of the accident respondent no.1 sustaining injuries. It is also not in dispute that at the relevant point of time, the driver of the offending vehicle did not have a valid licence in as much as the licence which the driver was holding was only confined to drive a light motor vehicle and it did not have permission to drive a motorcycle. Thus, the requirement of Section 3 read with sections 5 & 18 of the MV Act stood clearly breached.
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> 8. In view of the same, this Court has no hesitation in reaching to the conclusion that the finding arrived at by the Tribunal cannot be said to be erroneous or bad in law. Moreover, the finding of the Tribunal stands fortified from the judgment of the Supreme Court in the case of Zaharulnisha (supra) which was pronounced under somewhat similar set of facts."

5. At this juncture, it would be relevant to quote paragraph 4 of a decision of the Himachal Pradesh High court in New India Assurance Co.Ltd. Vs. Tika Ram & Ors. 2011 ACC 2299 (HP) wherein it was held as under:-

> "4.The legislature was obviously aware of the difference between two wheeled and four wheeled vehicles. In Section 10 while providing the form and contents of the driving licence motor

> cycle without gear and motor cycle with gear have been taken as a different category vis-a-vis the light motor vehicle. This is also apparent from a reading of Section 9(6), the proviso to which states that a person who has passed a test of driving a motor cycle with gear shall be deemed to have passed the test of driving motor cycle without gear. This clearly pre-supposes that test for driving motor cycle is different than that prescribed for light motor vehicle which is is a four wheeled vehicle. Even the form of the driving licence in the rules makes special mention of the motor cycles as a separate category. Therefore, it cannot be said that a motor cycle or a scooter or any other two wheeled vehicle will fall in the general category of light motor vehicle."

6. Both these judgments were passed relying upon the judgment of Supreme Court in case of Oriental Insurance Co.Ltd. Vs. Zaharulnisha & Ors.2008 (12) SCC 385.
7. In the light of the aforesaid judgments, this court is of the opinion that the finding of the Tribunal in fastening the liability of payment of compensation upon the insurance company does not seem to be proper, legal and justified. However, as the appeal is pending since, 2014 and as per the order of this court the appellant-insurance company has already deposited Rs.50,000/- and the balance amount to be paid is only Rs.46,680/-, this court is of the opinion that the present is a fit case where the doctrine of "Pay and Recover" can be applied.
8. It is ordered accordingly that the entire amount of compensation shall be paid by the appellant-insurance company at the earliest before the Tribunal with a liberty to recover the same from the owner and driver of the offending vehicle.
9. Accordingly, the appeal stands partly allowed and disposed of.

Sd/-
(P.Sam Koshy)
Judge

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