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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 76 of 2014

Branch Manager, The New India Insurance Company Limited Branch Office, Near To Jhankar Talkies, Jagdalpur, Distt. Bastar C.G.

---- Appellant

Versus

1. Sampatsingh Nag And S/o Ashpath Singh Nag Alias Narpatsingh Nag Aged About 32 Years R/o Mavliguda, Thana- Bhanpuri, Distt. Bastar C.G.
2. Shyamlal Sahu S/o Bala Ram Sahu Aged About 31 Years R/o Pathraguda, Near To Mata Mandir, Thana- Kotwali Jagdalpur, Distt. Bastar C.G.
3. Mo. Umar Khan S/o Late Ahmad Ali Aged About 77 Years R/o Kumharpara, Jagdalpur, Distt. Bastar C.G.

---- Respondents

For Appellant:	Shri Sudhir Agrawal, Advocate.
For Respondents:	None, though served.

Single Bench:Hon'ble Shri Sanjay Agrawal, J

Order On Board

13.09.2018

1. This miscellaneous appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') questioning the award dated 24.10.2013 passed by the Additional Claims Tribunal (F.T.C.), Bastar place Jagdalpur in Claim Case No. 84/2012, by which, the learned Claims Tribunal while allowing the claim petition in part has fastened the liability upon the insurance company.

2. Shri Sudhir Agrawal, learned counsel for the appellant submits that while passing the award impugned the learned Claims Tribunal has committed an illegality in fastening the liability upon the insurance company. According to him, the driver of the offending vehicle was not

authorized to drive the vehicle in question as he was entitled to drive the light motor vehicle only and, in absence of any endorsement he was driving the same, therefore, the insurance company, under such circumstances, cannot be held liable.

3. I have heard learned Counsel for the Appellant and perused the entire record carefully.

4. A claim enumerated under Section 166 of the Act has been made by the claimant Sampatsing Naag, Respondent No. 1, by submitting, *inter-alia,* that on 16.12.2008, he was coming from his village Shitalavand to Jagaldapur by his motorcycle-Hero Honda bearing its registration No. C.G.-17/K/4471 and on the way his motorcycle was dashed vehemently from the opposite side by the offending vehicle Commander "Mahindra Jeep" bearing its registration No. C.G-17/ZT/0193. According to the claim petition, the vehicle in question was being driven rashly and negligently by its driver namely-Shyamlal Sahu (Respondent No. 2) which was owned by Respondent No.3-Mohd. Umar Khan, insured with the New India Insurance Company Limited, the appellant herein. It is pleaded in the claim petition that he is a teacher by profession and performing his duty as Shikshakarmi Grade-III in Government Primary School at village Shitalavand and on account of the alleged accident, he suffered permanent disability as his right leg was amputated below the knee and has thus claimed total amount of compensation to the tune of Rs. 40,40,021/- on various heads.

5. The aforesaid claim was contested by the Respondents No. 2 & 3, the driver and the owner of the vehicle in question, on the ground that no accident as such occurred with the said offending vehicle and in fact, it

was due to rashness and negligent driving by the claimant himself. It is contested further on the ground that the vehicle in question was insured with the appellant/Insurance Company and was being driven by said Shyamlal Sahu, who was possessing the effective and valid driving licence, therefore, in case of any liability being fastened, the same would be indemnified by the appellant/Insurance Company.

6. The Appellant/New India Insurance Company Limited has contested the claim mainly on the ground that the driver of the offending vehicle, namely, Shyamlal Sahu was not having effective and valid driving licence, and therefore, was not authorized to drive the same. According to him, the vehicle in question was insured for commercial use (Taxi) and the said driver was not authorized to drive the same.

7. After considering the aforesaid pleadings of the parties and evidence as led by the parties, learned Claims Tribunal has come to the conclusion that the alleged accident has occurred on 16.12.2008 due to rashness and negligent driving by said Shyamlal Sahu, the driver of the offending vehicle, namely, Commander Jeep bearing its registration No. C.G. 17/ZT/0193, which was insured for commercial use. It held further that the applicant has suffered permanent disability to the extent of 65% by relying upon the permanent disability certificate (Ex.P.-60) and that by holding further that the vehicle in question was not being driven in violation of the terms and conditions of the Insurance Company, has fastened the liability upon the insurance company while awarding total amount of compensation to the tune of Rs. 1,02,996/- with 6% interest per annum from the date of filing of the claim petition till its realization.

8. In order to establish the fact that the driver of the offending vehicle

was not possessing the effective and valid driving licence, the appellant/insurer has examined one Ramkaran Ratre, as Non-applicant witness No.2, who is working as Assistant Grade-II in the Office of the Regional Transport Authority, Jagdalpur. A bare perusal of his statement would show that said driver (Shyamlal Sahu) was authorized to drive the light motor vehicle and was authorized to drive the heavy goods vehicle only with effect from 31.07.2009, i.e., much after the occurrence of the alleged accident. It is true that when the alleged accident has taken place, at that particular time, the driver was authorized to drive the light motor vehicle and was not authorized to drive the heavy goods vehicle as stated by the said witness. It is, however, pertinently to be noted here that the alleged offending vehicle “Mahindra Jeep” bearing its registration No. CG-17/ZT/0193 insured as “Passengers Carrying Commercial Vehicle” was not a heavy goods vehicle. It is a light motor vehicle as defined under Section 2(21) of the Act. Therefore, merely on this ground, it cannot be held that the driver of it, i.e. Shyamlal Sahu, who was possessing the driving licence (Ex.D.-2) to drive the light motor vehicle, was not entitled to drive the said offending vehicle. Even no endorsement as such is needed. Even otherwise, the burden to prove that the driver was not possessing the effective and valid driving licence to drive the said offending vehicle was heavily upon the Insurance Company. However, the Insurance Company has failed to produce any cogent and reliable evidence to prove the same.

9. At this juncture, the principles laid down in “***Mukund Dewangan Vs. Oriental Insurance Company Limited”*** reported in **(2017) 14 SCC 663**, is to be noted, wherein Hon'ble the Supreme Court, has held that even in absence of any endorsement as such, the driver who was

authorized to drive the light motor vehicle would be entitled to drive the vehicle of same kind. Paragraphs 60.1, 60.2 and 60.4 are relevant for the purpose and reproduced hererin as under:-

> **60.1.** "Light motor vehicle" as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 1994.
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> **60.2.** A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor or a roadroller, "unladen weight" of which does not exceed 7500 kg and holder of a driving license to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or roadroller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the license is required to drive a transport vehicle of light motor vehicle class as enumerated above. A license issued under Section 10(2)(d) continues to be valid after Amendment Act 54 of 1994 and 28-3-2001 in the form.
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> **60.4.** The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving license for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding license to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.

10. By applying the aforesaid principles to the case in hand, it is clear that the driver of the offending vehicle was authorized to drive the said offending vehicle, and the finding so recorded by the learned Claims Tribunal in this regard, therefore, deserves to be and is hereby affirmed.

11. Further contention of Shri Sudhir Agrawal, learned counsel for the appellant that the applicant being the Government employee must have

obtained the sum of Rs.60,996/- from the Government towards medical expenses, and therefore, he is not entitled to get the said amount again from the appellant/Insurance Company, is also noted to be rejected, as neither the plea nor any evidence has been adduced by the insurer in this regard.

12. Consequently, I do not find any substance in this appeal. The appeal is accordingly dismissed. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE

Nikita