NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 221 of 2012

1. Tarachand Sahu S/o Kachru Sahu, R/o Village Goregaon, Tahsil Nagri, District Dhamtari (CG).
2. Dayal Tahalwani S/o Dularam Tahalwani, R/o Jangalpara Nagari, Dist. Dhamtari (CG).

---- Appellants

Versus

1. Smt. Gayatri Bai Dhruv Wd/o Gendlal Dhruv, aged 40 years.
2. Ku. Anamika Dhruv, D/o Gendlal Dhruv, aged 21 years.
3. Sharad Kumar Dhruv S/o Gendlal Dhruv, aged about 17 years.
4. Praveen Kumar Dhruv S/o Gendlal Dhruv, aged about 15 years.
5. Pranay Kumar Dhruv S/o Gendlal Dhruv, aged about 15 years.
   Respondents No.3 to 5 are minors through legal guardian Mother Smt. Gayatri Bai-Respondent No.1.
   All R/o Village Goregaon, Tahsil Nagri, Present Address, Village Daspur, Tahsil and District Kanker (CG).
6. The Oriental Insurance Co. Ltd. Through The Divisional Manager, Divisional Office- Dhamtari (CG).

---- Respondents

For Appellants	:	Shri Pradeep Rajgir, Advocate.
For Claimants	:	Shri SP Sahu, Advocate.
For Insurance Co.	:	None.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

06.02.2018

1. The present is an appeal filed by the driver and owner Section 173 of the Motor Vehicles Act (for short, the MV Act) against the award dated 05.11.2011 passed by the Motor Accident Claims Tribunal, Kanker (for short, the Tribunal) in Claim Case No.33/2010. Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV Act in a death case has awarded a compensation of Rs.11,95,600/- to the claimants along with interest @ 6 percent per annum from the date of application. The liability of

payment of compensation has been fastened upon the appellants driver and owner exonerating the insurance company of its liability.

2. The liability of the insurance company has been exonerated only on the ground that the driver of the offending vehicle did not have a valid license on the date of accident. As per finding of the Tribunal, the driver had a license only to drive a light motor vehicle whereas, the vehicle which was being driven by the driver was a Jeep for commercial purpose and there was no proper endorsement of permission to drive commercial transport vehicle.

3. Learned counsel appearing for the appellants submits that the present is a case which is squarely covered by the decision of the Supreme Court in case of Mukund Dewangan Vs. Oriental Insurance Co. Ltd, AIR 2017 SC 3668 wherein it has been held that merely because there is no endorsement on the licence of the driver who otherwise has a licence to drive the Light Motor Vehicle by itself would not absolve the insurance company of its liability. Therefore, prayed for the award to be suitably modified.

4. Counsel for the respondent-claimants did not dispute the aforesaid contention put forth by the counsel for the appellants.

5. There is no representation on behalf of the insurance company though served.

6. Given the facts and circumstances of the case what is undisputed is the date of accident being 07.05.2009; the deceased in the instant case being Gendlal who died on 12.05.2009 during the treatment; the vehicle involved in the accident being Jeep bearing registration

No.CG-04-ZD-0321 owned by appellant No.2 and driven by appellant No.1 and the vehicle was duly insured with the respondent No.6.

7. The insurance company in the instant case has led evidence of two witnesses one being MT Khan, Administrative Officer of the insurance company and the other being Rajesh Bhargav, an employee from the RTO, Raipur. The witness from the RTO office has categorically admitted the fact that the driver in the instant case had a valid license to drive light motor vehicle though he further admits that there was no endorsement or permission to drive commercial transport vehicle.

8. Since it is an admitted factual position that the driver of the offending vehicle had a license to drive light motor vehicle, in the opinion of this court, the present appeal is squarely covered by the decision of Supreme Court in case of Mukund Dewangan (Supra). In addition to the decision in the case of Mukund Dewangan (Supra), the Supreme Court has also in a recent decision in case of Sant Lal Vs. Rajesh & Ors., AIR 2017 SC 4054 in relation to the use of tractor and trolley has applied the judgment of Mukund Dewangan (Supra) and have ordered that the liability of payment of compensation under the said circumstances would be that on the insurance company.

9. Thus, keeping in view the aforesaid two decisions of the Supreme Court, the findings of the Tribunal exonerating the insurance company is set aside and the award is modified to the extent that the liability of payment shall be jointly and severally upon the owner, driver and the insurer of vehicle involved in the accident and the responsibility of payment of compensation shall be upon the respondent-insurance

company.

10. Whatever amount deposited by the appellants while filing the appeal and subsequently, the same shall be refunded to them by the insurance company and the balance amount, if any, shall be deposited by the insurance company before the Tribunal.
11. Accordingly, the appeal of the owner and driver stands allowed and disposed of.

Sd/-
(P.Sam Koshy)
Judge

inder