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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1246 of 2014

- Abis Broiler Private Limited Indian Agro And Food Industries R/o Baldev Bag, Rajnandgaon, Tah. And Distt. Rajnandgaon C.G., Chhattisgarh

---- Appellant

Owner

Versus

1. Kuleshwari Bai W/o Late Ranjnu Sahu Aged About 26 Years
2. Kamlesh Kumar S/o Late Ranjnu Sahu Aged About 9 Years
3. Dupendra Kumar S/o Late Ranjnu Sahu Aged About 7 Years

   Respondents No. 2 & 3 are represented through their natural guardian Kuleshwari Bai, w/o late Ranjnu Sahu.

   All are resident of Village Sursuli, Police Station & Tahsil – Devri, Distt. Balod (CG)

4. Bhupendra Kumar S/o Purshottam Lahutre Aged About 22 Years R/o Dilapahari, P.S. Lalbagh, Tah. And Distt. Rajnandgaon C.G.- driver of the offending vehicle.
5. The New India Insu.Co.Ltd. Parekh Bhawan, Station Road, Durg C.G.

---- Respondent

For Appellant	: Shri Malay Shrivastava, Advocate.
For Respondent No.5	: Shri Sourabh Sharma, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

09/10/2018 :

This is an appeal by the owner/non-applicant No.2 challenging the award dated 4.9.2014 passed by Motor Accident Claims Tribunal, Balod (CG) in Claim Case No.20/2013 whereby the Tribunal has awarded compensation of Rs. 7 lacs with interest @ 6% per annum from the date of application till realization, in favour of the claimants fastening the liability on the appellant/owner.

02. On 29.7.2013, due to rash and negligent driving of vehicle Tata 407 bearing registration No.CG 08-B-1124 by respondent No.4/non-applicant No.1, the said vehicle turned turtle near main road, Doundilohara and Ranjnu Sahu, aged about 36 years, who was travelling in the said vehicle as conductor, died as a result of injuries sustained in this accident. The claimants who are wife and children of the deceased being dependent on him filed a claim petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.22.48 lacs.

03. The Tribunal considering the evidence available on record by the impugned awarded granted a total compensation of Rs.7 lacs in favour of the claimants. However, the liability to satisfy the award has been fastened upon the appellant/non-applicant No.2, owner of the vehicle, on the ground that the driver of the vehicle-respondent No.4/non-applicant No.1 was not having a valid and effective driving licence to drive the vehicle in question. Being aggrieved by the said award, the appellant/owner has filed the instant appeal under Section 173 of the Motor Vehicles Act.

04. Learned counsel for the appellant submits that on the date of accident, the driver/non-applicant No.1 was having a valid and effective driving licence to drive LMV vide Ex.D/2. The said driving licence has been duly proved before the Tribunal and a finding to this effect has also been recorded by the Tribunal. Though the vehicle in question is TATA 407, which was a transport vehicle and there is no endorsement

in the driving licence in this regard, but in view of decision of the Hon'ble Supreme Court in the matter of ***Mukund Dewangan Vs. Oriental Insurance Company Ltd.***, reported in ***(2017) 14 SCC 663***, no such endorsement is required in the driving licence for driving transport vehicle if its unladen weight does not exceed 7500 kg. Therefore, he submits that the liability has wrongly been fastened upon the appellant by the Tribunal whereas it ought to have held the insurance company liable for satisfying the award.

05. On the other hand, learned counsel for respondent No.5/insurance company opposes the submission on behalf of the appellant and supports the impugned award passed by the Tribunal.

06. Heard learned counsel for the respective parties and perused the material available on record.

07. The only issue which needs to be considered by this Court is whether in the given facts and circumstances of the case the Tribunal was justified in exonerating the insurance company of its liability and fastening the same on the appellant/owner on the ground that the driver of the vehicle in question, which was a transport vehicle, was having licence to drive LMV only.

08. In order to ascertain the fact as to whether the driver of the vehicle in question possessed the valid driving license or not, I have examined the driving licence on record (Ex.D/2) and perusal of it shows that he was authorized to drive the light motor vehicle. The vehicle in question is, admittedly, a “light goods vehicle”. It is true that there is no endorsement in the said driving license authorizing the driver of the

offending vehicle to drive the light goods vehicle, but, undisputedly as observed herein above that the vehicle in question is a light motor vehicle as per the provision prescribed under Section 2(21) of the Act as its unladen weight does not exceed 7500 kg. Therefore, merely for want of endorsement in this regard in the driving license authorizing the driver to drive the vehicle in question, it cannot be said that he was not possessing the valid and effective driving license to drive the said vehicle, as held by the learned Claims Tribunal.

As regard the photocopy of the licence produced by the non-applicants No.1 & 2, only photocopy was produced by them before the Tribunal, the same was not examined or verified by the insurance company and there is no evidence by either of the parties in respect of this document which is said to be the second licence.

09. 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" is competent to drive "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)”

10. Applying the ratio of law laid down by the Supreme Court in the matter of **Mukund Dewangan (supra)**, it is apparent that the driver of the vehicle in question 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, liable 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.

11. In the result, the appeal is allowed. The impugned judgment is hereby modified to the extent that it is the respondent No.5/insurance company who is liable to satisfy the award of the Tribunal within a period of two months from today.

Sd/

(Gautam Chourdiya)

Judge

Khan