NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1125 of 2014

- National Insurance Company Ltd., Through: Branch Manager, Office 13, Minu Complex, Main Road, Kosabadi, Korba, Tahsil & District- Korba- (C.G.).

---- Appellant

Versus

1. Mahmood Khan Aged about 35 years, S/o Masukh Khan, R/o Village Tilak Nagar, Katghora, District- Korba- (C.G.).
2. Bhupendra Vaishnav, aged about 20 years, S/o Ramesh Vaishnav, R/o Village Dodipara, P.S.- Rampur, Tahsil & District- Korba (C.G.)
3. Murli Manohar Ujjaini S/o Asai. V. Ujjaini, R/o Qr. No. F-396, CSEB Colony, Korba, District- Korba- (C.G.).

---- Respondents

For Appellant : Shri Raj Awasthi, Advocate
For Respondent No. 3 : Shri Ajay K. Chandra, Advocate on behalf of Ms. Aasha, Advocate

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Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

12.10.2018

1. The instant appeal has been preferred by the appellant/insurance company against the award dated 02.08.2014, passed by the Additional Motor Accident Claims Tribunal, Katghora (for short ‘the Tribunal’) in claim case No. 20/2012, awarding Rs. 40,000/- as compensation along with interest @ 6% per annum from the date of filing of claim petition till its actual payment in favour of the respondent No.1/ claimant and as against the appellant/insurance company.

2. Brief facts of the case are that on 22.06.2011, at about 8.30 PM

respondent No. 1/claimant was coming on his motorcycle from Katghora to Kabirdham by that time he was dashed with a Bolero bearing registration No. CG-12Y-0210, which was driven by respondent No. 2 /driver of the said Bolero rashly and negligently, as a result of which, respondent No.1/claimant sustained grievous injuries on his right feet and also on the head.

3. As against the compensation of Rs.34,10,000/- claimed by the respondent No.1/ claimant by filing application under Section 166 of Motor Vehicles Act, 1988 (for short 'MV Act') for the injuries sustained by him in the motor accident on 22.06.2011, the Tribunal, awarded a total sum of Rs. 40,000/- as compensation along with interest @ 6 percent per annum from the date of application till its payment, holding the appellant/Insurance Company responsible for its payment.

4. The Tribunal, on a close scrutiny of evidence led, material placed and submissions made by the parties, held : the accident had occurred due to rash and negligent driving by driver of Bolero bearing registration No. C.G.-12 Y -0210; claimant/Mahmood Khan sustained multiple injuries in the said accident; appellant/insurance company liable for payment of compensation to the claimant as it could not establish violation of policy conditions, assessed and awarded aforesaid sum in favour of the claimant and as against the appellant/insurance company.

5. The appellant – National Insurance Company has filed the instant misc. appeal on the ground that at the time of accident, the driver of the offending vehicle i.e. respondent No. 2 did not have valid & effective driving licence, therefore, the Insurance Company is not liable for payment of compensation to the claimant/respondent No.1.

6. Learned counsel for the appellant/Insurance Company submitted that as per Ex. P-7, NAW 1 – S.R. Taraq has proved the driving licence of Respondent No. 2 and according to him, the driver of offending vehicle was not possessing valid and effective driving license to drive transport

vehicle and his licence was valid from 16.08.2010 to 15.08.2013 only for the purposes for non-transport vehicle (LMV Private) and, therefore, learned Tribunal has committed a gross error by not considering the fact that owner of the offending vehicle has committed breach of policy conditions as he has permitted to drive the offending vehicle to respondent No. 2, who is not duly licensed to drive such category of vehicle i.e. passenger carrying commercial / Transport vehicle and, as such, the appellant/Insurance Company is not liable to pay compensation to the claimant/respondent No.1.

7. Learned counsel for the respondent No. 3/owner of the offending vehicle opposing the submissions made by counsel for the appellant/Insurance Company would submit that driver of the offending vehicle was holding valid driving licence of the commercial vehicle and merely on the basis of the fact that there is no endorsement authorizing him to drive the transport vehicle is not mentioned in his driving license, the Insurance Company could not be exonerated from its liability to pay compensation and, as such, even in absence of endorsement, respondent No. 2 is held to be entitled to drive the said transport vehicle as unladen weight of the vehicle in question is not exceeding 7500 kg as provided under Section 2(21) of the Act and, therefore, the appeal filed by the appellant/Insurance Company is liable to be dismissed. In support, he placed his reliance upon the decision rendered in "***Mukund Dewangan Vs. Oriental Insurance Company Limited"*** reported in (2017) 14 SCC 663.

8. I have heard learned counsel appearing for the parties and perused the award impugned including the record of Claims Tribunal.

9. As per document Ex. NA-3 i.e registration of the vehicle and document NA-4 i.e. details of the lience, which were proved by the competent officer of the appellant / Insurance Company that the driver of the offending vehicle was having licence to drive non-transport light

Motor Vehicle at the time of accident. Only objection of learned counsel for the appellant/Insurance Company is that when the transport authority has issued specific licence in favour of respondent No. 2 to drive only non transport motor vehicle, he has no right to drive transport vehicle and the provisions contained in the judgment of the Supreme Court in the matter of **Mukund Dewangan** (supra) is not applicable in the present case.

10. 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 licence 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)"

11. 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 licence and was not driving the same in violation of the terms and conditions of the insurance policy and, therefore, I am of the view that appellant/National Insurance Company cannot be exonerated from its liability to pay compensation to the claimants and the learned Tribunal has rightly fastened liability upon the Insurance Company, therefore no need to interfere in the impugned award.

12. For the foregoing reasons, the appeal, being devoid of merit, is liable to be and is hereby dismissed. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

Amita