HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 10-7-2018

Order passed on 24 -07-2018

MAC No. 333 of 2012

- Durgadas Mahant S/o Gyandas Mahant, aged about 27 years, occupation Mason (presently unemplkoyed) R/o Rajga, P.S. & Tah Sakti, Dist. Janjgri-Champa (C.G).

---- Appellant

Versus

1. Deepak Ekka s/o. Areneus Ekka, aged about 40 years, r/o. Jamchua, PS Narayanpur, District Jashpur (CG) (Driver of the offending vehicle).
2. Manish Kumar Gupta S/o Abhimanyu Prasad Gupta, aged about 35 years, R/o Kudukela, P.S. Chhaal, Dist. Raigarh C.G. (Owner of the offending vehicle)
3. Branch Manager, National Insurance Co. Ltd. 13 Minu Complex, Main Road Kosabadi, Korba , Dist. Korba C.G. (Insurer of the offending vehicle)

---- Respondent s

For the appellant	:	Mr. Surfaraj Khan, Advocate.
For respondent No.2	:	Mr. Majoj Jaiswal, Advocate.
For respondent No.3	:	Mr. B.N. Nande, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Order

1) This appeal is preferred by the claimant/injured under Section 173 of the Motor Vehicles Act, 1988 against the award dated 30-1-2012 passed by the Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-Champa, (CG) in Claim Case No. 50 of 2010, wherein the said Tribunal exonerated the Insurance Company on the ground that though the driving licence issued to the driver was valid for driving the light motor vehicle from 23-7-2014 to 14-1-2024, but the

same was not endorsed for heavy goods vehicle on the date of incident i.e., 8-9-2009.

2) As per the appellant, in the present case, the offending vehicle is one Bus bearing registration No. CG -14A/1621 and the same was driven by respondent No.1 on 8-9-2009 registered in the name of respondent No.2 and insured with respondent No.3.

3) Learned counsel appearing for the appellant would submit that the appellant was travelling in the said vehicle with Bhagwan Das upto a place namely Kharasiya and due to negligent driving of respondent No.1, the said Bus turned turtle as a result of which he sustained grievous injuries. The appellant was admitted in various hospitals. Even after treatment he is unable to perform his work and he is advised to walk with the help of crutches and as per disability certificate, he is disabled upto 40%, but the Tribunal awarded compensation on lower side.

4) On the other hand, learned counsel appearing for respondent No.3/Insurance Company would submit that the licence was not renewed for heavy goods vehicle, therefore, the driver cannot be said to be holding a valid driving licence and the Insurance company is not liable to indemnify the insured. He placed reliance on the decision of Hon'ble Supreme Court in the matter of **Ram Babu Tiwari vs. United India Insurance Co. Ltd, and others, reported in 2008 (3) TAC 769 (SC).**

5) I have heard learned counsel for the parties and perused the record of the Tribunal including the impugned award.

6) Negligence driving of respondent No.1 causing injuries to the appellant is not challenged in the present appeal. The first question for consideration of this Court is whether the Insurance Company is liable to pay compensation even if licence is not endorsed for driving the heavy goods vehicle on the date of incident. Insurance Company adduced evidence of Santram Tarak (NAW/1) and Hemant Kumar Kasyap, District Transport Officer (NAW/2) and as per their evidence, respondent No.1 was not having licence for driving the heavy goods vehicle on the date of incident i.e., 8-9-2009. Hemant Kumar Kasyap (NAW/2) who is District Transport Officer admitted that the respondent No.1/driver was having a valid driving licence to drive the light motor vehicle from 23-7-2004 to 14-1-2024. From the statement of this witness, it is established that respondent No.1 was having a valid driving licence to drive the light motor vehicle on the date of incident.

7) Now, the point is whether it is proved that respondent No.1 was driving the vehicle which was not light motor vehicle.

8) As per law laid down in the matter of **Mukund Dewangan vs. Oriental Insurance Company Ltd., reported in (2017) 14 SCC 663,** Hon'ble the Apex Court held that the "light motor vehicle" as defined under Section 2(21) of the Motor Vehicles Act, 1988 Act

includes transport vehicle of omnibus, the gross vehicle weight of either of which does not exceed 7500 kgs and it includes tractor or road roller, unladen weight of, which, does not exceed 7500 kg., and holder of a driving licence to drive class of "light motor vehicle" is competent to drive the transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg i.e., to say that no separate endorsement on the licence is required to drive the transport vehicle of light motor vehicle as enumerated above.

9) In the present case, Insurance Company has not proved that unladen weight of the offending vehicle was more than 7500 kg, therefore, respondent No.1 who was having a valid and effective driving licence for light motor vehicle, was authorised to drive any transport vehicle or omnibus, the gross vehicle weight of which does not exceed to limit. In absence of any proof by the Insurance Company, the Insurance Company cannot be absolved from its liability.

10) Looking to the evidence adduced before the Tribunal by the Insurance Company, it is not established that respondent No.1 was not having a valid driving licence to drive the offending vehicle, therefore, finding of the Tribunal in this regard is not sustainable. The finding of the Tribunal is reversed and it is substituted that the Insurance Company has not proved breach of insurance contract and, therefore, the Insurance Company is liable to pay compensation

to the claimant as the policy was passenger carrying commercial package policy and the same was comprehensive covering 15 persons sitting in the said offending vehicle.

11) Next question for consideration as to what would be the just compensation. As per medical report, the appellant sustained 40% disability. In absence of proof of his regular income, his monthly income is assessed at Rs.3,000/- and looking to 40% disability he suffered loss of income of Rs.1200/- per month which comes out to Rs.14,400/- per annum and looking to his age of 28 years, on the date of incident, if multiplier of 18 is applied, then it comes to Rs.2,59,200/-. In addition to that, Rs.1,02,000/- is awarded for medical treatment and for transport, attendant, pain and suffering and special diet Rs.30,000/- is awarded. In all the appellant is entitled to Rs.3,93,200/-.

12) Considering all the facts and material available on record, this court is of the opinion that the case law cited by learned counsel for respondent No.3/Insurance Company is distinguishable from the facts of the present case.

13) In view of the above, the appeal is partly allowed. Award is passed in favour of the appellant and against the respondent No.3/Insurance Company as under:

(I) Respondent No.3/Insurance Company shall pay Rs.3,93,200/- (Rupees Three Lakhs, ninety-three thousand and two hundred) to the appellant/claimant upto 30-09-2018, failing which 9% shall be charged.

(ii) Respondent No.3/Insurance Company shall bear the cost of the appellant.

(iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.

(iv) On depositing the amount of compensation by the respondent No.3/Insurance Company, the Tribunal shall transfer the same into the account of the appellant.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju