NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 133 of 2014

1. The Oriental Insurance Company Ltd. Branch Office, Kawardha, Near Sunil Video World, Swami Mahaveer Chowk, Main Market Kawardha, Tahsil- Kawardha, District- Kabirdham- (C.G.).

---- Appellant

Versus

1. Rajesh Porte S/o Ramji Aged about 25 years, Occupation- Agriculturist, R/o Barbaspur, P.S. & Tahsil- Kawardha, District- Kabirdham- (C.G.)

2. Sekchand Bhaskar S/o Roopchand Bhaskar aged about 22 years, Occupation- Driver, R/o Ward No. 13, Minimata Chowk, Kawardha, P.S. & Tahsil- Kawardha, District- Kabirdham- (C.G.).

(Driver of vehicle No. CG-08-ZD-0377)---

3. Jitendra Singh Thakur, S/o Bhikari Singh, aged about 36 years, R/o Ward No. 14, Kawardha, District- Kabirdham-(C.G.)

(Owner of vehicle No. CG-08-ZD-0377)---

---- Respondents

For Appellant	:	Shri H. P. Agrawal, Advocate
For Respondent No. 1	:	Shri Sunil Sahu, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Order on Board

03.10.2018

1. This is an appeal by the appellant/Insurance Company against the award dated 27.11.2013 passed by the Motor Accident Claims Tribunal, Kabirdham (Kawardha) (for short 'the Tribunal'), in claim case No. 89/2012 vide award dated 27.11.2013 whereby the Tribunal has awarded Rs. 1,16780/- with interest @ rate of 7.5% per annum from the

date of filing of claim petition till its actual payment, fastening the liability on the Insurance Company to satisfy the award.

2. As per averments in the claim petition on 09.03.2012 claimant- Rajesh Porte was riding of Motorcycle bearing registration No. CG07-A/3828 as a pillion rider when his vehicle was dashed by Jeep bearing registration No. CG08ZD/0377 which was being driven by non-applicant No. 1 Sekchand Bhaskar in rash and negligent manner. As a result of this accident claimant- Rajesh Porte suffered severe injuries including fracture of right leg bone.

3. Learned Tribunal considering the evidence available on record by the impugned award granted a total compensation of Rs.1,16780/- in favour of the claimant with interest as aforesaid fastening the liability on the Insurance Company.

4. Learned counsel for the appellant submits that on the date of accident the driver/non-applicant No. 1 was not having a valid and effective driving licence to drive the vehicle in question. The offending vehicle was a transport vehicle whereas the driver was holding licence for L.M.V. only. In these circumstances the tribunal was not justified in holding the Insurance company liable for indemnifying the owner and satisfying the award.

5. Heard counsel for the appellant and perused the material available on record including the impugned award.

6. The only issue it needs to be considered by this Court is whether the Insurance Company is liable to be exonerated on the ground that the driver was having licence for LMV (NT) whereas the offending vehicle was a transport vehicle. This issue has already been considered by the

Hon'ble Supreme Court in the matter of **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in **(2017) 14 SCC663** wherein it has been observed that no endorsement is required in the driving licence for driving a transport vehicle if the unladen weigh does not exceed 7500Kg. In the present case as per document of Ex.NA-6 the unladen weigh of the offending vehicle is 1160kg and the driver of the vehicle was having licence for L.M.V.(NT). The aforesaid fact is not disputed by either of the parties. It the matter of **Mukund Dewangan(Supra)** it has been observed 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)"**

7. Thus, applying the ratio of law led down by the Hon'ble Supreme Court in the matter of Mukund Dewangan(Supra) it is apparent that the driver of vehicle in question was holding a valid and effective driving licence on the date of accident to prove the same. There is no other breach of policy committed by the owner or the driver. In these circumstances the Tribunal was justified in fastening the liability on the Insurance Company of the satisfying the award.

8. Accordingly, the appeal being devoid of merit is liable to be and is

hereby dismissed. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

Amita