

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 554 of 2014**

Radheshyam, S/o. Harbansh, Aged About 38 Years, R/o. Village & Post-
Ranai, P.S. Patna, Tahsil Baikunthpur, District Korea, Chhattisgarh

---- Appellant

Versus

1. Kishun Ram, S/o. Fulchand Cherwa, Aged About 70 Years.
2. Jagdish Kunwar, W/o. Kishun Ram Cherwa, Aged About 65 Years.
3. Ku. Basanti, D/o. Late Gorelal Cherwa, Aged About 17 Years.
4. Ku. Manju, D/o. Late Gorelal Cherwa, Aged About 12 Years.

No. 3 & 4 are Minor through Natural Guardian Grand-father Kishun Ram,
S/o. Fulchand Cherwa, Aged about 70 years.

All are R/o. Bhadi, Police Station & Tahsil Baikunthpur, District Korea,
Chhattisgarh

5. Branch Manager, United India Insurance Company Limited, Branch Office,
Bramha Road, Ambikapur, District Surguja, Chhattisgarh
6. Surendra, S/o. Jawahar, Aged About 27 Years, R/o. Village & Post- Ranai,
Police Station- Patna, Tahsil Baikunthpur, District Korea, Chhattisgarh

---- Respondents

For Appellant : Mr. Anil Gulati, Advocate.

For Respondent No.5 : Mr. H.B.Agrawal, Sr. Advocate with Mr.
Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

05.04.2018

1. This is an appeal against the award dated 03.03.2014 by the owner of the vehicle bearing No.C.G.16-A/0691 whereby the insurance company has been exonerated to pay the amount.
2. The claim petition was filed by two children and mother & father of the deceased with the averments that on 17.09.2012 while the deceased Gorelal was walking on the road, at that time, the Pickup vehicle C.G.16A/0691 driven by Surendra, respondent No.6 herein, dashed Gorelal from behind whereby he died on the spot. It was alleged that the deceased Gorelal was hale & hearty and was

earning Rs. 5000/- per month and because of such death, the dependents were deprived of the income & support and therefore an amount of compensation of Rs.20,55,000/- was claimed for.

3. The learned Claims Tribunal after evaluating the evidence found that on the date of incident, the alleged vehicle was being driven in rash & negligent manner and dashed the deceased Gorelal whereby he died. The Tribunal further held that on the date of incident, the driver of the vehicle Surendra was holding a license for Light Motor Vehicle & Motorcycle with Gear and was not authorise to drive a transport vehicle as there was no endorsement to drive transport vehicle thereby had exonerated the insurance company to pay any liability for breach of terms of policy. The Tribunal had awarded a sum of Rs.3,85,000/- to the claimants and ordered that to be recovered from the owner & driver of the vehicle.
4. Learned counsel for the appellant Radheshyam, who was the owner of the alleged offending vehicle, would submit that the insurance company was wrongly exonerated in the case as the unladen weight of the vehicle was 1640 Kg, therefore, it will come under Light Motor Vehicle. The counsel referred to **AIR 2017 SC 3668** in between **Mukund Dewangan v. Oriental Insurance Company Limited** and would submit when the weight of the vehicle is less than 7500 Kgs. then no endorsement would be required if the driver was holding the Light Motor Vehicle license. He further submits that the License Ex.D-3 would show that the driver was authorize to drive light motor vehicles. Consequently, the order exonerating the insurance company cannot be sustained. He further submits that the just compensation has also not been awarded to the claimants and no

future prospects and adequate compensation has been awarded, therefore, this Court in exercise of its appellate power may correct the same.

5. Learned counsel appearing for the insurance company opposes the argument and would submit that the order of the Court below is well merited, which do not call for any interference.
6. I have heard the learned counsel appearing for the parties at length, perused the pleadings and documents on record.
7. Perusal of the award would show that the learned Tribunal has given a finding that the driver of the offending vehicle was holding a license of Light Motor Vehicle & Motorcycle with Gear but was not holding any license to drive a transport vehicle, therefore, there was a breach of condition of the insurance policy.
8. The Supreme Court in case of ***Mukund Dewangan v. Oriental Insurance Company Limited*** reported in ***AIR 2017 SC 3668*** in detail has held as under :

“46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of “light motor vehicle” in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never

intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus :

(i) 'Light motor vehicle' as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No. 54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2) (d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No. 54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section

10(2)(g) and “heavy passenger motor vehicle” in section 10(2)(h) with expression ‘transport vehicle’ as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the 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 as it was and has not been changed and there is 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.”

9. The evidence in this case would show that the document Ex.D-3(c) which is the license of the driver of the offending vehicle was for Light Motor Vehicle & Motorcycle with Gear and was valid on the date of incident i.e. on 17.09.2012. In the registration of the offending vehicle Ex.P-5 the unladen weight of Mahindra Pickup is shown as 1640 Kgs. Consequently, the unladen weight since has not exceeded 7500 Kgs, the holder of the license of Light Motor Vehicle as provided in Section 10(2)(d) was competent to drive the transport vehicle or omnibus as it was below 7500 Kgs. In a result, the finding of the learned Tribunal that the driver was not holding the valid license cannot be held proper. Therefore, the finding whereby the insurance company was exonerated on the ground that the driver was not holding the valid license is set aside. In a result, the insurance company would be liable to pay the award of compensation to the claimants.

10. Now with respect to the submission made about the just compensation, the learned Tribunal has assessed the notional income of the deceased to Rs.3000/- per month. After perusal of the statement of the father, the claimant, it appears that the amount of Rs.3000/- per month as has been assessed appears to be justified. Perusal of the record would show that the evidence is on record by way of oral statement of the father of the deceased that at the time of accident, the deceased was 34 years of age, which also corroborated by the post mortem Ex.P-4. Considering the fact that the deceased was aged about 34 years at the time of accident, as per the law laid down in case of ***National Insurance Company Limited v. Pranay Sethi & Others*** reported in ***AIR 2017 SC 5157***, I think it proper to add the future prospects of 40% over & above the income of Rs.3000/- per month i.e. 36,000/- per annum, which comes to Rs. 50,400/-. The accident was of the year 2012, therefore, no income tax would be payable as the income tax slab limit was Rs.1,60,000/- at the relevant time.
11. Now coming to the deduction towards personal expenses. Claim petition was preferred by mother, father and two children, thereby, total four persons and, as such, as per the law laid down in case of ***Sarla Verma (Smt.) & Others v. Delhi Transport Corporation & Another***, reported in ***(2009) 6 SCC 121*** there will be deduction of 1/4th towards personal expenses of the deceased which comes to Rs.12,600/-, thus annual dependency after deducting Rs.12,600/- from Rs.50,400/- comes to Rs.37,800/-. Age of the deceased has been shown to be 34 years as per the statement and post mortem, therefore, the deceased belong to the age group of 31-35 years and multiplier of 16 would be applicable; therefore, the total dependency

comes to Rs. 6,04,800/-.

12. Considering the fact that the claim petition has been filed by two minor children and mother & father of the deceased, the consolidated amount of Rs.1,00,000/- is granted for loss of love & affection at the rate of 25,000/- each to the claimants. Further, the amount of Rs.15,000/- is granted for loss of estate and Rs.15,000/- for funeral expenses. Thus, the total compensation is re-assessed as under : -

S.No	Heads	Calculation
(i)	Notional income @ Rs.3000/- per month.	(Rs.3000 x 12) Rs.36,000/- per annum
(ii)	40% of (i) above to be added as future prospects	(36,000 + 14,400) Rs.50,400/-
(iii)	1/4 th of (ii) deducted as personal expenses of the deceased.	(50,400 – 12,600) Rs.37,800/-
(iv)	Compensation after multiplier of 16 is applied.	(Rs.37,800 x 16) Rs.6,04,800/-
(v)	Loss of love & affection to all the four claimants @ 25000/- each.	Rs. 1,00,000/-
(vi)	Loss of estate	Rs. 15,000/-
(vii)	Funeral expenses	Rs. 15,000/-
	Total compensation awarded	Rs. 7,34,800/-

13. Thus, the total compensation is recomputed as Rs. 7,34,800/-. After deducting Rs.3,85,000/- as awarded by the tribunal, the enhancement would be Rs. 3,49,800/-.
14. In the result, the appeal is partly allowed. The claimants will be entitled to Rs.3,49,800/- in addition to what is already awarded by the claims Tribunal. The enhanced amount will carry interest @ 9% from the date of enhancement of the award till its realization. It is made clear that the remaining amount of award shall be paid by the insurance company.

15. The Registry is further directed to communicate the claimants in writing “the enhanced amount” in this appeal as against the award made by the Tribunal below. The said communication be made in Hindi Deonagari language and the help of paralegal workers may be availed with a co-ordination of Secretary, Legal Aid of the concerned area wherein the claimants resides.

Sd/-
(Goutam Bhaduri)
JUDGE