

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 56 of 2014**

Narsingh Rajput S/o Sher Singh Rajput Aged About 32 Years R/o
Khairagarh, Post, Tah. And P.S. Khairagarh, Distt. Rajnandgaon C.G.

---- Appellant

Versus

1. Usant Kumar Verma And Ors. S/o Sukalu Verma Aged About 20 Years R/o Kulikasa, Post- Bhulatola, Tah. And P.S. Khairagarh, Distt. Rajnandgaon C.G.
2. The Oriental Insurance Compant Limited, Raipur, P.S. Raipur, Distt. Raipur C.G.
3. Ritu Raj Chandel S/o Late Sukhdeo Ram Chandel Aged About 44 Years R/o Kohalatola, Post, Police Station and Tahsil Chuikhadan, Distt. Rajnandgaon C.G.

---- Respondents

For Appellant:	Shri P. K. Dhurandhar, Advocate.
For Respondents No. 1 & 2:	None, though served.
For Respondent No. 3:	Shri N. K. Malaviya, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

20.08.2018

1. This miscellaneous appeal has been preferred by the owner under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') against the award dated 30.10.2013 passed by Additional Motor Accident Claims Tribunal, Khairagarh (hereinafter referred to as 'the Claims Tribunal') in Claim Case No. 23/2012 by which, the claim petition, filed by the applicant Rituraj Chandel, was allowed in part while awarding him amount of compensation to the tune of Rs. 84,469/- with 6% interest per annum from the date of claim petition till its realization.

2. Shri Praveen Dhurandhar, learned counsel for the appellant submits that while passing the award impugned, the Claims Tribunal has committed an illegality in holding that the driver of the offending vehicle

was not holding valid driving license merely on the ground that an endorsement authorizing him to drive the transport vehicle is not mentioned in his driving license (Ex.D.1) and, thereby erred in exonerating the insurance company from its liability. It is contended by him that the vehicle in question is a light motor vehicle and therefore, even in absence of endorsement as such, he is 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. In support, he placed his reliance upon the decision rendered in “**Mukund Dewangan Vs. Oriental Insurance Company Limited**” reported in (2017) 14 SCC 663.

3. On the other hand, Shri N. K. Malaviya, learned counsel for the Respondent No. 3/The Oriental Insurance Company Limited, while supporting the award impugned submits that the driver of the offending vehicle was authorized to drive the light motor vehicle only and, in absence of any endorsement authorizing him to drive the transport vehicle in his driving license (Ex.D.-1), it cannot be held that he was holding an effective and valid driving license to drive the same and as such, the learned Claims Tribunal has not committed any illegality in exonerating the Insurance Company from its liability.

4. I have heard learned Counsel for the parties and perused the entire record carefully.

5. A claim enumerated under Section 166 of the Act has been made by the claimant Rituraj Chandel by submitting *inter-alia*, that on 03.11.2011, he was going from his village Kohalatola to village Kukritola by his motorcycle and while returning to his village at about 1:30 P.M, his vehicle was dashed from the opposite side by the offending vehicle namely

Tata Magic bearing registration No. C.G.-08 T-0395 near the village Ghoghare. It is pleaded further in the claim petition that the said vehicle was owned by the appellant which was insured with the Oriental Insurance Company Limited, the respondent No. 3 herein, and was being driven rashly and negligently by respondent No. 1-Usant Kumar Verma. As a result of which, he (applicant-Rituraj Chandel) sustained grievous injuries on the ankle of his right leg, thigh, waist and also on his back side. A case was, thereafter, registered before the police station- Chuikhadan against the driver of the said offending vehicle under Sections 279, 337 and 338 of IPC in connection with the Crime No. 189/11. According to the claimant, he suffered permanent disability owing to the alleged accident and was admitted immediately into the hospital and operated by the doctor and has, thus, claimed total amount of compensation to the tune of Rs. 19,40,000/-.

6. The aforesaid claim was contested by the driver and owner of the offending vehicle by submitting *inter-alia*, that on the date of incident, the driver was carrying a seriously ill person and at the relevant point of time, the claimant himself drove his motor cycle rashly and negligently and dashed the said offending vehicle, therefore, he himself was liable for the alleged accident. It is pleaded further that the vehicle in question was insured with respondent No. 3/The Oriental Insurance Company Limited, therefore, in case of any liability being fastened, the insured would be indemnified by the said Insurance Company.

7. While opposing the claim, it is pleaded by respondent No. 3/ Oriental Insurance Company Limited that the claimant himself was responsible for the alleged accident and pleaded further that since the driver of the offending vehicle was not holding a valid and effective driving

license and was driving the same without permit, therefore, the insurance company cannot be held liable to indemnify the insured.

8. After considering the evidence led by the parties, learned Claims Tribunal has come to the conclusion that the alleged accident has occurred due to rash and negligent driving of the driver of the offending vehicle and observed further that in absence of any endorsement authorizing the driver to drive the transport vehicle in the alleged driving license (Ex.D-1), it cannot be held that the driver of the offending vehicle has possessed the effective and valid driving license and in consequence, exonerated the Insurance Company from its liability while awarding the compensation to the claimant to the tune of Rs. 84,469/- with 6% interest per annum from the date of filing of the claim petition till its realization.

9. While assailing the aforesaid findings, it is contended by learned counsel for the appellant/owner that the driver of the offending vehicle was holding a valid and effective driving license (Ex.D.-1) and merely for want of endorsement as such in the alleged driving license, it cannot be held that he was not holding an effective and valid driving license, irrespective of the fact that it was being used as a transport vehicle at the relevant time particularly when the vehicle in question was a light motor vehicle.

10. In order to ascertain the said fact as to whether the driver of the offending vehicle possessed the valid driving license or not, I examined the alleged driving license (Ex.D.-1) and perusal of it would show that he was authorized to drive the light motor vehicle. The vehicle in question is a Tata Magic which is a light motor vehicle as the unladen weight of the said vehicle is 1600 kg as evidenced by document (Ex.D-2). The vehicle in question is, therefore, a "light motor vehicle" as defined under Section

2(21) of the Act. It is true that there is no endorsement in the alleged driving license (Ex.D.-1) authorizing the driver of the offending vehicle to drive the transport 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 alleged driving license (Ex.D.-1) authorizing the driver of the offending vehicle to drive the said transport vehicle, it cannot be said that he was not possessing the valid and effective driving license to drive the said offending vehicle, as held by the learned Claims Tribunal.

11. 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” and who is driving the “transport vehicle” of that class in absence of such an endorsement, was considered and it was held therein at paragraphs 60.1, 60.2 and 60.4 as under:-

60.1. “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 Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 1994.

60.2. 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 roadroller, “unladen weight” of which does not exceed 7500 kg and holder of a driving license 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 roadroller, the “unladen weight” of which does not exceed 7500 kg. That is to say, no separate endorsement on the license is required to drive a transport vehicle of light motor vehicle class as enumerated above. A license issued under Section 10(2)(d) continues to be valid after

Amendment Act 54 of 1994 and 28-3-2001 in the form.

60.4. 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 license 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 license to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.

12. 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 as such in his driving license (Ex.D-1) 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, deserves 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 and, respondent No. 3/Oriental Insurance Company Limited cannot be exonerated from its liability. In consequence, the insurance company is liable to indemnify the insured/appellant and, the appellant is entitled to recover the amount of compensation as deposited by him in pursuance to the direction of this Court from the respondent No. 3/Oriental Insurance Company.

13. The appeal is allowed with the aforesaid direction. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE