AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 491 OF 2014

Shri Naveen Kumar Chopda, S/o Late Shri Gendmal Chopda, aged about 32 years, R/o F.C.I. Road, Tarbahar, P.O. & P.S. Tarbahar, Bilaspur, Civil and Revenue District Bilaspur (C.G.)

… Appellant

versus

1. Shri Hemprakash, S/o Mohitram Baghel, aged about 40 years, R/o Village- Beejabhat, P.S. Bhatapara (Grameen), Tehsil- Bhatapara, District Balodabazar (C.G.)
2. Naveen Kumar Mandal, S/o Swarna Bindeshwar Mandal, R/o Village Ashogi, P.S. Bairganiya, District Seemamadhi (Bihar), presently R/o F.C.I. Road, through Bhola Mandal, Tarbahar, District Bilaspur (C.G.)
3. Oriental Insurance Company Limited, Lal Ganga Complex, Kuchehri Chowk, Raipur, District Raipur (C.G.)

… Respondents

For Appellant	:	Mr. Vivek Chopda, Advocate.
For Respondent No.3	:	Mr. Deepak Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/01/2018

1. The present is an owner's appeal under Section 173 of the Motor Vehicles Act, 1988.

2. Challenge in the present appeal is to the award dated 25.3.2014 passed by the Additional Motor Accident Claims Tribunal, Bhatapara, in Claim Case No. 12/2012.

3. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.3,54,000/- to respondent no.1-claimant with interest thereon at the rate of 6% per annum from the date of presentation of the claim application. While passing the award, the learned Tribunal has exonerated the respondent no.3-insurance company of its liability and has fastened the liability for payment of compensation upon the present appellant *i.e.* the owner of the offending vehicle.

4. The point of issue involved in the instant case is, whether the vehicle belonging to the appellant, *i.e.*, a Tanker Truck, bearing registration no. CG10-ZB-0784, having a gross laden weight of 16200kg, falls within the definition of 'transport vehicle' under Section 10(2)(e) of the Motor Vehicles Act and that, whether a separate endorsement was required for a heavy goods vehicle to drive the said Tanker.

5. Facts of the case in brief are that on 30.1.2012 the deceased Ajeet Kumar who was travelling on a motorcycle was hit by a vehicle belonging to the present appellant, as a result of which Ajeet Kumar succumbed to the injuries sustained. The legal representative of deceased Ajeet Kumar filed a claim application which stood allowed vide the impugned award.

6. The driver of the offending vehicle, *i.e*., respondent no.2 Naveen Mandal, had a licence which was authorized to drive a Light Motor Vehicle (Non Transport) and also so far as the authorization for driving a ‘transport vehicle’ is concerned it had an endorsement of “LMV-GV, Transport”, and the issuing office was the RTO, Bilaspur. The endorsement so far as the validity for a transport vehicle was effective till 16.5.2014 from 2011 onwards and the date of accident in the instant case being 30.1.2012 means that, it was during the validity of the said licence. However, the Tribunal in the instant case has exonerated the insurance company on the ground that the driver of the offending vehicle did not have a separate endorsement authorizing him to drive a heavy goods vehicle.

7. It was the contention of the learned counsel for the appellant-owner that it is a case where the driver in the instant case had a valid licence for a transport vehicle and the validity of the licence also was till 16.5.2014 and as such he had a valid licence for a transport vehicle, and there was no requirement for separate endorsement for a heavy goods vehicle under the amended provisions of the Motor Vehicles Act. Further contention of the learned counsel for the appellant is that prior to 14.11.1994, the different categories under which the licence was to be issued were: **(*a*)** motor cycle without gear; **(*b*)** motor cycle with gear; **(*c*)** invalid carriage; **(*d*)** light motor vehicle; **(*e*)** medium goods vehicle; **(*f*)** medium passenger motor vehicle; **(*g*)** heavy goods vehicle; **(*h*)** heavy passenger motor vehicle; **(*i*)** roadroller; and **(*j*)** motor vehicle of a specified description. That, by virtue of the amendment made by the Act 54 of 1994, clauses **(*e*)** medium goods vehicle; (***f***) medium passenger motor vehicle; **(*g*)** heavy goods vehicle; and **(*h*)** heavy passenger motor vehicle, were omitted and in place a separate category namely **(*e*)** 'transport vehicle' was substituted. Thus, after 14.11.1994, according to the learned counsel for the appellant, the licence was not required to be issued separately for 'medium goods vehicle', 'medium passenger motor vehicle', 'heavy goods vehicle' or 'heavy passenger motor vehicle' and instead of common transport vehicle, licence was issued for authorization to drive such category of vehicle. Thus, the driver in the instant case having the endorsement so far as the authorization to drive a transport vehicle, the insurance company could not have been absolved of its liability and the finding of the Tribunal to that extent is bad in law and the same deserves to be set aside.

8. Learned counsel for respondent no.3-insurance company however opposing the appeal submits that it is a case where the category of the vehicle involved in the instant case is of 'heavy goods vehicle' and its laden weight was more than 18200kg and that does not fall within the category of ‘Light Motor Vehicle’. Therefore, there had to be a separate licence issued authorizing the driver of a permission to drive a heavy goods vehicle as well. In the absence of which the insurance company has been rightly exonerated of its liability. He further submits that in the present case, the driver’s licence (Exhibit D-1) also was in respect of 'Light Motor Vehicle', 'Light Motor Goods Vehicle' and 'Transport Vehicle', which according to the learned counsel for the insurance company would mean that the driver had a licence to drive only the goods vehicle and transport vehicle of the category which would fall otherwise in the class of Light Motor Vehicle and not under the Heavy Goods Vehicle which has a laden weight of more than 7500kg and thus the award seems to be proper, legal and justified and does not warrant interference and thus he prayed for the rejection of the appeal.

9. In the context of the aforesaid issue raised by the appellant, it would be relevant to refer to a recent Larger Bench's decision of the Hon'ble Supreme Court in the case of **Mukund Dewangan** v. **Oriental Insurance Company Limited, AIR 2017 SC 3668**, where in paragraphs 13 and 14 it has been held, as under:

> **"13.** Prior to amendment in 1994 licence for transport vehicle was clearly covered as per section 10(2) in five categories, i.e., Section 10(2)(d) light motor vehicle, Section 10(2)(e) medium goods vehicle, Section 10(2)(f) medium passenger motor vehicle, Section 10(2)(g) heavy goods vehicle and Section 10(2)(h) heavy passenger motor vehicle. The licence for 'light motor vehicle' has been provided in section 10(2)(d). The expression 'transport vehicle' has been inserted by virtue of Amendment Act 54/1994 in section 10(2)(e) after deleting four categories or classes of vehicles, i.e. medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, and heavy passenger motor vehicle. Earlier Section 10 did not contain the separate class of transport vehicles.
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> **14.** The definition of 'light motor vehicle' makes it clear that for a transport vehicle or omnibus, the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kgs. 'Gross vehicle weight' has been defined in section 2(15). The motor car or tractor or road roller, the unladen weight of any of which does not exceed 7500 kgs. as defined in section 2(48) of the Act, are also the light motor vehicle. No change has been made by Amendment Act of 54/94 in the provisions contained in sections 2(21) and 10(2)(d) relating to the light motor vehicle. The definition of 'light motor vehicle' has to be given full effect to and it has to be read with section 10(2)(d) which makes it abundantly clear that 'light motor vehicle' is also a 'transport vehicle', the gross vehicle weight or unladen weight of which does not exceed 7500 kgs. as specified in the provision. Thus, a driver is issued a licence as per the class of vehicle i.e. light motor vehicle, transport vehicle or omnibus or another vehicle of other categories as per gross vehicle weight or unladen weight as specified in section 2(21) of the Act. The provision of section 3 of the Act requires that a person in order to drive a 'transport vehicle' must have authorization. Once a licence is issued to drive light motor

> vehicle, it would also mean specific authorization to drive a transport vehicle or omnibus, the gross vehicle weight or motor car, road roller or tractor, the unladen weight of which, as the case may be, does not exceed 7500 kg. The insertion of 'transport vehicle' category in section 10(2)(e) has no effect of obliterating the already defined category of transport vehicles of the class of light motor vehicle. A distinction is made in the Act of heavy goods vehicle, heavy passenger motor vehicle, medium goods vehicle and medium passenger motor vehicle on the basis of 'gross vehicle weight' or 'unladen weight' for heavy passenger motor vehicle, heavy goods vehicle, the weight, as the case may be, exceed 12000 kg. Medium goods vehicle shall mean any goods carriage other than a light motor vehicle or a heavy goods vehicle; whereas 'medium passenger motor vehicle' means any public service vehicle or private service vehicle or educational institution bus other than a motorcycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle.
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> Thus, the newly incorporated expression 'transport vehicle' in section 10(2)(e) would include only the vehicles of the category as defined in section 2(16) - heavy goods vehicle, section 2(17) - heavy passenger motor vehicle, section 2(23) – medium goods vehicle and section 2(24) medium passenger motor vehicle, and would not include the 'light motor vehicle' which means transport vehicle also of the weight specified in section 2(21).**"**

10. The plain reading of the aforesaid would by itself further clarify the issue involved in the present case inasmuch as in paragraph 13 the Hon'ble Apex Court also has admitted the aspect of the deletion of the four categories of class of vehicle for which separate endorsement was required to be issued prior to 14.11.1994 and which was no longer is required subsequent to the amendment brought in the Act by way of introducing category called 'transport vehicle'. Similarly, in paragraph 14, the Hon'ble Supreme Court has further highlighted the aspect that the newly incorporated expression 'transport vehicle' would include all the four categories of the vehicle which stood deleted with effect from the amendment brought into force in the Act on 14.11.1994.

11. Given the aforesaid factual matrix of the case as also the judgment of the Hon'ble Supreme Court in **Mukund Dewangan** (supra), what reveals is that subsequent to 14.11.1994 the licence which could be issued in favour of a driver authorizing him to drive a vehicle would be of those categories which are now envisaged in Section 10(2) of the Motor Vehicles

Act and the two categories of vehicle which are relevant for adjudication of the present dispute would be 10(2)(d) a ‘Light Motor Vehicle’ and 10(2)(e) a ‘Transport Vehicle’.

12. In the licence (Exhibit D-1) which is an admitted document before the Tribunal, the endorsement made is authorizing him to drive a Light Motor Vehicle (Non Transport) and in addition it had the endorsement for a ‘LMV-GV’, which means a Light Motor Vehicle - Goods Vehicle, and ‘Transport’, which for all practical purposes has to be presumed that the endorsement is authorizing him to drive a transport vehicle inclusive of all categories of vehicle which stood deleted by way of the amendment brought into force from 14.11.1994 onwards.

13. Another aspect which cannot be lost sight of is that the insurance company in the instant case has not led any evidence to prove either the aspect of the driver not having a valid licence nor has it led any evidence to substantiate their contentions so far as the licence not being valid to drive a transport vehicle.

14. In the said given circumstances, this Court is of the opinion that the driver *i.e*. respondent no.2 in the instant case, had a licence with an endorsement to drive a transport vehicle as well on the date of accident and that the Tribunal was not justified in exonerating the respondent no.3-insurance company of its liability, therefore, the finding of the Tribunal to this extent is set aside.

15. It is ordered that it shall be the liability of the insurance company to indemnify the appellant-owner jointly and severally so far as the award is concerned and it shall be the liability of the insurance company to pay the entire amount awarded. Whatever amount that has been deposited by the appellant while filing of the appeal, the same shall be refunded by the insurance company and the insurance company shall pay the balance amount before the Tribunal.

16. The appeal stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

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