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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 301 of 2013

- The Oriental Insurance Company Limited, through the Branch Manager, Chawla Complex, Sai Nagar, Devendra Nagar, Raipur, P.S. Raipur, Distt. Raipur C.G., Chhattisgarh (Insurer of Auto No.C.G. 04 T 3342)

---- Appellant

Versus

1. Hirmat Bai Dewangan W/o Vishnu Dewangan, aged about 35 Years R/o Hanuman Nagar, Near Durga Mandir, Near Lakhenagar Dhal, P.S. Purani Basti, Raipur, Distt. Raipur C.G.

2. Prahlad Sahu S/o Awadhram Sahu R/o Karma Chowk, Ramnagar (House Of Malikram), P.S. Gudhiyari, Distt. Raipur C.G.

---- Respondents

For Appellant	Shri H.S. Patel, Advocate.
For Respondents	Shri Sanjay Pathak, Advocate on behalf of Shri Awadh Tripathi, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

26/09/2018

1. This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') questioning the award dated 04.01.2013 passed by the Seventh Additional Motor Accident Claims Tribunal Raipur in Claim Case No. 02/2012, by which, the learned Claims Tribunal while allowing the claim petition in part has fastened the liability upon the insurance company.

2. Claimant/Respondent No.1 Hirmat Bai Dewangan filed an application under Section 166 of Motor Vehicles Act, 1988, before

the learned Claims Tribunal, claiming the compensation to the tune of Rs. 4,60,000/- with 12% interest from the appellant on account of injury sustained to her. The learned claims Tribunal awarded compensation to the respondent No.1 to the tune of Rs.26,000/- with 6% interest. He further submits that while passing the award impugned the learned Claims Tribunal has committed an illegality in fastening the liability upon the insurance company. According to him, the driver of the offending vehicle was not authorized to drive the vehicle in question as he was entitled to drive the light motor vehicle only and, in absence of any endorsement he was driving the same, therefore, the insurance company, under such circumstances, cannot be held liable.

3. On the other hand, learned counsel appearing for the respondents supported the award and submitted: in the facts and circumstances of the case, the Tribunal has rightly fastened the liability of payment of compensation upon the insurance company, which does not call for any interference.

4. I have heard both the parties and perused the entire record carefully.

5. A claim enumerated under Section 166 of the Act has been made by the claimant Hirmat Bai, Respondent No.1, by submitting *inter-alia*, that on 03.06.2011, she was dashed by respondent No.2 Prahlad Sahu, who driving the offending auto rashly and negligently. Due to said accident, the claimant alleged to sustain injury on her head, hand, leg and face and other parts of her body and has thus claimed total amount of compensation to the tune of

Rs.4,60,000/-.

6. The aforesaid claim was contested by the Respondents Nos .1 & 2, i.e. the claimant and Driver & owner of the vehicle in question, on the ground that no accident as such occurred with the said offending vehicle and in fact, it was due to rashness and negligent driving by the respondent No.2 himself. It is contested further on the ground that the vehicle in question was insured with the appellant/Insurance Company and was being driven by said Prahlad Sahu, who was possessing the effective and valid driving licence, therefore, in case of any liability being fastened, the same would be indemnified by the appellant/Insurance Company.

7. The Appellant/ Insurance Company Limited has contested the claim mainly on the ground that the driver of the offending vehicle, namely, Prahlad Sahu was not having effective and valid driving licence, and therefore, was not authorized to drive the same. According to him, the vehicle in question was insured for commercial use (Auto) and the said driver was not authorized to drive the same.

8. After considering the aforesaid pleadings of the parties and evidence as led by the parties, learned Claims Tribunal has come to the conclusion that the alleged accident has occurred on 03.06.2011 due to rashness and negligent driving by said Prahlad Sahu, the driver & owner of the offending vehicle, namely, Auto bearing its registration No. C.G.04/T/3342, which was insured for commercial use. It held further that the claimant has sustained

injuries on her head, hand, leg, face and other parts of the body and that by holding further that the vehicle in question was not being driven in violation of the terms and conditions of the Insurance Company has fastened the liability upon the insurance company while awarding total amount of compensation to the tune of Rs. 26,000/- with 6% interest per annum from the date of filing of the claim petition till its realization.

9. In order to establish the fact that the driver of the offending vehicle was not possessing the effective and valid driving licence, the appellant/insurer has examined Rajesh Bhargav Regional Transport Office Licence Clerk as NA-W-1, R.K. Xalxo as NA.W.-2 posted as Assistant Grade at Regional Transport Office and Jitendra Kumar Sinha as NA.W-3. A bare perusal of their statements would show that said driver (Prahlad Sahu) was authorized to drive the light motor vehicle and was the vehicle in question was the transport vehicle. It is true that when the alleged accident has taken place, at that particular time, the driver was authorized to drive the light motor vehicle and was not authorized to drive the transport vehicle as stated by the said witnesses. It is, however, pertinently to be noted here that the alleged offending vehicle “Auto” bearing its registration No. CG-04/T/3342 insured as “Passengers Carrying Commercial Vehicle” was not a heavy goods vehicle. It is a light motor vehicle as defined under Section 2(21) of the Act. Therefore, merely on this ground, it cannot be held that the driver of it, i.e. Prahlad Sahu, who was possessing the driving licence to drive the light motor vehicle, was not entitled to drive the said offending vehicle. Even no endorsement as such

is needed. Even otherwise, the burden to prove that the driver was not possessing the effective and valid driving licence to drive the said offending vehicle was heavily upon the Insurance Company. However, the Insurance Company has failed to produce any cogent and reliable evidence to prove the same.

10. At this juncture, the principles laid down in "***Mukund Dewangan Vs. Oriental Insurance Company Limited"*** reported in **(2017) 14 SCC 663**, is to be noted, wherein Hon'ble the Supreme Court, has held that even in absence of any endorsement as such, the driver who was authorized to drive the light motor vehicle would be entitled to drive the vehicle of same kind. Paragraphs 60.1, 60.2 and 60.4 are relevant for the purpose and reproduced hererin 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.
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> **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.
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> **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.

11. By applying the aforesaid principles to the case in hand, it is clear that the driver of the offending vehicle was authorized to drive the said offending vehicle, and the finding so recorded by the learned Claims Tribunal in this regard, therefore, deserves to be and is hereby affirmed.

12. Consequently, I do not find any substance in this appeal. The appeal is accordingly dismissed. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh