

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 08.08.2018****Delivered on 14.08.2018****Misc. Appeal (C) No. 946/2013**

(Arising out of judgment/decreed dated 25.07.2013 passed in MAC Case No. 48/2012 by the
Second Additional Motor Accident Claims Tribunal, Rajnandgaon)

- The Oriental Insurance Co. Ltd. Rajnandgaon, Thru- The Branch Manager, Branch Office Rajnandgaon, P.S. And Distt. Rajnandgaon, Chhattisgarh

---- Appellant

Versus

1. Sushil Bhonde S/o Late Maruti Bhonde Aged About 34 Years R/o Sulejhari, Nagbhind, Post, P.S. And Tah. Nagbhind, Distt. Chandrapur , Maharashtra
2. Santosh Bhonde S/o Late Maruti Bhonde Aged About 38 Years R/o Sulejhari, Nagbhind, Post, P.S. And Tah. Nagbhind, District : Chandrapur, Maharashtra
3. Santosh S/o Ramsewak Aged About 27 Years R/o Bheemnagar, Ward No. 07, Badhiyatola, P.S. And Tah. Dongargarh, District : Rajnandgaon, Chhattisgarh
4. M/s Rajnandgaon Gurukul Private Limited Thru- The Manager, Yugantar Public School, Rajnandgaon, P.S. And District : Rajnandgaon, Chhattisgarh

---- Respondents

 For Appellant : Shri H.S. Patel, Advocate
 For Respondents No.1 and 2: None.
 For Respondents No.3 and 4: Shri Aditya Bharadwaj, Advocate

Hon'ble Shri Justice Sharad Kumar Gupta**CAV JUDGMENT**

1. In this MAC the challenge levied is to the award dated 25-7-2013 passed by the 2nd Additional Motor Accident Claims

Tribunal, Rajnandgaon in Motor Accident Claim Case No. 48/2012 whereby and whereunder the appellant has also been held liable along with respondents No. 3 and 4 jointly and severally to pay the compensation Rs. 1,82,000/- to respondents No. 1 and 2 within a period of one month from the date of award and also to pay interest at the rate of 6 % per annum from the date of application i.e. 19-10-2011 till its realization.

2. This is admitted by respondent No. 4 that he is the owner of school bus bearing registration No. CG 08 B 5120. Respondent No. 3 was the driver of the said vehicle at the time of the accident. Said vehicle was insured by appellant. On 1-4-2011 at village Indamara, the said bus dashed one person, as a result of which he died. This is also admitted by respondents No. 3 and 4 that at the time of accident respondent No. 3 had a valid driving licence.
3. In brief, the respondents No. 1 and 2 case is that driver of the said vehicle driven it rashly and negligently. Their brother Shankar Bhonde died in that accident.
4. In brief, the case of the respondents No. 3 and 4 is that accident was not occurred due to rash and negligent driving of respondent No. 3, they are not liable to pay compensation.
5. In brief, the case of the appellant/insurance company is that respondent No. 3 had not a valid driving licence to drive the transport vehicle at the time of accident. Thus, liability cannot be fastened on him to pay the compensation. The respondents No. 1 and 2 were not dependent upon the deceased, thus, they are

not entitled to get compensation from him.

6. After the conclusion of the trial said claims tribunal passed the aforesaid award. Being aggrieved the appellant has preferred this appeal.
7. Counsel for the appellant vehemently argued that at the time of the accident respondent No. 3 was holding learning licence and he was not competent to drive the heavy service transport vehicle bus. He had also violated the rule 3 of Central Motor Vehicle Rules, 1989 (in brevity 'Rules, 1989'). The respondent No. 4 had deliberately violated the condition of insurance policy. Thus, the appellant cannot be held liable to pay the compensation to the respondents No. 1 and 2.
8. Counsel for the respondents No. 3 and 4 argued that respondent No. 3 had a valid driving licence at the time of the accident. Thus, the appellant is liable to pay the compensation.
9. None appears for the respondents No. 1 and 2.

10. **Points for determination:-**

There are following points for determination in the case :-

- (I) Whether respondents No. 1 and 2 were not dependent upon the deceased, thus they are entitled to get any compensation from appellant?
- (ii) Whether the appellant No. 3 had not a valid and effective driving licence to drive the offending bus at the time of the accident ?
- (iii) Whether the offending vehicle was driven violating the terms and conditions of the Insurance Policy?

(iv) Whether the appellant cannot be held liable to pay the aforesaid compensation along with the respondent No. 3 and 4 jointly and severely ?

(v) Relief and cost ?

Point for determination No.1 findings with reasons:-

11. In the matter of **National Insurance Company Ltd.**

Chandigarh v. Nicollertra Rohtagi and others {2002 (7) SC

456} the Hon'ble Supreme Court has observed that where the

conditions precedent embodied in Section 170 of the Motor

Vehicle Act, 1988 (hereafter called as 'Act, 1988') are satisfied

and the accidents claims tribunal passes an order permitted the

insurer to avail of the grounds available to the person against

whom the claim is made, the insurer can contest the claim on

such grounds and in case of an adverse award can file an

appeal challenging the quantum of the compensation or the

findings regarding negligence of the offending vehicle.

Otherwise, mere omission on part of the insured to file an

appeal under Section 173 of the Act, 1988 insurer would not

entitle to file an appeal challenging the quantum of the

compensation or the findings regarding negligence.

12. The Tribunal had not permitted appellant to contest the claim on

all or any of the grounds which were available to the respondents

No. 3 and 4. Thus, in this circumstance, looking to the aforesaid

judicial precedent laid down in **Nicollertra Rohtagi (supra)**,

appellant in this appeal cannot challenge that respondents No. 1

and 2 were not dependent upon deceased.

Point for determination No.2 findings with reasons:-

13. As per the Motor Insurance Certificate Cum Policy Schedule Ex. D3 the offending vehicle was L.P. 407 Turbo Bus, seating capacity was 20+1 and any person can drive the said vehicle who holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence.
14. As per the Ex. D1 driving licence, respondent No.3 was authorised to drive vehicles L.M.V., M.C.W.G., TRANS. Validity of L.M.V., M.C.W.G. upto 08.04.2027. It was issued on 09.04.2007. As per the Ex.D4 extract of driving licence, first time driving licence was issued for category M.C.W.G., L.M.V. on 09.04.2007 and it was valid upto 08.04.2027.
15. From Ex. D1 and Ex.D4 it is unequivocal that at the time of the accident i.e. 01.04.2011 respondent No. 3 had a driving licence for L.M.V.
16. Section 3 of the Act, 1988 deals with the necessity for driving licence which is extracted hereunder :-

“Section 3. Necessity for driving licence – “S.3. Necessity for driving licence.-- (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than 1[a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.

(2) The conditions subject to which sub-section (1) shall not

apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.”

17. It is apparent from the provisions contained in Section 3 of the Act, 1988 that it is necessary to have a licence to drive a motor vehicle in any public place in order to drive a transport vehicle, the driving licence must specifically entitle him to do so.

18. Driving licence has been defined in Section 2(10) of the Act, 1988. The Section is extracted hereunder :-

“Section 2(10) “Driving Licence” means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle, or a motor vehicle any specified class or description.”

19. It is apparent from the definition of driving licence that licence is issued authorizing the person specified in the licence to drive a motor vehicle or a motor vehicle of any specified class or description. Significantly, the definition of “Driving Licence” categories the licence of any specified class or description.

20. The provisions of Section 10 before the amendment made by Amendment Act 54 of 1994 is extracted hereunder:-

“Section 10. Form and contents of licence to drive --(1)

Every learner's licence and driving licence, except a driving licence issued Under Section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence

shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

- (a) motorcycle without gear;
- (b) motorcycle 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;
- (j) motor vehicle of a specified description.”

21. It is apparent from the pre-amended provision which existed before the amendment made in the year 1994 that class or description of the vehicle for which licence used to be issued were categorised *inter alia* as light motor vehicle, medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle and motor vehicle of a specified description. Transport vehicle was not a separate class.

22. The provision of Section 10 after amendment made by Amendment Act 54 of 1994 is extracted hereunder :-

“Section 10 – Form and contents of licence to drive –

(1) Every learner's licence and driving licence, except a driving licence issued Under Section 18, shall be in such form and shall contain such information as may be

prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

- (a) motorcycle without gear;
- (b) motorcycle with gear;
- (c) invalid carriage;
- (d) light motor vehicle;
- (e) transport vehicle;
- (f) – (h)
- (i) road-roller;
- (j) motor vehicle of a specified description.”

23. As per the Section 2 (21) “light motor vehicle” means 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 Kg.

24. As per the Section 2 (15) of the Act, 1988 “ gross vehicle weight” means in respect of any vehicle the total weight of the vehicle and load certified and registered by the Registry authority as per permissible for that vehicle.

25. As per the Section 2 (48) of the Act, 1988 “unladen weight” means the weight of a vehicle or trailer including all equipments ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant and where alternative parts or bodies are used the unladen weight of the

vehicle means the weight of the vehicle with the heaviest such alternative part or body.

26. As per the Section 2(47) of the Act, 1988 “transport vehicle” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

27. In **Mukund Dewangan v. Oriental Insurance Company Ltd.** {2017 SAR (Civil) 1008} Hon'ble Supreme Court has laid down the following judicial precedents :-

“(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.”

28. In the case in hand, appellant failed to prove that the gross vehicle weight of the offending vehicle was exceeding 7500 Kg. Thus, this Court finds that the gross vehicle weight of the offending vehicle was less than 7500 Kg.

29. Looking to the above mentioned facts and circumstances of the

case, and aforesaid judicial precedents laid down in **Mukund Dewangan (supra)**, this Court finds that the offending vehicle was “light motor vehicle” and Ex. D1, Ex.D4 show that appellant had a driving licence to drive class of “light motor vehicle” as provided in Section 10(2)(d) of the Act, 1988 at the time of the accident, and was competent to drive offending vehicle whose gross weight was not exceeding 7500 Kg.

30. After the appreciation of the evidence discussed herebefore this Court finds that appellant had a valid and effective driving licence to drive the offending vehicle at time of accident.

Point for determination No. 3 findings with reasons :-

31. This has been earlier decided that at the time of accident respondent No. 3 had possessed a valid and effective driving licence, thus, appellant failed to prove that at the time of the accident the offending vehicle was driven violating the terms of the Insurance Policy.

Point for determination No. 4 findings with reasons :-

32. This has been earlier decided that respondent No.3 had a valid and effective driving licence and the offending vehicle not driven violating the any terms and conditions of the Insurance Policy. Thus, the appellant failed to prove that he cannot be held liable to pay the aforesaid compensation along with the respondent No. 3 and 4 jointly and severely.

Point for determination No. 5 findings with reasons :-

33. After the complete and full appreciation of the evidence discussed herewith this Court finds that appellant failed to

establish his appeal. The instant appeal is devoid of merits and deserves to be and is hereby dismissed.

34. Appellant shall bear his own costs as well as costs of respondents.

Sd/-

(Sharad Kumar Gupta)
Judge

Kishor