

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1283 of 2018**

1. The New India Assurance Company Limited, Branch Office Ambikapur, District Surguja C.G.

---- Appellant**Versus**

1. Sangla S/o Virsay, aged about 65 years,
2. Sukhmen W/o Sangla, aged about 58 years,
3. Shila W/o Dharamsai, aged about 20 years,
4. Santoshi D/o Sangla, aged about 18 years,
5. Suraj S/o Sangla, aged about 15 years (minor) through natural guardian father claimant No.1 Sangla

All R/o Village Karri Chalgali, Tahsil Balrampur, District Balrampur C.G.

6. Yogendra Gupta S/o Kanhai Gupta, aged about 38 years, Caste Rouniyar, R/o Village Karri Chalgali, Tashil Balrampur, District Balrampur C.G.

---- Respondents

For Appellants	:	Shri Pankaj Agrawal, Advocate.
For Respondents	:	None.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****26.11.2018**

1. This is an appeal by the Insurance Company against the award dated 16th March, 2018 passed by the Additional Motor Accident Claims Tribunal, Pratappur, District Surajpur, C.G. in claim case No. 38 of 2017 whereby the Tribunal in a death case has awarded a total compensation of Rs. 9,77,200/- with interest at the rate of 6 percent from the date of application till its realization, fastening the liability on the non applicants jointly and severely.

2. As per averments made in the claim petition, on 11.05.2017 while deceased Dharamsai was driving the vehicle pick up bearing registration No. CG15-AC-1433, all of a sudden, due to bursting of the front tyre and tube of the vehicle it turned turtle. As a result of thereof Dharamsai suffered grievous injuries and died during treatment in the hospital on 11.05.2017.
3. On claim petition being filed by the claimants under Section 166 of the Motor Vehicle Act, the learned Tribunal considering the evidence led by both the parties awarded compensation as mentioned above.
4. Learned counsel for the appellant submits that the Tribunal was not justified in fastening the liability on the insurance company because at the time of accident the Driver/deceased was not having a valid and effective licence sine the vehicle was a transport vehicle whereas, the driver was holding LMV for non transport vehicle. He has also assailed the award on the ground that contributory negligence of the deceased has not been considered by the Tribunal. Lastly, he submits that the amount awarded by the Tribunal is also on the higher side and deserves to be reduced suitably.
5. Heard learned counsel for the appellant and perused the material available on record including the impugned award.
6. As regards the competence of the driver to drive the vehicle in question, the issue raised by the insurance company has already been settled by the Hon'ble Supreme Court in the matter of **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in **(2017) 14 SCC 663** that a person holding LMV (non-transport) is competent to drive the transport vehicle even without there being any endorsement to this effect in the driving licence if the unladen weight

of the vehicle does not exceed 7,500 Kg. The relevant part of the aforesaid decision is being reproduced as under:-

“Held, the effect of amendment of Form 4 by insertion of “transport vehicle” related only to 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 – There was 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 – Further held, even otherwise the Form could not control the substantive provisions carved out in Ss. 10(2)(d) and 10(2)(e) and the interpretation of the Form has also to be in tune with the Statement of Objects & Reasons and the provisions of the Act inserted by virtue of the amendment – Interpretation of Statutes – Basic Rules – Harmonious Construction – Subordinate/Delegated Legislation/Rules Under the Act – Central Motor Vehicles Rules, 1989, Form 4 and R.14 (before and after 28.03.2001)”

In view of above, this Court finds no substance in the argument of the insurance company that the driver was not having a valid and effective driving licence to drive the vehicle in question on the date of accident as the offending vehicle was admittedly a Light Goods Vehicle having unladen weight of 1190 kg as per Vehicle Registration Certificate.

7. So far as contributory negligence of the deceased is concerned, no evidence has been adduced by the insurance company to prove that the deceased was in any manner negligent in causing the accident. AW-3 Bandhan Ram was accompanying the deceased at the time of accident has categorically stated that the deceased was driving the vehicle with a moderate speed and the accident occurred due to bursting of the front tyre and tube. The statement of this witness gets support from the document of Ex.P-5 and the police statement as well. Thus, there is nothing on record which could suggest that the

deceased was negligent in causing the accident.

8. On the basis of aforesaid discussions, this Court finds that the Tribunal was fully justified in passing the impugned award and fastening the liability on the appellant/insurance company along with non applicant No.1 owner jointly and severely. Accordingly, the appeal being without any substance is liable to be dismissed and is hereby dismissed.
9. As for that the quantum of compensation, the Tribunal considering the fact that the accident occurred on 11.05.2017, there was no evidence adduced by the claimants to support their contention that the deceased was earning Rs.2,60,000/- per annum from the different sources has rightly considered the income on notional basis at Rs.4,500/-. As regards the other assessment made by the Tribunal, the same is based on the judgments of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, and ***Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121***, this Court finds no illegality in the assessment of compensation made by the Tribunal in the aforesaid manner.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh