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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No.1255 of 2018

The Oriental Insurance Company Limited, Madina Building, Katcheri Chowk Jail Road Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Appellant

Versus

1. Dhansai Sahu S/o Ramnath Sahu Aged About 40 Years R/o Village Tamasivani, Abhanpur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Vipin Kumar Shukla S/o Shri Vinod Kumar Shukla Aged About 24 Years R/o Rameshwar Nagar, Bhanpuri, Police Station Khamtarai District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Appellant: Shri Raj Awasthi, Advocate.

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

11.09.2018

1. Heard on IA No.1/2018, an application for condonation of delay of 26 days in filing the Appeal.

2. On due consideration, the same is allowed. Delay of 26 days in filing the Appeal is condoned.

3. Also heard on admission.

4. This Miscellaneous Appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') questioning the award dated 31.03.2018 passed by the 1st Additional Motor Accidents Claims Tribunal, Raipur (for short 'the Claims Tribunal') in Claim Case No.142/2015 by which, the learned Claims Tribunal, while allowing the claim in part, has fastened the liability upon the Insurance Company.

5. Shri Raj Awasthi, learned Counsel for the Appellant submits that the award impugned fastening the liability upon the Insurance Company is

apparently contrary to law. According to him, learned Claims Tribunal ought to have held that the driver of the offending vehicle was not holding valid and effective driving license to drive the vehicle in question and erred further in not considering the permit (Ex.D-2) in its proper manner and thereby erred in fastening the liability upon the Insurance Company.

6. I have heard learned Counsel for the Appellant and perused the entire record carefully.

7. A claim enumerated under Section 166 of the Act has been made by the Claimant Dhansai Sahu alleging *inter alia* that on 23.02.2014, he was going by Hero Honda motorcycle along with his friend from Aarang to Tamaseoni and as soon as he reached near culvert, which is situated between Odka and Bhilai, the said motorcycle was dashed by a three wheeler i.e. “auto-rickshaw” bearing its registration No.CG 04 T 7282 which was coming from the opposite side. It is pleaded in the Claim Petition that at the relevant time, the vehicle in question was being driven by its owner namely Vipin Kumar Shukla and owing to his rash and negligent driving, the alleged accident occurred, in which, the Claimant has sustained serious injuries and was therefore, admitted immediately into the hospital. He submits further that he is a driver by profession and used to earn Rs.300/- per day and used to get Rs.100/- as a daily allowance and has thus claimed a total sum of Rs.12 lacs on various heads. The claim so made was contested by the said Vipin Kumar Shukla, the owner of the said offending vehicle on the ground that no incident as such has taken place by his vehicle and contested further on the ground that since it was insured by the Appellant-Insurance Company, therefore, in case of any liability being fastened, the same would be indemnified by the said Insurance Company.

8. Appellant/Oriental Insurance Company has contested the aforesaid claim on the ground that the vehicle in question was being driven in utter violation of the insurance policy as the driver who was authorized to drive the light motor vehicle was not entitled to drive the same and contested further on the ground that since the vehicle in question was being driven beyond the permissible limit as prescribed under the permit (Ex.D-2), therefore, the Insurance Company, under such circumstances, cannot be held liable.

9. After considering the pleadings of the parties and that by considering the evidence adduced in this regard, learned Claims Tribunal has awarded the amount of compensation to the tune of Rs.87,500/- with 9% interest p.a. from the date of filing of the Claim Petition till its realization. While awarding the compensation as such, it held further that the Insurance Company has failed to prove that the vehicle in question was being driven in violation of the terms and conditions of the insurance policy, as alleged. In consequence, the learned Claims Tribunal, while fastening the liability upon the Insurance Company, has awarded the said amount of compensation payable to the Claimant.

10. In order to establish the fact that the vehicle in question was being driven in violation of the insurance policy, the insurer has examined one of its witnesses namely Rajesh Kumar Bharadwaj, who is an employee of the Regional Transport Authority, Raipur. According to the statement of the said witness, the driver of the offending vehicle was not authorized to drive the said offending vehicle as there is no endorsement in his driving license (Ex.D-1) to drive the same. However, the said statement cannot be taken into consideration in order to arrive at a conclusion that he was not authorized to drive the alleged offending vehicle. It is an undisputed fact that the vehicle in

question "Auto Rickshaw" was a light motor vehicle and therefore, in absence of any endorsement as such, it cannot be held that he was not authorized to drive the same.

11. At this juncture, the principles laid down in *"Mukund Dewangan Vs. Oriental Insurance Company Limited"* reported in **(2017) 14 Supreme Court Cases 663** is to be noted as the question 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.
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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.

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), it cannot be held that he was not possessing the valid and effective driving license at the relevant point of time. The finding so recorded by the learned Claims Tribunal in this regard is, therefore, deserves to be and is hereby affirmed. 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 as contended by Shri Awashti and the Appellant-Oriental Insurance Company Limited cannot be exonerated from its liability

13. The second contention of Shri Awasthi that the offending vehicle was being driven beyond the permissible limits as prescribed under the permit (Ex.D-2) is also noted to be rejected as the Insurance Company has failed to adduce any cogent and reliable evidence in this regard. In such an eventuality, it cannot be held that the vehicle in question was being driven in violation of the terms and conditions of the Insurance Company as alleged by the Appellant. The finding of the learned Claims Tribunal in this aspect also deserves to be and is hereby affirmed.

14. In view of the foregoing discussions, I do not find any substance in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge

Priya