NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 694 of 2015

Judgment reserved on : 01.08.2018

Judgment delivered on : 09.08.2018

Branch Manager, Reliance General Insurance Company Limited, Khanuja Tower Ground, Floor- B/H Flershan India, D.D.P. Standard Maruti, Jabalpur, M.P.

At Present- 5th Floor, National Corporate Park, G.E. Road, P.S. Saraswati Nagar, Civil & Revenue District- Raipur, Chhattisgarh.

---- Appellant

Versus

1. Ayush Agrawal S/o Shri Shrawan Kumar Agrawal, Aged About 7 Years (Minor) R/o Village Patna, Tahsil Baikunthpur, at Present Gadhelpara, Baikunthpur, Tahan Baikunthpur, Civil & Revenue District - Koria, Chhattisgarh (Res. No. 1 is a minor and represented through his father Shri Shrawan Kumar Agrawal).

2. C.P. Shoma Shekhran S/o Late C.B. Prabhkar, Aged About 52 Years, profession- service, R/o B-6, MPEB Colony, Bhandar, Birsinghpur, Thana Pali, District- Umarriya, Civil & Revenue District- Umariya (M.P.)

3. Shyam Narayan Dwevedi S/o Shri Ram Bihari Dwevedi Aged About 52 Years, Profession vehicle owner, R/o Village Naurojabad, Ward No. 5, Thana Naurojabad, District- Umarriya, Civil & Revenue District- Umariya Madhya Pradesh.

---- Respondents

For Appellant	:	Mr. Rohitashva Singh, Advocate.
For respondent No. 1	:	None.
For Respondent No. 2	:	Mr. R.K. Gupta, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV ORDER

1. This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 against the award dated 12.02.2015 passed by learned Additional Motor Accident Claims Tribunal (FTC), Baikunthpur, District- Koriya (C.G.) in Claim

Case No. 48/2013 wherein, the said tribunal awarded a sum of Rs. 10,25,000/- on account of injury caused in a motor accident dated 24.11.2012.

2. As per the claim case, on 24.11.2012 at about 5.00 p.m., the injured/ respondent No. 1 was standing near Ambikapur-Manendragarh national highway with his mother, at the same time, respondent No. 2 who was driver of one Bolero vehicle bearing registration No. MP18-C-2632 dashed respondent No. 1 by driving the vehicle negligently and thereby sustained grievous injuries in his body.

3. Learned counsel for the appellant/insurance company submits that respondent No. 2 who was driver of the vehicle holding driving licence for Light Motor Vehicle, but not holding to drive transport vehicle, therefore, he was not authorized to drive the said Bolero vehicle which is a transport vehicle.

4. In view of this Court, the issue is no longer *res integra* as per the law laid down by Hon'ble Apex Court in the matter of **Mukund Dewangan Vs. Oriental Insurance Company Ltd.** reported in **(2017) 14 SCC 663**, wherein, Hon'ble the Apex Court held that the “light motor vehicle” as defined under Section 2(21) of the Motor Vehicles Act, 1988 includes transport vehicle or omnibus, the gross vehicle weight of either of which does not exceed 7500 kgs. and it includes tractor or road roller, unladen weight of, which, does not exceed 7500 kg., and holder of a driving licence to drive class of “light motor vehicle” is competent to drive the transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. i.e., to say that no separate endorsement on the licence is required to drive the transport vehicle of light motor vehicle enumerated above. Hence, the argument advanced on behalf of the appellant is not sustainable.

5. It is contended on behalf of the appellant that the said Bolero vehicle was driven as taxi and no permit was produced before the tribunal therefore, breach of insurance contract is established.

6. In view of this Court, the argument is not substantiated by evidence. No one deposed before the tribunal that the vehicle was driven as taxi and any fare was taken from persons sitting in the said vehicle.

7. From the statement of Shyam Narayan Dwivedi, NAW-1 who is owner of the vehicle, it appears that the vehicle is not used as taxi at the time of incident. No one examined before the tribunal to establish that any fare is received. It appears that no one was sitting as passenger, therefore, argument on behalf of the insurance company is not sustainable.

8. In the present appeal, an application of cross-objection under Order 41 Rule 22 of the Code of Civil Procedure, 1908 is also filed by respondent No. 1 for enhancing the award amount on the ground that multiplier is not applied properly and no amount was awarded for future income, but no one pressed their argument before this Court, therefore, the application for cross-objection is rejected for want of prosecution.

9. Considering all the facts and the material available on record, this Court is of the view that the ground raised by the appellant is not sustainable and the award passed by the tribunal needs no modification.

10. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun