

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 388 of 2013**

Mahendra Singh Hora S/o Sohan Singh Hora Aged About 70 Years R/o.
Trilochan Bhavan, Shyam Nagar, PS, Tah & Distt. Raipur C.G.

---- Appellant**Versus**

1. Ramesh Kumar Kurre S/o Bhudharu Ram Aged About 34 Years R/o
New Changora Bhata, Ayodha Nagar, P.S. D.D. Nagar, Tah. And Distt.
Raipur C.G.
2. Lalluram Dhruw S/o Baldeo Prasad Aged About 31 Years R/o Gosai
Para, Ratanpur, P.S. Ratanpur, Distt. Bilaspur, Present Add. -
Rajudhaba, Mandir Hasaud, P.S. Mandir Hasaud, Raipur C.G.
3. The New India Insu. Co. Ltd. S/o Thru- Divisional Manager, Division
Office, Madina Building, Jail Road, Raipur C.G.

---- Respondents

For Appellant	:	Shri Yashwant Thakur, Advocate.
For Respondent Nos.1.	:	Shri Sikhar Sharma & Ms. Pushpalata Khalkho, Advocates on behalf of Shri Raghvendra Pradhan, Advocate.
For Respondent No.2	:	None.
For Respondent No.3	:	Shri Raj Awasthi, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****20/06/2019**

- 1 Appellant - owner of Tata DI bearing registration No.CG04/JB/2413
(hereinafter shall be referred to as "offending vehicle") has filed this
appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the
Act of 1988') challenging award dated 28.08.2012 passed by learned 5th
Additional Motor Accident Claims Tribunal, Raipur, District Raipur, C.G

(for short 'the Tribunal') in Claim Case No.02/2011 whereby the Tribunal allowed claim application in part and awarded total compensation of Rs.1,85,950/- alongwith interest @ 9% p.a. and fastened liability upon non-applicants nos.1 & 2/appellant -herein to pay amount of compensation to claimant. The Tribunal exonerated non-applicant no.3/insurance company from its liability holding that there was violation of condition of insurance policy as on the date of accident driver of offending vehicle was not possessing valid and effective driving license.

- 2 Brief facts relevant for disposal of this appeal are that on 22.03.2009, Ramesh Kurre (injured) alongwith his friend Tekamdas Bharti was returning his home situated at Dunda, Raipur from Mandir Hasaud on motorcycle bearing registration No.CG04/CQ/6134 (herein-above shall be referred as 'motorcycle'). On the way near Sheetal Soap Factory, village- Chedi-Khedi offending vehicle driven by non-applicant No.1, dashed their motorcycle as a result of which said Ramesh Kurre (injured) suffered severe injuries on various parts of his body including right knee due to which his Tibia Fibula bone got fractured. He was immediately taken to Yashwant Hospital, Raipur for treatment. Matter was reported to Police Station – Mandir Hasaud based on which criminal case was registered against driver of offending vehicle.
- 3 After recovery of injuries, claimant filed claim application under Section 166 of the Act of 1988 before competent Claims Tribunal claiming Rs.27,00,000/- as compensation on the grounds mentioned therein.
- 4 Non-applicant nos. 1 & 2 – driver and owner of offending vehicle submitted their reply to claim application and denied all adverse

pleadings except admitted facts. They pleaded that accident took-place due to rash and negligent driving of driver of motorcycle, on the date of accident driver of offending vehicle was having valid and effective driving license and offending vehicle was insured with non-applicant No.3/insurance company, therefore, liability if any would be on insurance company.

- 5 Non-applicant no.3/insurance company submitted reply to claim application and also denied all averments except admitted facts made therein. It was further pleaded that amount of compensation claimed by claimant is on higher side and there was no permanent disability. Lastly it was pleaded that there was contributory negligence on the part of claimant himself and on the date of accident driver of offending vehicle was not possessing valid and effective driving license. There was no valid permit and fitness certificate of offending vehicle, thus there was violation of conditions of insurance policy, therefore, insurance company is not liable to indemnify insured.
- 6 Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties awarded a sum of Rs.1,85,950/- after recording a finding that there was violation of conditions of insurance policy and exonerated the insurance company on the ground that on the date of accident driver of offending vehicle was possessing driving license only to drive 'motorcycle' and 'light motor vehicle' (LMV), whereas offending vehicle is a 'light goods vehicle' and there is no endorsement in license to drive 'transport vehicle'.

- 7 Learned counsel for appellant submits that the Tribunal erred in recording said finding that on the date of accident driver of offending vehicle was not possessing valid and effective driving license. He further submits that on the date of accident driver of offending vehicle was having valid and effective driving license to drive 'motorcycle' as well as 'light motor vehicle' and offending vehicle comes within a category of 'light motor vehicle' as defined under Section 2(21) of the Act of 1988.
- 8 In support of his arguments he relied upon the judgment passed by Hon'ble Supreme Court in the matter of **Mukund Dewangan Vs Oriental Insurance Company Limited** reported in **2017 14 SCC 663**.
- 9 Learned counsel for respondent No.3.-insurance company supported the impugned award and pleaded that the Tribunal has rightly held that there was violation of conditions of insurance policy as on the date of accident, driver of offending vehicle was possessing license to drive 'light motor vehicle' only, whereas offending vehicle comes within the category of 'medium goods vehicle'.
- 10 I have heard learned counsel for the parties and perused the records.
- 11 A glance of copy of driving license available on record as Ex. D/ 1 & 2 would show that said license was issued on 01.05.2002 having its validity upto 01.05.2022. Holder of license was authorised to drive 'motorcycle with Gear' and 'Light Motor Vehicle' (non-transport). In the insurance policy (Ex. D-3) gross vehicle weight of offending vehicle has been mentioned as '2950 kgms' and against the type of vehicle, it is mentioned as "goods carrying commercial vehicle". Though copy of

registration certificate has not been marked as an exhibit, but it is available on record, in which Registering Authority has certified that offending vehicle is 'Light Goods Vehicle'. Issue as to whether a person holding license to drive 'Light Motor Vehicle' can drive other type of vehicle of the same category has come-up for consideration of the Hon'ble Supreme Court in the matter of ***Mukund Dewangan*** (supra) and it was held as under :-

“17. The definition of ‘light motor vehicle’ makes it clear that for 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 kgs. ‘Gross vehicle weight’ has been defined in [section 2\(15\)](#). The motor car or tractor or road roller, the unladen weight of any of which does not exceed 7500 kgs. as defined in [section 2\(48\)](#) of the Act, are also the light motor vehicle. No change has been made by [Amendment Act](#) of 54/94 in the provisions contained in [sections 2\(21\)](#) and [10\(2\)\(d\)](#) relating to the light motor vehicle. The definition of ‘light motor vehicle’ has to be given full effect to and it has to be read with [section 10\(2\)\(d\)](#) which makes it abundantly clear that ‘light motor vehicle’ is also a ‘transport vehicle’, the gross vehicle weight or unladen weight of which does not exceed 7500 kgs. as specified in the provision. Thus, a driver is issued a licence as per the class of vehicle i.e. light motor vehicle, transport vehicle or omnibus or another vehicle of other categories as per gross vehicle weight or unladen weight as specified in [section 2\(21\)](#) of the Act. The provision of [section 3](#) of the Act requires that a person in order to drive a ‘transport vehicle’ must have authorization. Once a licence is issued to drive light motor vehicle, it would also mean specific authorization to drive a transport vehicle or omnibus, the gross vehicle weight or motor car, road roller or tractor, the unladen weight of which, as the case may be, does not exceed 7500 kg. The insertion of ‘transport vehicle’ category in [section 10\(2\)\(e\)](#) has no effect of obliterating the already defined category of transport vehicles of the class of light motor vehicle. A distinction is made in the Act of heavy goods vehicle, heavy passenger motor vehicle, medium goods vehicle and medium passenger motor vehicle on the basis of ‘gross vehicle weight’ or ‘unladen weight’ for heavy passenger motor vehicle, heavy goods vehicle, the weight, as the case may be, exceed 12000 kg. Medium goods vehicle shall mean any goods carriage other than a light motor vehicle or

a heavy goods vehicle; whereas 'medium passenger motor vehicle' means any public service vehicle or private service vehicle or educational institution bus other than a motorcycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle.

"59. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28-03-2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in Section 2(21) and the provisions of Section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in Section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed.

60. Thus we answer the questions which are referred to us thus:

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 No.54 of 1994.

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 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 28-03-2001 in the form.

60.3. The effect of the amendment made by virtue of Act No.54 of 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.

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 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.”

12 In the light of definition of 'transport vehicle' given in the Act of 1988 and considering its earlier judgments, in the above cited judgment Hon'ble Supreme Court has held that a person holding license to drive 'light motor vehicle' can drive a transport vehicle of said category, having gross weight not exceeding 7500 kgms and no separate endorsement on the license is required to drive a transport vehicle of LMV category.

13 In the light of aforementioned judgments passed by hon'ble Supreme Court, if the facts of present case are considered, it is evident that gross vehicle weight of offending vehicle is less than 7500 kgms ie. 2950 kgms as mentioned in insurance policy (Ex.D-3) and in registration certificate available on record it is mentioned as 'Light Goods Vehicle'. In this circumstance, driver of offending vehicle who was holding license to drive 'light motor vehicles will also have authorization to driver offending vehicle, which has been shown to be the category of 'light goods vehicle'

and no separate endorsement on the license to drive transport vehicle is required.

14 In view of above, the Tribunal erred in recording the finding that there is violation of condition of insurance policy, which is not sustainable and is hereby set aside.

15 For the foregoing discussions, appeal is allowed in part and award passed by Tribunal against appellant (owner of offending vehicle) holding him to liable to satisfy the amount of compensation is hereby set aside. As a consequence, it is directed that non-applicant no.3/insurance company shall pay entire amount of compensation along-with interest, as directed by the Tribunal, to claimant. Any amount deposited by appellant before the Tribunal, pursuant to the impugned award will be refunded to him on depositing the entire amount of compensation by respondent no.3-insurance company. Other conditions imposed by the Tribunal will remain intact.

Sd /-

(Parth Prateem Sahu)
JUDGE