NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No.458 of 2013

Pramod Kumar Singh S/o Virendra Singh R/o Kabir Chowk, Near F.C.I. Godown, Kalindi Kunj, Raigarh, Tah. And Distt. Raigarh C.G., Chhattisgarh **(Non-Applicant No.2 (Owner) ---- Appellant**

Versus

1. Smt. Anita Kewat, W/o Late Dilip Kewat Aged About 21 Years R/o Sahdeopali, Tah. Pusore, Distt. Raigarh C.G. **(Applicant /Claimant)**
2. Mayalal Kewat S/o Late Ramjeet Kewat Aged About 46 Years R/o Sahdeopali, Tah. Pusore, Distt. Raigarh C.G. **(Applicant /Claimant)**
3. Rajesh Singh S/o Hirday Narayan Singh Aged About 35 Years R/o Chhattisgarh Motor Training School, Orr**isa** Road, Raigarh, Tah. And Distt. Raigarh C.G. **(Non-Applicant No.1/Driver)**
4. Reliance General Insu.Co.Pvt.Ltd. S/o Thru- Divisional Manager, Branch Office, Shop No. 412-413, 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur, Tah. And Distt. Raipur C.G **(Applicant No.3/Insurance Company)**

---- Respondents

For Appellant:	Shri Sanjay Agrawal, Advocate.
For Respondents No.1 to 3:	None, though served.
For Respondent No.4:	Shri Sourabh Sharma, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J

Award On Board

06.08.2019

1. This Miscellaneous Appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988) by Appellant/Non-Applicant No.2/Owner questioning the legality and propriety of the award dated 05.02.2012 passed by the Motor Accident Claims Tribunal, Raigarh (CG) (for short 'the Claims Tribunal') in Claim Case No.54/2012 by which, the Claims Tribunal, while allowing the claim in part, awarded total

amount of compensation to the tune of Rs.2,92,000/- with 6% interest per annum from the date of filing of the Claim Petition till its realization. The parties to this Appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated, the facts of the case are that on 10.10.2010 at 4.30 p.m, deceased Dilip Kewat was coming by his motorcycle along with his friend from his village Sahdevpali to village Kodatarai and as soon as they reached near 'Kodatarai Mangla Bazar', it was dashed vehemently from the opposite side by the offending vehicle "tractor" bearing its Registration No. CG 13 D 0379. At the relevant time, the vehicle in question was being driven rashly and negligently by its driver/Non-Applicant No.1-Rajesh Singh, owned by Non-Applicant No.2/Appellant and insured with Non-Applicant No.3/Reliance General Insurance Company Private Limited. Due to the alleged accident, the deceased sustained serious injuries and was admitted immediately into KG Hospital, Raigarh where, during the course of the treatment, he expired. Owing to the alleged accident, the Claimants/legal representatives of deceased Dilip Kewat instituted a Claim Petition enumerated under Section 166 of the Act of 1988 by submitting *inter alia* that deceased Dilip Kewat, a 23 years old, was a supervisor/*munshi* and used to earn Rs.6,000/- per month and as such, total amount of compensation of Rs.40,39,000/- was claimed.

3. The aforesaid claim has been contested by Non-Applicants No.1 & 2, the driver and owner of the vehicle in question by saying that deceased himself was responsible for the alleged accident and pleaded further that since the vehicle in question was insured with the Insurance Company, therefore, in case of any liability being fastened, the same could be indemnified by the insurer.

4. While Non-Applicant No.3/Insurance Company has contested the claim by submitting *inter alia* that the deceased himself was responsible for the alleged accident and it was pleaded further that since the vehicle in question was insured for agricultural purposes, however, it was being used for commercial use by carrying sand by the driver who was even not holding the valid and effective driving license and therefore, the Insurance Company, for violation of the terms and conditions of the insurance policy, cannot be held liable for the alleged accident occurred on 10.10.2010.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 10.10.2010 at 4.30 pm on account of rash and negligent driving of the driver of the offending vehicle namely Rajesh Singh/Non-Applicant No.1, resulting into the sad demise of deceased Dilip Kewat. It held further that the vehicle in question was being used for transporting the sand by the said driver, who was not holding the valid and effective driving license to drive the same and therefore, the Insurance Company cannot be held liable. As a consequence, while exonerating the Insurance Company from its liability, awarded a total compensation to the tune of Rs.2,92,000/- with 6% interest per annum from the date of filing of the Claim Petition till its realization.

6. Being aggrieved, Non-Applicant No.2/Owner of the offending vehicle has preferred this Appeal. Shri Sanjay Agrawal, learned Counsel for Non-Applicant No.2/owner/Appellant submits that the award impugned as passed by the Claims Tribunal holding that the vehicle in question was being driven by a person who was not holding valid and effective driving license is apparently contrary to law. According to him, though the vehicle in question was being driven by the said driver who was holding the driving license for driving the

light motor vehicles, but merely on this ground and particularly when the alleged vehicle (tractor) which was a light motor vehicle, it cannot be held that the vehicle in question was being used in violation of the policy. In support, he placed his reliance upon the decision rendered in the matter of *Mukund Dewangan vs. Oriental Insurance Company Limited* reported in **(2017) 14 SCC 663.**

7. On the other hand, Shri Sourabh Sharma, learned Counsel for Non-Applicant No.3/Insurance Company, while supporting the award impugned, submits that the vehicle in question was being used for commercial purposes by carrying sand at that particular time, therefore, the driver of the offending vehicle, who was not authorized to drive the said transport vehicle, the Claims Tribunal has not committed any illegality in exonerating the Insurance Company from its liability.

8. I have heard learned Counsel for the parties and perused the entire record carefully.

9. An accident occurred on 10.10.2010 at 4.30 pm, when deceased Dilip Kewat was coming by his motorcycle bearing its Registration No.CG 13 ZE 5045 from village Sahdevpali to Kodatarai. At the relevant time, it was hit vehemently by the offending vehicle (tractor) which was being driven in a rash and negligent manner by its driver Rajesh Singh/Non-Applicant No.1 and owing to the alleged accident, the deceased has sustained serious injuries and was admitted into the Hospital, where he expired during the course of his treatment. A Claim Petition was therefore, made by the Claimants under Section 166 of the Act of 1988. After considering the evidence led by the parties, the Claims Tribunal, while assessing the amount of compensation to the tune of Rs.2,92,000/-, has exonerated the Insurance Company from its

liability on finding that the driver of the vehicle in question was not holding the valid and effective driving license to drive the same, which was being used as a transport vehicle. The question, therefore arises for determination in this Appeal is as to whether the driver of the said vehicles, who was authorized to drive the light motor vehicle, was entitled to drive the same. The said issue, however, remains no more *res integra* in view of the principles laid down in the matter of *Mukund Dewangan vs. Oriental Insurance Company Limited* (supra). The said matter is squarely applicable as the question involved herein 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.

10. By applying the aforesaid principles, it is evident that although there is no endorsement in the alleged driving licence possessed by the driver of the offending vehicle namely Rajesh Singh/Non-Applicant No.1 authorizing him to drive the said vehicle in question, but he is certainly entitled to drive the alleged vehicle as it was also a light motor vehicle. The finding of learned Claims Tribunal holding that the driver of the offending vehicle was not entitled to drive the same is therefore, liable to be and is hereby set aside and accordingly, I hold that the driver of the alleged offending vehicle was possessing valid and effective driving license to drive the same and as such, the insurance company/Non-Applicant No.3 is liable to indemnify the insured/Non-Applicant No.2/owner.

11. In view of the foregoing discussions, the Appeal is allowed and Non-Applicant No.3/Insurance Company is liable to indemnify the insured/Non-Applicant No.2/owner of the vehicle in question. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

Priya