

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 57 of 2015

- The Divisional Manager, The Oriental Insurance Co. Ltd. Through Branch Manager, Oriental Insurance Co. Ltd., Kamptee Line, Rajnandgaon, Distt. Rajnandgaon C.G.

---- Appellant

Versus

1. Pintu @ Pitamber Dhankar S/o Khemlal Aged About 9 Years Through Natural Guardian Father- Khemlal Dhankar, S/o Jaitu, age not mentioned, R/o Bargadi, Tah. Ghumka, Distt. Rajnandgaon C.G.
2. Panchram @ Satyawar Baghel S/o Goverdhan Baghel Aged About 40 Years R/o Village- Birejhar, Post- Temri, Distt. Rajnandgaon C.G.
3. Bhushan Lal Baghel S/o Goverdhan Baghel, age not mentioned, R/o Village- Birejhar, Post- Temri, Distt. Rajnandgaon C.G.

---- Respondents

For Appellant	:	Shri HP Agrawal, Advocate.
For Respondent No.1	:	None though served.
For Respondent No.2	:	Shri Samir Singh, Advocate.
For Respondent No.3	:	None though served.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

15/02/2019:

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award 31st October, 2014 passed by First Additional Motor Accident Claims Tribunal, Rajnandgaon (CG) in Claim Case No. 20/2014 awarding total compensation of 1.58 lac with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No.3 jointly and severally along with non-applicants No. 1 & 2.

02. As per claim petition, on 9.7.2006 when Pintu, aged about 2 ½

years, was standing along with his brother by the side of the road, non-applicant No.1 Panchram by driving Tempo bearing No. CG 08 ZA 6056 in a rash and negligent manner, dashed Pintu. As a result of which Pintu suffered grievous injuries resulting in permanent disability. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

03. On claim petition being filed by the injured claimant under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellant/insurance company submits that the Tribunal has wrongly fastened liability on the insurance company because the driver was having licence for LMV whereas he was driving the offending vehicle i.e. Tempo, which is a transport vehicle, on the date of accident without there being any endorsement to this effect in his driving licence. Further, the offending vehicle was being driven in violation of the permit conditions beyond the limit prescribed in the permit as has been proved by NAW-1 Kishore Shrivastava. This apart, at the time of accident, the injured was aged about 3 years as per Ex.P/6 and the finding given by the Tribunal, he was not an earning member; the disability certificate is issued after about 8 years of the accident and therefore, the amount of Rs.1.20 lacs awarded by the Tribunal towards permanent disability is very much on the higher side.

05. On the other hand, learned counsel for the respondent No.2/driver supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly fastened liability on the insurance company and awarded compensation which needs no interference by this Court.

06. Heard learned counsel for the parties and perused the material available on record.

07. As regards the issue of competence of the driver for driving the offending vehicle, admittedly, as per Ex.D/2 non-applicant No.1/driver was having licence for LMV which was valid and effective on the date

of accident, and that as per Ex.D/3 the unladen weight of the offending vehicle is 650 kg and the laden weight is 1350 kg.

08. At this juncture, the principles laid down in ***Mukund Dewangan Vs. Oriental Insurance Company Ltd.***, reported in **(2017) 14 SCC 663**, is to be noted as the question involved herein, as to whether a driver who is having a license to drive the “light motor vehicle” is competent to drive “transport vehicle” of that class in absence of such an endorsement, was considered in the said case and it was held therein 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)”

09. Applying the ratio of law laid down by the Supreme Court in the matter of Mukund Dewangan (supra), it is apparent that the driver/non-applicant No.1 was holding a valid and effective driving license and even in absence of any endorsement as such in his driving license authorizing him to drive the offending vehicle, it cannot be held that he was not possessing the valid and effective driving license at the relevant time.

10. As regards the issue of breach of permit conditions, NAW-1 Kishore Shrivastava, Assistant Manager, Oriental Insurance Co. Ltd., who is not an eyewitness to the accident, has stated that the permit issued for the offending vehicle was confined to 16 km from the area of Municipal Corporation, Rajnandgaon and since the accident has occurred at Village-Bargahi, which is 20 km away from Rajnandgaon, there is breach of permit conditions. Only on the basis of statement of

NAW-1, the insurance company is contending that there is breach of policy conditions. From the statement of NAW-1 it is seen that he has stated that the accident occurred approximately 20 km away from Rajnandgaon. He has not stated as to on what basis he is stating so or whether the driver exceeded the permit limit by 4 km or 20 km. As such, there is no specific evidence regarding breach of permit. Even otherwise, there is no fundamental breach of permit on the part of non-applicant No.1.

11. As regards the amount of Rs.1.20 lac awarded by the Tribunal towards permanent disability, as per Ex.P/37 i.e. disability certificate issued by District Medical Board, Rajnandgaon, which was issued after eight years after the accident on 14.3.2014, the claimant suffered 30% permanent disability. The Tribunal considering the disability certificate of Ex.P/37, which has been duly proved by the treating doctor AW-2 Dr. Prakash Bhalerao, treatment papers Ex.P/7 to P/35 and other documents Ex.P/5 & P/6, considering the functional disability in respect of the whole body to the extent of 20%, awarded Rs.1.20 lac towards permanent disability, future treatment including other expenses incidental thereto and loss of marital prospects. In the facts and circumstances of the case and the evidence, oral and documentary, available on record, considering the nature and extent of injury and age of the claimant, this amount of Rs.1.20 lac awarded under the above heads cannot be said to be excessive, rather it appears to be just and proper.

12. In the result, the appeal filed by the insurance company being without any substance is liable to be dismissed and it is dismissed as such.

Sd/

(Gautam Chourdiya)

Judge