

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 445 of 2014

- Branch Manager, The Oriental Insurance Co. Ltd. M/s Laxman Avenue, Medical College Road, Jagdalpur, Distt. Bastar C.G.

---- Appellant

Versus

1. Rameshwar Yadav S/o Vishwanath Yadav Aged About 56 Years
2. Smt. Malti Devi W/o Rameshwar Yadav Aged About 54 Years - claimants
3. Jitendra Gupta S/o Shivshanker Gupta Aged About 22 Years R/o Keshalpur, P.S. Parpa, Tah. Jagdalpur, Distt. Bastar C.G.
4. Manoj Kumar Gupta S/o Shivshanker Gupta Aged About 27 Years R/o Keshalpur, P.S. Parpa, Tah. Jagdalpur, Distt. Bastar C.G.

---- Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate.
For Respondents	:	None though served.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

18/03/2019

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award dated 6.2.2014 passed by Motor Accident Claims Tribunal, Bastar at Jagdalpur in Claim Case No.57/2011 awarding total compensation of Rs.3.49 lacs with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No.3/insurance company.

02. As per claim petition, on 18.8.2010 Bhagwan Yadav by riding his motorcycle Hero Honda bearing No. CG 17-6105 with a moderate speed was going towards Jagdalpur. However, on the way, non-

applicant No.1 Jitendra Gupta by driving Commander Jeep bearing No. CG 17 ZD 0988 in a rash and negligent manner dashed the said motorcycle as a result of which Bhagwan Yadav suffered grievous injuries on various parts of his body and died on the spot. At the time of accident, the offending vehicle was owned by non-applicant No.1 and insured with non-applicant No.3.

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

04. Learned counsel for the appellant/insurance company submits that the offending vehicle was a passenger carrying commercial vehicle as is evident from Ex.NA-3 i.e. insurance policy. The Tribunal has also recorded a finding that the offending vehicle was a passenger carrying commercial vehicle. Being so, permit is required for plying such vehicle at a public place as per Section 66 of the Motor Vehicles Act, 1988 (in short "the Act") whereas at the time of accident, the same was being plied without any valid permit. No permit is obtained by the owner of the vehicle. Further, as per Ex.NA-2 i.e. seizure memo, validity of the permit of the offending vehicle was from 5.9.2010 to 30.9.2010 and NAW-1 Shiv Subramanyam Ayyar has also stated that permit was issued on 5.9.2010 only whereas the accident occurred on 18.8.2010 and as such, on the date of accident, the vehicle was being plied without any valid permit. This apart, the driver/non-applicant No.1 was not having a valid and effective licence to drive the offending vehicle as there was no such endorsement in his licence authorizing him to drive the said vehicle and he was having licence only for LMV.

05. None for the respondents though served.

06. No counsel appeal has been filed by the respondents as submitted by counsel for the appellant.

07. Heard learned counsel for the appellant and perused the material available on record.

08. So far as the issue of valid and effective driving licence is concerned, since the driver/non-applicant No.1 was having a licence for LMV, the offending vehicle falls in the category of LMV, keeping in view the decision of the Hon'ble Supreme Court in S. **Ayyapan Vs. United India Insurance Co. Ltd. and another, 2013 (3) SCCD 1689 (SC)** and **Mukund Dewangan Vs.**

Oriental Insurance Company Limited reported in (2017) 14 SCC 663, this Court is of the opinion that the Tribunal was justified in holding that the driver was having a valid and effective licence on the date of accident and there was no need of any such endorsement in his licence authorizing him for driving the offending vehicle.

09. As per evidence available on record in the form of Ex.NA-3 i.e. insurance policy and the statement of NAW-1 Shiv Subramanyam Ayyer, Administrative Officer of the insurance company as also the finding recorded by the Tribunal in the impugned judgment, it is not in dispute that the offending vehicle was a passenger carrying commercial vehicle having 9 +1 sitting capacity. Further, as per Ex.NA-2 i.e. seizure memo, the investigating officer seized the permit of the offending vehicle which was valid from 5.9.2010 to 30.9.2010 whereas the accident occurred in this case on 18.8.2010. The driver and owner of the vehicle contested the case but no any other permit was produced by them before the Tribunal. The Tribunal has fastened liability on the insurance company only on the ground that on the date of accident no passenger was being carried by the offending vehicle, it was being taken to the pond for being washed and therefore, no permit was required for plying the vehicle in such a manner. However, the finding so recorded by the Tribunal is against the provisions of Section 66 of the Act, which mandates that for plying any passenger carrying commercial vehicle at any public place, permit is required. Since the vehicle in question was being plied in a public place without any valid permit, there being violation of policy conditions, the insurance company cannot be saddled with the liability of satisfying the award.

10. In the matter of **Amrit Paul Singh and another Vs. Tata AIG General Insurance Co. Ltd. and others, (2018) 7 SCC 558**, while

dealing with identical issue, the Hon'ble Supreme Court considering the provisions of Section 66(1) of the Act which prescribes that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority, held that use of a vehicle as a transport vehicle in public place without a permit is a fundamental statutory infraction. Though Section 66(3) of the Act carves out certain exceptions to Section 66(1), in order to invoke those exceptions, the same must be pleaded and proved, the said exceptions cannot be taken aid of in the course of argument to seek absolution from liability.

11. However, considering the facts and circumstances of the case, the fact that on the date of accident, the offending vehicle was duly insured with the appellant/insurance company and the deceased was the third party, in view of principles of law laid down by the Hon'ble Supreme Court in ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796*** and ***Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another, (2018) 5 SCC 762***, this Court feels it proper to order for “pay and recover” in this case, meaning thereby that the insurance company shall first pay the amount of compensation to the claimants and then recover the same from non-applicants/owner & driver in accordance with law.

12. In the result, the appeal filed by the insurance company is allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)
Judge