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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 407 of 2014

- Talvindar Singh Pall S/o Dharampall Singh Aged About 30 Years R/o Q.No. 1284, Prem Nagar, Madanmahal, Jabalpur, Distt. Jabalpur M.P.

---- Appellant

Versus

1. Devkibai Wd/o Late Rajkumar Dhurve Aged About 37 Years

2. Rakeshwari Dhurve Aged About 19 Years

   Both are R/o Village Shanti Nagar, Sakri, Thana-Chakarbhatha, Tahsil/Distt. Bilaspur (CG)

3. Branch Manager The National Insurance Co. Ltd., Branch Office-Taha Complex, Vyapar Vihar Road, Near Gazibo Hotel, Bilaspur, Distt. Bilaspur C.G.

---- Respondents

For Appellant	:	Shri Ashok Kumar Jain with Shri Aditya Jain and Shri KPS Gandhi, Advocates.
For Respondent Nos 1 & 2	:	None.
For Respondent No.3	:	Shri Gautam Khetrapal & Shri Qamrul Aziz, Advocates.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

20/03/2019:

This appeal is filed by the owner under Section 173 of the Motor Vehicles Act, 1988 (in short "the Act") challenging the award dated 28th January, 2014 passed by III Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.25/2012, awarding compensation of Rs.8,05,000/- in favour of claimants with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No.1/owner while exonerating non-applicant No.2/insurance company of its liability.

02. As per averments in the claim petition,7.4.2012 Rajkumar Dhruve was waiting for bus near Barnala turning. At that time, the driver of vehicle Tanker bearing No. MP 20/HB 2784 namely Ganpat Singh by driving the vehicle in a rash and negligent manner, dashed Rajkumar, as a result of which Rajkumar suffered grievous injuries and died on the spot itself. Driver Ganpat also died in the said accident.

03. On claim petition being filed by the claimants, wife & daughter of the deceased, under Section 166 of the Act claiming, the Tribunal considering the evidence led by the parties, by the impugned award granted compensation as mentioned above.

04. Learned counsel for the appellant/owner submits that admittedly, on the date of accident the driver of the offending vehicle was having a licence for LMV and HTV vide Ex.D/9 and therefore, in view of decision of the Hon'ble Supreme Court in the matter of ***Mukund Dewangan Vs. Oriental Insurance Company Ltd.***, reported in ***(2017) 14 SCC 663***, there is no such requirement of endorsement in the licence of the driver authorizing him for driving the offending vehicle. Further, the Tribunal was not justified in exonerating the insurance company merely on the ground that the driver of the offending vehicle was not having a licence for driving acid tanker.

Reliance has been placed on the decision of High Court of Madhya Pradesh in ***Baghelkhand Filling Station Vs. Brijbhan Prasad, 2006 ACJ 2503***.

05. On the other hand, learned counsel for the insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter and the evidence adduced by the parties, has rightly exonerated the insurance company and fastened liability on the owner/appellant.

06. Heard learned counsel for the appellant and perused the material available on record including the impugned award.

07. It has not been disputed by the parties that as per Ex.D/9 i.e. particulars of driving licence of driver of the offending vehicle Ganpat Singh, the driver was issued a licence for LMV and HTV by RTO, Jabalpur (MP), which after renewal was valid from 19.10.2010 to 18.10.2013. The accident in this case occurred on 7.4.2012. Thus, the offending vehicle being a heavy transport vehicle, on the date of accident the driver was having a valid and effective licence to drive the same. The only dispute between the parties is with regard to endorsement in the driving licence by the licensing authority authorizing him for driving the offending vehicle which was acid tanker.

08. The identical issue arose before the High Court of Madhya Pradesh in the matter of *Baghelkhan Filling Station* (supra) where the High Court considering the decisions of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Swaran Singh, 2004 ACJ 1, United India Insurance Co. Ltd. Vs. Lehru, 2003 ACJ 611*** and Rule 9 of the Central Motor Vehicle Rules, observed as under:

> “12. For better appreciation of Sub-rules (3) and (4) of Rule 9 of the Rules, we deem it apposite to reproduce the same:
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> 9. Educational qualifications for drivers of goods carriages

carrying dangerous or hazardous goods.

xxx xxx xxx

(3) The licensing authority, on receipt of the application referred to in Sub-rule (2), shall make an endorsement in the driving licence of the applicant to the effect that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature to human life.

(4) A licensing authority other than the original licensing authority making any such endorsement shall communicate the fact to the original licensing authority.

13. A perusal of the aforesaid relevant rules would show that endorsement in the driving licence of the applicant is necessary to the effect that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature to human life. This endorsement was of course not seen on the driving licence of respondent No. 3, by the appellants. But, it is equally true that driver was holding a licence to drive a tanker. It is not the case of the respondents that accident had taken place on account of the fact that there was no endorsement to drive such a vehicle. The endorsement neither increases the efficiency of the driver nor in its absence the efficiency of the driver is likely to be reduced in any manner whatsoever. It only certifies additionally that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature. For driving such a vehicle, no further expertise or driving skill is required. This could be said to be a lapse on the part of the driver as well as on the part of appellants herein, but this lapse was not responsible for the cause of accident.

14. Even without the endorsement as contemplated under Sub-rule (3), the driving skill of the respondent No. 3 had not reduced. In fact the appellants having seen a certificate from Hindustan Petroleum Limited that respondent No. 3 was driving their tanker earlier appeared to be satisfied that the driver was holding a valid and proper licence and did not care to inquire with regard to endorsement. By taking the endorsement from the licensing authority, the nature of vehicle or the kind of the vehicle which the driver would be driving would not have changed, it would have remained the same. Thus, taking of the endorsement from the licensing authority was for some other purpose and not for giving him further certificate for driving the tanker, as he was already holding a valid licence for driving it. Precisely this is what has been said in Swaran Singh's case, in para 102. It has been held so ...To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time. It has further been held as under:

> "Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply 'the rule of main purpose' and the concept of 'fundamental breach' to allow defences available to the insurer under Section 149(2) of the Act."

> 15. Thus, the crux of the matter would be whether such a breach that is to say not having obtained necessary endorsement as required under Sub-rule (3) of Rule 9 of the Rules, the accident occurred due to that non-endorsement has been discussed hereinabove, the said endorsement is not required to be given to the driver after having gone through any specialised training or after having passed any special test. Any driver who has held a driving licence to drive a tanker would be entitled to this endorsement subject to fulfilling of other conditions as contemplated in Sub-rule (3) of Rule 9, but they do not deal with the professional skill of driving. With regard to professional skill of driving, he has already been clarified by the licensing authority at the time of granting of licence to him. It is not the case of the respondents that his driving licence was not obtained properly.
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> 16. For all these reasons, we are of the opinion that Tribunal committed a grave error in not fastening the liability on the insurance company and instead exonerating it from payment of compensation.
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> 17. In the light of aforesaid facts and features, we are of the opinion that there was no fundamental or basic breach of the terms and conditions of the policy, which could have been sufficient to hold that insurance company would not be liable to pay the compensation."

09. Thus, considering the facts and circumstances of the case, the fact that on the date of accident, the driver was having a valid licence for driving the HTV, the offending vehicle was also a heavy transport vehicle, the judgment of the MP High Court in *Baghelkhan Filling Station* (supra), this Court is of the opinion that the Tribunal was not justified in exonerating the insurance company on the ground of there

being no endorsement in the licence of the driver authorizing him for driving acid tanker and fastening the liability on the owner/appellant.

10. In the result, the appeal is allowed. The impugned judgment is hereby modified to the extent that non-applicant No.2/insurance company is liable jointly and severally along with non-applicant No.1/owner to pay compensation as awarded by the Tribunal to the claimants. Non-applicant No.1/owner shall be entitled to recover the amount paid to the claimants from non-applicant No.2/insurance company. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge

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