**AFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

**MAC No. 169 of 2014**

- Tamesh Ram Nag S/o Pratap Nag Aged About 30 Years, Caste Kalar, R/o Mandhabharri, P.S. And Tahsil Narharpur, District Uttar Bastar, Kanker C.G.

**----Appellant**

**Versus**

- Mukesh Kumar Nagesh S/o J.R. Nagesh, Aged About 25 Years R/o Musurputta, Tahsil and P.S. Narharpur, District Uttar Bastar Kanker C.G.
- Bajaj Allianz General Insurance Company Ltd. Branch Office, Second Floor, Shiv Mohan Bhavan-1, Vidhan Sabha Road, Pandari, P.S. Pandari, Raipur, Distt. Raipur C.G.

**---- Respondents**

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| For Appellant | Shri Pushkar Sinha, Advocate. |
| For Respondent No.1 | Shri D.N. Prajapati, Advocate. |
| For Respondent No.2 | Shri Sachin Singh Rajput, Advocate. |

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**Hon'ble Shri Justice Gautam Chourdiya**
**Judgment on Board**

01/05/2019

1. This appeal filed by the non-applicant no.1/owner-driver under Section 173 of the Motor Vehicle Act arises out of the award dated 20.12.2013 passed by Motor Accident Claims Tribunal, Uttar Bastar Kanker, C.G. in Claim Case No. 5/2013.

2. As per averments made in the claim petition, on 14th June, 2012 Mukesh Kumar Nagesh (respondent no.1 herein ) was going along with Tilak Ukey on his motorcycle bearing no.CG1-B-4890 as a pillion rider to his house from the main road Dudhabha, on the way non-applicant no.1 driver-owner of the offending vehicle Tractor bearing no.CG19-G-1689 attached with Trolley bearing no.CG19-G-1847, driving the same in a rash and negligent manner dashed the said

motorcycle, as a result of which both Mukesh and Tilak suffered grievous injuries. At the time of accident, offending vehicle was insured with non-applicant no.2.

3. On claim petition being filed by the claimant/injured Mukesh Kumar Yadav under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.9,30,000/- under various heads, the Tribunal considering 25% contributory negligence on the part of the claimant, awarded total compensation of Rs.1,43,400/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant no.1 while exonerating the Insurance Company of its liability on the ground of breach of policy conditions as the non-applicant no.1 was not having a valid and effective licence to drive the offending vehicle.

4. It is submitted by learned counsel for both the parties that no counter appeal is filed by the insurance Company.

5. Learned counsel for the appellant/owner-driver submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award on the sole ground that the Tribunal has wrongly fastened liability upon the owner-driver on the ground that the driver was having licence for LMV only as per Ex.D-6 and Ex.D-7 whereas he was driving the offending vehicle i.e. Tractor bearing no.CG19-G-1689 and Trolley bearing no. CG19-G-1847, which is a transport vehicle on the date of accident without there being any endorsement to this effect in his driving licence. In support of his pleadings, placing reliance of the decision of Hon'ble Supreme Court in the matter of ***Mukund Dewangan Vs. Oriental Insurance Company Ltd.***, reported in ***(2017) 14 SCC 663***,

he submits that the driver of the offending vehicle was having a valid and effective driving licence and the Tribunal was not justified in exonerating the Insurance Company on the ground that the driver was not having a valid and effective driving licence. He further submits that the aforesaid documents of Ex.D-6 and Ex.D-7 have been duly proved by NAW-2 Kalaram Mandavi, Assistant Grade-III in RTO.

6. On the other hand, learned counsel for the respondent no.2 supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation.

7. Learned counsel for the respondent no.1/claimant has duly assisted the Court.

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

9. It is not disputed by the parties that on the date of accident non-applicant no.1 was having a licence for LMV. Even as per Ex.D-6 and Ex.D-7, it is clear that non-applicant no.1 was having a licence for driving the vehicle which is valid from 22.06.2010 to 28.07.2029. As per Ex.D-1C, it is evident that the gross weight of the vehicle is 6000 kg. True it is that the non-applicant no.1/driver was having a licence for light Motor Vehicle and the offending vehicle was a light transport vehicle (LMV), however, keeping in view of the decision of Hon'ble Supreme Court in the matter of ***Mukund Dewangan*** *(supra)***,** the driver who is having a licence to drive the light motor vehicle is competent to drive the transport vehicle of that class in absence of such endorsement observed 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)"**

10. The Insurance Company has not alleged any other breach of policy conditions on the part of the driver-owner of the offending vehicle except the breach on the ground that driver of the offending vehicle was not having a valid and effective licence. Since the aforesaid issue has already been settled by the Hon'ble Supreme Court in the matter of **Mukund Dewangan** (supra), the Tribunal was not justified in holding that non-applicant no.1 was not having a valid and effective licence to drive the offending vehicle. As such non-applicant no.2 is held liable jointly and severally along with driver-owner of the offending vehicle to pay the entire amount of compensation to the claimant.

11. In the result, the appeal is allowed. Non-applicant No.2/Insurance Company is held liable jointly and severally along with non-applicant no.1 driver-owner of the offending vehicle to pay the entire amount of compensation to the claimant. The amount, if any, already deposited by the non-applicant no.1 with the concerned Tribunal is paid to the claimant, non-applicant no.1 shall be entitled to recover the same from non-applicant no.2 in accordance with law.

Sd/-
Gautam Chourdiya
Judge

Akhilesh