AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 184 of 2017

1. Mukesh Kumar Agarwal S/o Shri Ramkishan Agrawal, R/o Mohalaine Bhata Katghora Tha- Katghora, Dist- Korba (C.G.) (Vehicle Owner/ Non-Applicant No.2)

---- Appellant

Versus

1. Smt. Jamuna Bai W/o Late Dular Singh, Aged About 33 Years,

2. Ratni Kumar S/o Late Dular Singh, Aged About 12 Years Minor Through The Natural Guardian Mother Smt. Jamuna Bai W/o Late Dular Singh, Aged About 33 Years,

   Both are R/o Village Aanchidadar, Tahsil Katghora, District Korba (C.G.) Present Address Tulsi Nagar Korba, District Korba, (C.G.)

3. Shiv Prasad Kanwar S/o Maharaj Singh Kanwar, Aged About 28 Years R/o Village Aanchi Dadar, Tahsil Katghora, District Korba, (C.G.) (Driver)

4. Megma H.D.I. General Insurance Company Ltd. Megma House, 24 Park Gali, Kolkata 700016 Branch Office 102, Indira Commercial Complex Hotel Behind Of Hotel Natraj, T.P. Nagar Korba, Tahsil And District Korba (C.G.) (Insurance Company)

---- Respondents

For Appellant	:	Shri S.R.J. Jaiswal, Advocate.
For Respondent No. 4	:	Shri Rohitashva Singh, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

06/05/2019

1) This appeal is preferred by the owner of the vehicle/non-applicant No. 2 challenging the award dated 15/11/2016 passed by Motor Accident Claims Tribunal, Korba (C.G.) in Claim Case No. 28/2015; whereby the Tribunal has awarded compensation of Rs. 2,60,000/- with interest @ 8% per annum from the date of

application till realization, in favour of the claimants fastening the liability on the appellant/owner and driver jointly and severally and exonerated Insurance company on the ground that at the time of accident driver of vehicle Shri Prasad Kanwar not having valid and effective transport license of vehicle.

2) As per averments of claim petition, on 11/01/2015 at about 02:30 PM deceased Surendra Kumar, aged about 14 years, earning Rs.5,000/- per month as labour, was standing on road near village Aanchi Kachar, Non-applicant No.1/Shiv Prasad Kanwar driver of offending vehicle parked the vehicle Pick-Up bearing registration No. CG12 S 1708 in negligent manner after cleaning the vehicle place in downside without taking due care and at that time the vehicle was suddenly reversed back and dashed Surendra Kumar. As a result of this accident deceased Surendra Kumar sustained grievous injury and died on the spot. Offending vehicle was owned by Non-applicant No.2/Appellant and insured with non-applicant No. 3/respondent No.4.

3) On claim petition being filed by the claimant mother and sister of deceased under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

4) The Tribunal considering the evidence available on record by the impugned awarded granted a total compensation of Rs. 2,60,000/- with interest @ 8% per annum in favour of the claimants. However, the liability to satisfy the award has been fastened upon the appellant/non-applicant No.2, owner of the vehicle, on the ground that the driver of the vehicle-respondent No.3/non-applicant No.1 was not having a valid and effective driving license to drive the vehicle in question. Being aggrieved by the said award, the appellant/owner has filed the instant appeal under Section 173 of the Motor Vehicles Act.

5) Learned counsel for the appellant submits that on the date of

accident, the driver/non-applicant No.1 was having a valid and effective driving license to drive LMV which was valid from 29/12/2012 to 27/12/2032 vide Ex.D-4. The said driving license has been duly proved before the Tribunal and a finding to this effect has also been recorded by the Tribunal. Though the vehicle in question is Pick-Up, which was a transport vehicle and there is endorsement in the driving license valid for transport vehicle from 03/07/2015 to 02/07/2018 in this regard. As per Ex. D-5 i.e. certificate of Insurance-cum-Schedule and Ex. D-2, Ex. D-3 & Ex. D-4, the offending vehicle is also LMV and gross weight is 2880 kg, 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***, no such endorsement is required in the driving license for driving transport vehicle if its unladen weight does not exceed 7500 kg. The Tribunal was not justified in exonerating Insurance Company on the ground of breach of policy conditions. Therefore, he submits that the liability has wrongly been fastened upon the appellant by the Tribunal; whereas it ought to have held the Insurance Company liable for satisfying the award.

6) On the other hand, learned counsel for the respondent No. 4/Insurance Company opposes the submission on behalf of the appellant and supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

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

8) The only issue which needs to be considered by this Court is whether in the given facts and circumstances of the case the Tribunal was justified in exonerating the insurance company of its liability and fastening the same on the appellant/owner on the ground that the driver of the vehicle in question, which was a

transport vehicle, was having license to drive LMV only.

9) So far as liability is concerned, as per Ex. D-4, which is evident that non-applicant no. 1 was having a license for Light Motor Vehicle which was valid from 29/12/2012 to 27/12/2032 and the laden weight of vehicle in question is 2880 KG.

10) The issue involved in this case has already been considered by the Hon'ble Supreme Court in the matter of ***Mukund Dewangan (supra)*** 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, 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 license 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)”

11) Applying the ratio of law laid down by the Supreme Court in the matter of Mukund Dewangan (supra), it is apparent that the driver of the vehicle in question 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 possessed valid and effective driving license at the relevant time. The finding so recorded by the learned claims Tribunal in this regard is, therefore, liable to be and is hereby set aside. It is accordingly held that the driver of the offending vehicle was holding the valid

and effective driving license and was not driving the same in violation of terms and conditions of the Insurance Policy.

12) In this view of the matter, the Insurance Company is held liable jointly and severally alongwith non-applicant No. 1/Driver and Non-applicant 2/Owner for paying compensation to the claimant.

13) In the result, the appeal is allowed with modification in the impugned award to the above extent that the non-applicant No.3/respondent No. 4 Insurance Company is jointly and severally liable to satisfy the claim of claimant, looking to the Insurance Policy valid on the date of accident, Respondent No. 4 is hereby directed to deposit the amount within two months from the date of this judgment.

14) If any amount has been deposited by the appellant and disbursed to the claimants/respondent No. 1 and 2, the appellant is entitled to recover the same form Insurance Company non-applicant No. 3/respondent No. 4.

15) However, rest of the conditions of the impugned award shall remain intact.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant