AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 790 of 2012

1. The Oriental Insurance Co. Ltd. Through- Its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur (C.G.) (**Non-applicant No. 3**)

---- Appellant

Versus

1. Smt. Munni Kusar W/o Late Mohd. Yunus Aged About 50 Years,

2. Javed Hussain S/o Late Mohd. Yunus Aged About 30 Years,

3. Rameez Raja S/o Late Mohd. Yunus Aged About 23 Years,

Respondent No. 1 to 3 are R/o Surajmukhi, Rajkishore Nagar, District Bilaspur (C.G.) (**Claimants**)

4. Jamuna Prasad Tiwari S/o Ram Lakhan Tiwari Aged About 30 Years Village Madla, P.S. Sonhat, District Koriya (C.G.) (**Driver**)

5. Managing Director, Zila Vanopaj Sahakari Union Ltd. Koria, Forest Division Baikunthpur, District Koriya (C.G.) (**Owner**)

---- Respondents

For Appellant	:	Shri R.N. Pusty, Advocate.
For Respondent Nos. 1 to 3	:	None.
For Respondent No. 4	:	Shri Ajay Lakra, Advocate on behalf of Shri Shailendra Shukla, Advocate.
For Respondent No. 5	:	Shri B.L. Sahu, Advocate

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

13/05/2019

1) This appeal is preferred by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 against the award dated 28/06/2012 passed by Sixth Additional Motor Accident Claims Tribunal Bilaspur (C.G.) in Claim Case No. 04/2012

awarding total compensation of Rs. 16,10,167/- with interest @ 7.5% per annum from the date of application till realization, fastening liability on the non-applicant 1, 2 and 3 i.e. Driver, Owner and Insurance Company jointly severally.

Aggrieved by this award insurance Company filed this appeal under section 173 of Motor Vehicles Act., 1988 challenging liability fastening upon insurance Company alongwith contributory negligence on part of the deceased.

2) As per averments in the claim petition, on 18/05/2009 deceased Mohd. Yunus aged about 53 years, earning Rs. 38,621/- per month (Para-3) working as Senior Mining Sardar (SPA) in Charcha East Colliery, was riding Scooter with a moderate speed and when he reached near Charcha Basti, Shiv Ghat, non-applicant No. 1, who was driving a Tata Magic (offending vehicle) bearing Engine No. 275IDI05GRZS40379 & Chassis No. 445051GRZV4 0512 rashly and negligently, dashed the Scooter of deceased. Consequently, deceased Mohd. Yunus suffered grievous injury and declared by Doctor as brought dead in hospital. Offending vehicle was owned by non-applicant No.2 and insured with non-applicant No. 3/appellant.

3) On claim petition being filed by the claimants' wife and children of the 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 in para No. 1 of the judgment.

4) Learned counsel for the appellant submits that though he has raised various grounds in this memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds only :-

i. That the deceased himself was liable for accident and looking to the head on collision between two vehicles, learned Tribunal having not considered contributory negligence on part of the deceased, the said aspect is required to be considered as per evidence available on record.

ii. That the driver of the insured vehicle was not having a valid and effective driving license, the vehicle was bing plied without permit and at the time of accident vehicle was not got registered by its owner, therefore, the Insurance company is not liable to indemnify the claim due to breach of the terms and conditions of Policy. Therefore, the award passed by learned Tribunal against Insurance Company is liable to be set-aside and interest awarded @7.5% is on higher side.

5) Learned counsel for the respondent supported the award and contended that in this case, the offending vehicle was an LMV and driver of the vehicle having a valid and effective driving license of LMV. As per ***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. Contributory negligence on part of the deceased is not proved by

the Insurance company and no any legally admissible evidence has been adduced by the any party to prove the contributory negligence.

6) The vehicle is insured on the basis of Engine No. 275IDI05GRZS 40379 & Chassis No. 445051GRZV40512 and policy covered the date of accident, therefore, there is no substance in this appeal and the same is liable to be dismissed.

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

8) As per material available on record, the insured vehicle is LMV driven by non-applicant No. 1 and as per particular of driving license proved by the party (Ex. D2C), at the time of accident the driver was having license to drive LMV alongwith motorcycle with gear valid, which was effective from 21/12/2000 to 20/12/2020. Therefore, as per Mukund Dewangan's case (Supra)**,** there is no need of any endorsement. Gross weight of vehicle as per Ex. D-2 is 1550 kg hence, no permit is required under section 66(3)(i) of Motor Vehicles Act in respect any goods vehicle gross weight of which, does not exceed 3000 Kg and no any issue in that regard has been raised by the Insurance Company in pleading and no evidence has been adduced by the Insurance Company regarding the same. Therefore, according to law there is no requirement of permit in respect of goods vehicle, the GVW of which is below 3000 Kg. The learned counsel for the appellant argues that there was contributory negligence on part

of the deceased also as there was head on collision between Scooter driven by the deceased and the offending insured vehicle and placed reliance of judgment of Hon'ble Supreme reported in the matter of ***Bijoy Kumar Dugar V/s Bidya Dhar Dutta and Others (2006) 3 SCC, 242.*** As far as the argument raised by the learned counsel for the appellant regarding contributory negligence on the part of the deceased, no any evidence is adduced by the Insurance company or other respondents, owner and driver. As the driver of offending vehicle was not examined before Tribunal and no counter FIR was lodged against the Mohd. Yunus who died while driving the Scooter, therefore, without any legally admissible evidence contributory negligence cannot held to be established on part of the deceased only on the basis of head on collision between two vehicles.

9) The Insurance company had insured the vehicle according to Engine No. 275IDI05GRZS40379 & Chassis No. 445051GRZV4 0512 and regarding the vehicle being plied without nay registration number, no any issue has been framed and no any evidence has been adduced by the party.

10) Looking to the evidence adduced by the claimants quantum and interest awarded by the learned Tribunal is just and proper according to the evidence available on record, therefore, needs no interference by this Court.

11) On the basis of aforesaid discussions, this Court finds that the

Tribunal was fully justified in passing the impugned award and fastening the liability on the appellant/insurance company along with non applicant No. 1 & 2 driver and owner jointly and severely. Accordingly, the appeal being without any substance is liable to the dismissed and is hereby dismissed.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant