

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 837 of 2013**

1. National Insurance Company Limited Branch Office- Kosa Badi Korba (CG) Through Divisional Manager, National Insurance Company Limited, Divisional Office - Taha Complex, Vyapar Vihar Road, Bilaspur, Tahsil and District Bilaspur (CG)

---- Petitioner**Versus**

1. Sanjay Kumar Mehar, S/o Maniram Mehar, Aged About 12 Years, Minor through father Maniram Mehar, son of, aged ...years (s/o and age not mentioned in certified copy of award), R/o Mini Basti, Jarhabhata, Bilaspur, Police Station Civil Lines, Tahsil & District Bilaspur (CG).
2. Mohan Singh Thakur S/o Ramnath Singh Thakur, aged about 25 years, Occupation- Driver, R/o Sutarra, Police Station- Katghora, Tahsil Katghora, District Korba (CG).
3. M/s Sarvamangla Construction Company, Agrasen Bhavan Marg, Mission Road, Korba, District : Korba (CG)

---- Respondents

For Appellant	:	Shri Qamrul Aziz, Advocate
For Respondent No.1	:	Shri R.K. Jain, Advocate
For Respondent No.2	:	None
For Respondent No.3	:	Shri Rajeev Bharat, Advocate

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu**29/07/2019**

1. Appellant Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging award dated 18.6.2013 passed by the learned 6th Additional Motor Accident Claims Tribunal, Bilaspur (for short 'the Claims Tribunal') in Claim Case No.37/13 whereby claim application has been allowed in part and liability to pay amount of compensation has been fastened on appellant insurance company.
2. Brief facts relevant for disposal of above appeals are that

on 31.1.2009 at about 8.45 a.m. the claimant/respondent No.1 herein along with one Arvind Kumar was returning to his village Chakraway from Baitalpur-Sargaon on motorcycle bearing registration No.CG04/CM/2051. When they reached near Narayanpur Square (Chandrakhuir Square), one truck bearing registration No.CG04-ZB/1482, driven by non-applicant No.1, dashed their motorcycle as a result of which claimant suffered multiple grievous injuries on various parts of body and became unconscious. He was taken to Baitalpur Government Hospital but looking to grievousness of his injuries, he was referred to hospital at Bilaspur. Claimant was admitted in Sanjeevni Hospital & Research Centre where he remained admitted upto 10.2.2019. He was discharged from the said hospital with instructions for further treatment. On account of injuries suffered in the aforementioned accident, the claimant filed claim application claiming Rs.1,64,000/- as compensation.

3. Non-applicant No.1 & 2, who are driver & owner of offending vehicle, submitted their reply to claim application and denied all adverse pleadings made in claim application. They pleaded that the accident took place due to negligence on the part of driver of motorcycle, however, since the offending vehicle is a 'heavy vehicle', the offence was registered against the driver of said vehicle. They also pleaded that the owner

and insurer of motorcycle have not been arrayed as non-applicants, therefore, claim application is not maintainable.

4. Non-applicant No.3/Insurance Company also filed its reply to claim application and pleaded that on the date of accident, driver was not possessing valid & effective driving license to drive offending vehicle and as such, there was violation of condition of insurance policy, therefore, the insurance company is not liable to indemnify the insured. It was also pleaded that the driver of motorcycle was also contributory negligent; the owner & insurer of motorcycle have not arrayed as party to claim application and therefore claim application is not maintainable and liable to be dismissed as such.
5. The Claims Tribunal on appreciation of evidence available on record, allowed claim application in part and awarded a total amount of Rs.20,000/- as compensation. The Claims Tribunal also held that as there was no violation of conditions of insurance policy, therefore, non-applicants will be, jointly and severally, liable for payment of amount of compensation.
6. Learned counsel for appellant submitted that the Claims Tribunal erred in holding that there was no violation of condition of insurance policy because on the date of accident, driver of offending vehicle was possessing license to drive 'light motor vehicles' only, whereas the

offending vehicle in the instant case is a 'heavy goods vehicle'.

7. Learned counsel appearing on behalf of claimant/respondent No.1 submits that the Claims Tribunal on the basis of material and evidence available on record has rightly held that the insurance company failed to prove violation of any of the conditions of insurance policy.
8. Learned counsel for respondent No.3-owner of offending vehicle submits that the Claims Tribunal has rightly passed the impugned award fastening liability on insurance company as on the date of accident the offending vehicle was insured with insurance company and the driver of offending vehicle was possessing valid and effective driving license to drive it.
9. I have heard learned counsel for the parties and perused the record of Claims Tribunal.
10. Ex.D-1 is the particulars of license issued by the District Transport Officer, Lohardaga (Jharkhand). Perusal of Ex.D-1 would show that initially the license was issued to driver of offending vehicle on 11.5.2002 authorizing him to drive 'light motor vehicle'. Later on, an endorsement was made as per Ex.D-1 authorizing its holder (non-applicant No.1) to drive 'heavy goods vehicle' w.e.f. 17.7.2002. This document (Ex.D-1) was proved by Shri Budhram Oraon, who at the relevant point of time was

working as Clerk in the office of the District Transport Office, Lohardaga (Jharkhand). According to this witness, the license was initially issued on 11.5.2002 for 'light motor vehicles' only and subsequently, on 17.7.2002 an endorsement was made on Ex.D-1 authorizing its holder to drive 'heavy goods vehicle' and validity of which was upto 10.5.2005 i.e. for a period of three years.

11. Ex.D-2C is a copy of Form-10 'State Register of Driving License', which was issued by the District Transport Office, Lohardaga (Jharkhand) wherein also endorsement of 'HGV' w.e.f. 17.7.2007 and valid upto 10.5.2005 is mentioned. Ex.D-3 is the particulars of driving license issued by the District Transport Officer, Ranchi wherein against Column No.9 pertaining to 'Vehicle Initially authorized to drive', the words 'LMV Only' has been mentioned. In Column No.10 pertaining to 'Detail of all renewals', it is mentioned that license No.1360/02 (Ex.D-1) was firstly renewed from 11.5.2002 to 10.5.2005 and thereafter on 11.5.2005 upto 10.5.2008 and then from 08.08.2008 to 7.8.2011.

12. Although above particulars issued by the District Transport Office have been proved by witness No.2 of non-applicant No.3, however, this witness in his statement stated that license was issued for 'light motor vehicle (commercial)' having its validity upto 7.8.2011. From perusal of Ex.D-3 it is evident that it is nowhere

mentioned that license is issued for 'light motor vehicle (commercial)' and it only mentions in Column No.9 that vehicle initially authorized to drive 'LMV only'. On the contrary, the contents of Ex.D-1 & Ex.D-2 contained an endorsement indicating that holder is authorized to drive 'heavy goods vehicle', which was subsequently renewed for a period of three years from time to time, as mentioned in Ex.D-3. Needless to mention that validity period of license to be issued for transport vehicles is 03 years.

13. Section 10 (2) of the Act of 1988 provides the category of vehicles for which license is to be issued. Section 10 (2) is reproduced below for ready reference:-

“(2) A learner's license or, as the case may be, driving license shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following cases, namely:-

- (a) motor cycle without gear;
- (b) motor cycle with gear
- (c) invalid carriage;
- (e) transport vehicle;
- (i) road roller;
- (j) motor vehicle of a specified description;

14. Clause (e) of sub-section (2) of Section 10 of the Act of 1988 provides for 'transport vehicle' which has been inserted by way of amendment w.e.f. 14.11.1994. Prior to the amendment, different classes of commercial vehicles were mentioned in clauses (e) to (h) of the Act of 1988, like medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor

vehicle, but after the amendment all the classes of vehicle mentioned in clause (e) to (h) have been substituted by 'transport vehicle'. Currency of license to drive motor vehicle is provided under Section 14 of the Act of 1988. Clause (a) of sub-section (2) of Section 14 of the Act of 1988 provides for currency period of license for transport vehicle as '03 years'.

15. Keeping in mind the particulars of license, which has been produced by the insurance company itself, wherein there is an endorsement to the effect that driver is authorized to drive 'heavy goods vehicle'; the same was valid for a period of three years only and the fact that the offending vehicle comes within the category of 'transport vehicle', this Court is of the view that on the date of accident, non-applicant No.2-driver was having valid and effective driving license to drive offending vehicle. In view of aforementioned discussion and perusal of Ex.D1, D-2 & D-3, it is clear that driver of offending vehicle is possessing valid and effective driving license. Learned counsel for the appellant has only taken the contents of Sr. No.9 in Ex.D-3, which is the column showing initial date and its authorization on that date, but subsequently there was endorsement in license to drive 'heavy goods vehicle'. Sr. No.9 of Ex.D-3 cannot be read as the authorization to drive vehicle on the date of accident. It is to be read along with the period of consecutive renewals

mentioned in Ex.D-3 along with Ex.D-1 & Ex.D-2(C) which makes clear that the license is to drive 'transport vehicle'. Thus, the submission made by learned counsel for insurance company that on the date of accident, driver of offending vehicle was not possessing valid & effective driving license is not sustainable and is hereby repelled.

16. Consequently, the appeal being sans merit is liable to be dismissed and is hereby dismissed.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-