

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1109 of 2013**

1. Rajesh Kumar Gupta S/o Mohan Prasad Gupta, Aged About 27 Years, Occupation – Vehicle Owner, R/o Mahadev Gali, Bouripara, Ambikapur, P.S. And Tah. Ambikapur, Revenue and Civil District - Surguja (C.G.) (Non-applicant No. 1)

---- Appellant**Versus**

1. Anil Kumar Jaiswal, S/o Sachnu Prasad, Aged About 35 Years R/o Rewatpur, Occupation – Agriculturist and Business, P.S. And Tahsil - Rajpur, Distt. Surguja (Now Revenue Distt. Balrampur)-Ramanujganj (C.G.) (Applicant)
2. Branch Manager National Insurance Company Limited, Mandal-X.V. National Insurance Bhawan, 08, India Exchange, First Floor, Kolkata 700001 (Non-applicant No. 2 Insurer)

---- Respondents

For Appellant	:	Shri Sunil Tripathi, Advocate.
For Respondent No. 1	:	Shri Jitendra Shrivastava, Advocate.
For Respondent No. 2	:	Shri Qamrul Aziz, Advocate.

MAC No. 1110 of 2013

1. Rajesh Kumar Gupta S/o Mohan Prasad Gupta, Aged About 27 Years, Occupation – Vehicle Owner, R/o Mahadev Gali, Bouripara, Ambikapur, P.S. And Tahsil - Ambikapur, Revenue and Civil District - Surguja (C.G.) (non-applicant No. 1)

---- Appellant**Versus**

1. Pankaj Kumar Jaiswal S/o Surendra Prasad Jaiswal, Aged About 22 Years, Occupation – Busniess, R/o Rewatpur, P.S. And Tahsil Rajpur, District Surguja (Now Revenue Distt. Balrampur)-Ramanujganj (C.G.) (Applicant)
2. Branch Manager, National Insurance Company Limited., Mandal X.V. National Insurance Bhawan 08, India Exchange, First Floor, Kolkata 700001 (Non-applicant No. 2 Insurer)

---- Respondents

For Appellant	:	Shri Sunil Tripathi, Advocate.
For Respondent No. 1	:	Shri Jitendra Shrivastava, Advocate.
For Respondent No. 2	:	Shri Qamrul Aziz, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

24/06/2019

- 1) As both these appeals filed under section 173 of Motor Vehicles Act, 1988 arises out of the same accident occurred on 18/09/2010 involving vehicle Truck TATA ACE registration No. UP64 H 4541, in which the claimants suffered grievous injuries, they are being disposed of by this common judgment.

- 2) Both these appeals i.e. **MAC No. 1109/2013** and **MAC 1110/2013** have been preferred by the owner-driver of the vehicle under Section 173 of the Motor Vehicles Act, 1988 against the award dated 06/09/2013 passed by First Additional Motor Accident claims Tribunal, Ambikapur, Surguja (C.G.) in Claim Case No. 156/2011 related to MAC No. 1109/2013 awarding total compensation of Rs. 18,700/- with interest @ 7.5% per annum from the date of application till realization and in Claim Case No. 157/2011 related to MAC No. 1110/2013 awarding total compensation of Rs. 1,08,600/- with interest @ 7.5% per annum from the date of application till realization, in favour of claimants fastening liability on the non-applicant No. 1/owner-driver of vehicle and exonerated Insurance Company on the ground that at the time of accident non-applicant No. 1/owner-driver of offending vehicle Rajesh Kumar Gupta not having valid and effective license for driving the light goods vehicle.

- 3) As per averments in the claim petitions, on the date of accident 18/09/2010 around 04:30 PM Anil Kumar Jaiswal, aged about 35 years, alongwith one Pankaj Kumar Jaiswal, aged about 22 years, was going to village Rewapur from Ambikapur by

motorcycle Yamaha Crux bearing No. CG15 C 3630. The motorcycle was being ridden by Pankaj Kumar Jaiswal and Anil Kumar Jaiswal was a pillion rider. However, on the way non-applicant No. 1 by driving TATA ACE bearing No. UP64 H 4541 in a rash and negligent manner dashed the said motorcycle, as a result of which both Pankaj Kumar Jaiswal and Anil Kumar Jaiswal suffered grievous injuries. At the time of accident the offending vehicle was owned-driven by appellant/non-applicant No. 1 and insured with non-applicant No. 2.

- 4) On claim petitions under section 166 of Motor Vehicles Act, 1988 being filed by the claimants, the Tribunal considering the evidence led by the parties granted compensation in favour of the claimants as mentioned above in para 2 of this judgment.
- 5) **MAC No. 1109/2013 and MAC 1110/2013**: 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 grounds only that on the date of accident, the appellant/driver-owner/non-applicant No.1 was having a valid and effective driving license to drive LMV which was valid from 19/02/2010 to 18/02/2030 vide Ex. D-1. 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 TATA ACE and there is no endorsement in the driving license in this regard, as per Certificate of Registration, the offending vehicle is also Light Goods Vehicle as its laden weight is 1510 Kgs and unladen weight is 815 Kgs. 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***, 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 driver-owner 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.2/ 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 matter has rightly awarded compensation which needs no interference by this Court.
- 7) Learned counsel for the claimants/respondent No. 1 for both the appeals has duly assisted the Court and support the contention made by the appellant counsel.
- 8) Heard learned counsel for the parties and perused the material available on record.
- 9) So far as liability is concerned, as per Ex. D-1, it is evident that non-applicant no. 1 was having a license for motorcycle with gear and Light Motor Vehicle which was valid from 19/02/2010 to 18/02/2030 and the laden weight of vehicle in question is 1510 Kgs.
- 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-Owner for paying compensation to the claimants.
- 13) In the result, **both the appeals are allowed** with modification in the impugned award to the above extent that the non-applicant No.2/respondent No. 2 Insurance Company is jointly and severally liable to satisfy the claim of claimants. Respondent No. 2 is hereby directed to deposit the amount within two months from the date of this judgment. However, rest of the conditions of the impugned award shall remain intact.
- 14) If any amount has been deposited by the appellant and disbursed to the claimants/respondent No. 1 in **MAC No. 1109/2013** and **MAC 1110/2013**;, the appellant is entitled to recover the same from Insurance Company non-applicant No. 2/respondent No. 2.

-Sd/-
(Gautam Chourdiya)
Judge