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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 507 of 2013

- Smt. Anjani Sahu, W/o Kamlesh Sahu, aged about 33 years, R/o Durga Chowk, Nayapara, Balodabazar, Tahsil and Police Station Balodabazar, Revenue District Balodabazar, Civil District Raipur (C.G.)

Represented through: General Power of Attorney Holder Kamlesh Sahu, S/o Dhirpal Sahu, aged about 40 years (Husband of Smt. Anjani Sahu – Appellant), R/o Durga Chowk, Nayapara, Balodabazar, Tahsil and Police Station Balodabazar, Revenue District Balodabazar, Civil District Raipur (C.G.)

(Owner of Bus No. CG 04 E 00706)

**---- Appellant/Owner/Non-applicant No.2
Versus**

1. Smt. Bhagmati Patel, widow of Late Ramkhilawan Patel, aged about 50 years
2. Santosh Patel, S/o Late Ramkhilawan Patel, aged about 30 years

Both R/o Village Tarpongi, P.O. and Police Station Nandghat, Civil and Revenue District Durg (C.G.)

(Claimants)

3. Devram Banjare, S/o Sunderlal Banjare, aged about 25 years, R/o Village Pachri, P.O. Miruda, Police Station Shivrinarayan, Civil and Revenue District Janjgir-Champa (C.G.)

(Non-applicant No.1/Driver of Bus No. CG 04 E 00706)

4. The New India Insurance Company Limited, Madina Manzil Jail Road, Kachhari Chowk, Raipur, Tahsil Raipur, Civil and Revenue District Raipur (C.G.)

The New India Insurance Company Limited, Shantikunj Civil Lines, Balodabazar, District Raipur (C.G.)

(Non-applicant No.3/Insurer of Bus No. CG 04 E 00706)

---- Respondents

For Appellant	:	Shri Malay Kumar Bhaduri, Advocate
For Respondents 1 to 3	:	None
For Respondent No. 4	:	Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

30.04.2019

1. This is an appeal by the owner/non-applicant No.2 challenging the award dated 03.05.2013 passed by the First Additional Motor Accident Claims Tribunal Balodabazar, District Raipur (C.G.) in Claim Case No. 163 of 2011 whereby the Tribunal has awarded compensation of Rs.1,77,000/- with interest @ 6% per

annum from the date of application till realization, in favour of the claimants fastening the liability on non-applicants No. 1 & 2/driver-appellant/owner jointly and severally.

2. Brief facts are that on 29.10.2010 while deceased- Ramkhilawan alongwith his wife and son was traveling from Village Tarpongi to Ghodhra Kasdol in Mini-Bus bearing registration No. CG-04/E/0706, when he reached at Kasdol and was getting down from Mini-Bus, non-applicant No. 1- Devram Banjare drove the vehicle rashly and negligently, dashed Ramkhilawan and Ramkhilawan got crushed under the wheel of the said Bus. As a result thereof, Ramkhilawan sustained grievous injuries on various parts of the body and during treatment, he died. Deceased- Ramkhilawan was aged about 55 years and was earning Rs.6,000/- per month as Mason. The Claimants are wife and son of the deceased being dependents on him filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.10,00,000/-

3. The Tribunal considering the evidence available on record by the impugned award granted a total compensation of Rs.1,77,000/- in favour of the claimants. However, the liability to satisfy the award has been fastened upon the non-applicants No.1 and 2/driver and 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 licence to drive the vehicle in question. Being aggrieved by the said award, the appellant/owner has filed this instant appeal under Section 173 of the Motor Vehicles Act.

4. 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 licence to drive LMV vide Ex.-NA-7. The said driving licence has been duly proved before the Tribunal and a finding to this effect has also been recorded. Though the vehicle in question is Mini-Bus, which was a transport vehicle and there is no endorsement in the driving licence in this regard, but in view of the decision of the Hon'ble Supreme Court in the matter of **Mukund Dewangan** Vs. **Oriental Insurance Company**

Limited reported in **(2017) 14 SCC 663**, no such endorsement is required in the driving licence for driving transport vehicle if its unladen weight does not exceed 7500 Kg. 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.

5. On the other hand, learned counsel for respondent No.4/Insurance Company opposes the submission on behalf of the appellant and supports the impugned award passed by the Tribunal.

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

7. 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 licence 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 and 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)."

8. From perusal of the Certificate of Registration, Ex.-NA-3-C, it is apparent that gross weight of the offending vehicle is 7490 Kg and it is not in a dispute that

the driver was having a valid and effective licence to drive the light motor vehicle. Thus, 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 the valid and effective driving licence (Ex.-NA-7) and even in absence of the any endorsement as such in his driving licence authorizing him to drive the said transport vehicle, it cannot be held that he was not possessing the valid and effective driving licence 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 licence and was not driving the same in violation of the terms and conditions of the insurance policy.

9. In the result, the appeal is allowed. The impugned judgment is hereby modify to the extent that it is the respondent No.4/Insurance Company who is liable to satisfy the award of the Tribunal within a period of two months from today.

10. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge