AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 490 of 2014

- Bajaj Allianz General Insurance Company Limited Thru- its Authorized Officer, Bajaj Allianz General Insu.Co.Ltd., Branch Office, Shiv Mohan Bhawan, 2nd Floor, Vidhansabha Road, Pandri, Distt. Raipur, Chhattisgarh

---- Appellant

Versus

1. Itwara Bai, W/o Late Krishna Kumar Aged About 20 Years
2. Jai Kumar S/o Sheetal Prasad Aged About 45 Years
3. Budhwara Bai W/o Jai Kumar Aged About 40 Years

   All r/o village-Seepat (Bus Stand) PS Seepat, Tehsil and District - Bilaspur CG
4. Laxman Varma S/o Late Jorik Lal Varma Aged About 29 Years R/o Seepat, Near Bus Stand, Tah. And Distt. Bilaspur, Chhattisgarh

---- Respondents

For Appellant	:	Shri Ghanshyam Patel, Advocate
For Respondents	:	None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

15.02.2019

1. Appellant/Insurance Company assailed the impugned award dated 03.02.2014 passed by learned Motor Accident Claims Tribunal (for short, 'Claims Tribunal'), Bilaspur in Claim Case No.378 of 2009, wherein learned Claims Tribunal awarded a total sum of Rs.4,17,500/- as compensation in a death case.

2. Brief facts for disposal of this appeal are that on 28.06.2009 deceased Krishna Kumar was driving a tractor bearing No.CG10-A-5654 (offending vehicle) and was going towards Seepat. At that relevant time, near Nargoda turning, one motor cycle suddenly came in front of his

tractor and while saving the motorcyclist from accident, tractor turned turtle due to which Krishna Kumar died.

3. The claimants who are unfortunate wife and parents of deceased Krishna Kumar have filed claim application under Section 163-A of Motor Vehicle Act, 1988 (for short, 'the Act') claiming total sum of compensation of Rs.8,08,000/- against the owner and insurer of offending vehicle. The grounds mentioned in the claim application are that the deceased was working as driver of tractor and on the date of accident he was earning Rs.3,000/- per month. The claimants were dependant on him for their livelihood.

4. Non-applicants/owner and insurer in the claim application of the offending vehicle, after service of notice made their appearance before learned Claims Tribunal and submitted their reply.

5. Owner in his reply pleaded that he was owner of the tractor bearing No.CG10A-5654 and on the date of accident the offending vehicle was insured with Insurance Company for a period from 21.01.2009 to 20.01.2010 midnight. Though he denied the fact of involvement of his tractor in the accident, further pleaded that liability if any, for payment of compensation would be on the Insurance Company as on the date of accident, the offending vehicle was insured with the Insurance Company.

6. Insurance Company also submitted its reply to the claim application and pleaded that as the deceased himself was driving the offending vehicle and died in the accident, application under Section 163A of the Act would not be maintainable. Further it also been pleaded that driver of

offending vehicle was not possessing a valid and effective driving license, therefore, there is violation of conditions of Insurance Policy and the Insurance Company may be exonerated from its liability. It has also been pleaded that driver of offending vehicle is also one of the necessary party in the claim application and therefore, the claimants who are LRs of the deceased / driver of offending vehicle, cannot maintain claim application in the facts and circumstances of the case.

7. Learned Claims Tribunal initially passed an award on 03.12.2010 which was challenged by the Insurance Company before this Court in MAC-336 of 2011. Division Bench of this Court after hearing learned counsel for the parties, remanded the case with a direction to consider certain provision of the Act and Rules of Chhattisgarh Motor Vehicle Rules, 1994 for determining the just and proper compensation.

8. After remand of the case, claimants did not choose to amend their pleadings and learned Claims Tribunal thereafter proceeded further and framed additional issues with respect to violation of conditions of Insurance Policy and after considering the claim case afresh, passed impugned award and awarded a total compensation of Rs.4,17,500/- to the claimants.

9. Learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal committed error in not considering the application under Section 163A of the Act as it was not maintainable as the deceased himself was driving the offending vehicle and met with an accident of his own negligence. Further he argued that on the date of accident, driver of

the offending vehicle was possessing valid and effective license to drive the vehicle with an endorsement of 'LMV only'. The offending vehicle was registered as 'Commercial vehicle' but there was no endorsement of competent authority, authorising the deceased to drive the transport vehicle.

10. I have heard learned counsel for the appellant/Insurance Company and perused the record.

11. So far as the ground raised by learned counsel for the appellant with respect to maintainability of claim application under Section 163A of the Act is concerned, it will be beneficial to glance the provision of 163A of the Act, reproduced herein below:

> "[163A. Special provisions as to payment of compensation on structured formula basis.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).
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> (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

> (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

12. Herein the present case, there is specific pleading that offending vehicle met with an accident when its driver tried to save a motorcyclist, who was coming towards the offending vehicle and in the process, the offending vehicle turned turtle and in the said accident, driver himself died. Further it has been pleaded that deceased driver was a paid driver which fact has not been specifically denied by its owner. The Insurance Company also accepted premium for driver which is evident from Ex.NA-5.

13. Hon'ble Supreme Court in the matter of **United India Insurance Company Limited Vs Sunil Kumar and another** reported in AIR 2017 SC 5710 has dealt with the issue of application under Section 163A of the Act and held as under :

> "8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the

> claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention."

14. In light of above and the law laid down by Hon'ble Supreme Court in the matter of **Sunil Kumar** (*supra),* this Court does not find any force in the argument raised by learned counsel for the appellant that accident took place on account of negligence of deceased himself and therefore, application under Section 163A of the Act is not maintainable. Accordingly, it is hereby rejected. Other ground which was raised for consideration is that on the date of accident, driver of offending vehicle was not possessing valid and effective driving license. In this regard, copies of particulars of driving license No.A-201/2007 as well as the license issued in the name of deceased Krishna Kumar have been perused. These documents are filed as NA3 and NA4 respectively. A bare perusal of these exhibits shows that license has been issued authorising deceased Krishna Kumar to drive 'LMV Only' from 18.09.2007. Particulars of registration of offending vehicle issued from the registering authority, RTO have been exhibited as NA2, in which the makers of offending vehicle are shown as Swaraj and unladen weight of the vehicle is 1800 kgs. The definition of LMV has been provided under Section 2 (21) of the Act which reads as under:

> "Section 2(21) in The Motor Vehicles Act, 1988
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> (21) “light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed

> 2[7,500] kilograms; 1[7,500] kilograms;" 3(21A) “manufacturer” means a person who is engaged in the manufacture of motor vehicles; 2(21A) “manufacturer” means a person who is engaged in the manufacture of motor vehicles"

15. From perusal of aforementioned definition of LMV which very specifically provides that motor vehicle having the unladen weight less than 7,500 kgs would come under the category of LMV and in view of the same, offending vehicle of which unladen weight is 1800 kgs would certainly come within the category of LMV. Particulars of registration certificate Ex.NA6 also shows that the offending tractor on the date of accident was being registered as commercial tractor and the Insurance Policy Ex.NA5 issued by appellant/Insurance Company also bears the policy for commercial vehicle/Class D.

16. Undisputedly, the offending vehicle is registered as 'commercial vehicle' and the policy has been issued for the commercial vehicle only. Therefore, learned counsel for the appellant raised an argument that on the date of accident vehicle has been registered as commercial vehicle but the deceased was having license and authorisation to drive only LMV and not the commercial / transport vehicle as there is no endorsement in the license authorising the deceased to drive transport vehicle. Deceased driver was possessing the license to drive a particular category of vehicle but on the date of accident he was found to drive the vehicle though of a particular category, but of different type.

17. In the matter of **Mukund Dewangan Vs Oriental Insurance Company Limited** reported in (2017) 14 SCC 663 the above issue has been dealt with as under:

> "60.1 "Light motor vehicle" as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 1994.
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> 60.2 A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form."

18. In view of aforementioned proposition of law laid down by Hon'ble Supreme Court the argument raised by learned counsel for the appellant that on the date of accident deceased was not possessing valid and effective driving license is also not sustainable. No other ground is raised by learned counsel for the appellant.

19. Appellant/ Insurance Company could not make out any good ground calling interference of this Court in the impugned award passed by learned Claims Tribunal.

20. The appeal being devoid of any substance and merit, is liable to be and is hereby dismissed.

21. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

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