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## HIGH COURT OF CHHATTISGARH, BILASPUR

**MAC No. 542 of 2014**

- The Oriental Insurance Co.Ltd. Thrugh- Its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur, Distt. Bilaspur C.G., Chhattisgarh,

**---- appellant.**

**Versus**

1. Smt. Rit Kunwar W/o Late Mansingh Pav Aged About 38 Years R/o Village- Kusum Khaira, P.O. Kenda, Out Post- Belgahna, P.S. And Tah. Kota, Distt. Bilaspur C.G., Chhattisgarh,

2. Rupesh Kumar S/o Late Man Singh Pav Aged About 18 Years R/o Village- Kusum Khaira, P.O. Kenda, Out Post- Belgahna, P.S. And Tah. Kota, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh,

3. Ku. Panchkali D/o Late Man Singh Pav Aged About 16 Years Minor, Thrugh- Mother Smt. Rit Kunwar, R/o Village- Kusum Khaira, P.O. Kenda, Out Post- Belgahna, P.S. And Tah. Kota, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh

4. Mukesh Kumar S/o Late Man Singh Pav Aged About 14 Years Minor, Thru- Mother Smt. Rit Kunwar, R/o Village- Kusum Khaira, P.O. Kenda, Out Post- Belgahna, P.S. And Tah. Kota, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh

5. Ku. Sanju D/o Late Man Singh Pav Aged About 11 Years Minor, Thrugh- Mother Smt. Rit Kunwar, R/o Village- Kusum Khaira, P.O. Kenda, Out Post- Belgahna, P.S. And Tah. Kota, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh,

6. Ku. Priyanka D/o Late Man Singh Pav Aged About 8 Years Minor, Thru- Mother Smt. Rit Kunwar, R/o Village- Kusum Khaira, P.O. Kenda, Out Post- Belgahna, P.S. And Tah. Kota, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh,

7. Milap Singh S/o Late Aghnu Ram Aged About 61 Years R/o Village- Kusum Khaira, P.O. Kenda, Out Post- Belgahna, P.S. And Tah. Kota, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh,

8. Dev Kashyap S/o Laxman Kashyap Aged About 34 Years R/o Beltara, P.S. Ratanpur, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh,

9. Smt. Neelima Dubey W/o Shyamlal Dubey R/o Masanganj, Bilaspur, P.S. City Kotwali, Bilaspur, Tah. And Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh,

**---- Respondents**

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| For Appellant | : | Shri R. N. Pusty, Advocate. |
| For Respondent No.1to 7 | : | Shri Samir Singh. |
| For the Respondent No. 8 &9 | : | None |

**Hon'ble Shri Gautam Chourdiya, J**

**Judgment On Board**

**07/02/2019:**

This appeal is by the insurance company under Section 173 of the Motor Vehicles Act, 1988 against the award dated 24.03.2014, passed by 6th Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No. 59/2013 awarding total compensation of Rs. 4,48,200/- with interest @ 7.5% per annum from the date of application till realization, fastening liability on the non-applicant No.3 jointly and severally along with non-applicants No. 1 & 2.

02. As per averments in the claim petition, on 17.04.2012 the deceased-Maansingh Pav was going to village Baridih for attending a marriage function by travelling in a bus bearing registration No. CG 10-/1407. However, non-applicant No.1 Dev Kashyap drove the said vehicle in a rash & negligent manner as a result of which Mansingh Pav fell off the bus and was run over by the bus leading to his death on the spot. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

03. On claim petition being filed by the claimants/wife, children & parents under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellant/insurance company submits that the Tribunal has wrongly fastened liability on the insurance company because the driver was having licence for LMV whereas he was driving the offending vehicle i.e. Bus, which is a passenger carrying vehicle, on the date of accident without there being any endorsement to this effect in his driving licence. He also submits that the Tribunal by wrongly relying upon the unexhibited documents produced by the claimants has fastened liability on the Insurance Company and therefore, the finding so recorded being not sustainable in law is liable to be set aside.

05. On the other hand, learned counsel for the respondents/claimants

supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly fastened liability on the insurance company and awarded compensation which needs no interference by this Court.

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

07. As regards the issue of competence of the driver for driving the offending vehicle, does not in dispute that the non-applicant No. 1 driver was having a licence for LMV (NT) which was valid and effective on the date of accident. As per RC Book (unexhibited document) gross weight of the offending is 6950 kg.

08. At this juncture, the principles laid down in ***Mukund Dewangan Vs. Oriental Insurance Company Ltd.***, reported in ***(2017) 14 SCC 663***, is to be noted as the question involved herein, as to 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, was considered in the said case 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 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)”

09. Applying the ratio of law laid down by the Supreme Court in the matter of Mukund Dewangan (supra), it is apparent that the driver/non-applicant No.1 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 possessing the valid and effective driving license at the relevant time.

10. As regards the issue of breach of policy conditions, there is nothing on record which could show that the offending vehicle was being driven in violation of any of the policy conditions. Even as per the report submitted by the investigator of the Insurance Company, there is no other breach of policy conditions alleged against the owner and driver of the vehicle.

11. In the result, the appeal filed by the insurance company being without any substance is liable to be dismissed and it is dismissed as such.

Sd/-

**(Gautam Chourdiya)**
**Judge**

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