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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 860 of 2014

- The Oriental Insurance Company Ltd. Through its Divisional Manager, Branch Office Ambedkar Chowk, Ambikapur, Zilla-Sarguja, Chhattisgarh

---- Appellant/Insurer/Non-applicant No.2

Versus

1. Smt. Poonam Kujur W/o Late Sonu Kujur, Aged about 20 years
2. Suresh Kujur S/o Buduru Kujur, Aged about 50 years
3. Sniyaro Kujur W/o Suresh Kujur, Aged about 40 years
4. Kumari Archana Kujur, aged about 01 month, under the guardianship of Claimant No.1 Smt. Poonam Kujur

   All are resident of village Bishnupur Khurd Thana Jaynagar, Tahsil Surajpur, Zilla Surajpur (C.G.)

   (Claimants)
5. Satishchandra Cherwa S/o Dashru, aged about 40 years, Resident of Parradand, Mahamaya Road Nagar Ambikapur Thana & Tahsil Ambikapur Zilla Sarguja (C.G.)

   (Driver & Owner of offending vehicle/Non-applicant No. 1)

---- Respondents

And

Miscellaneous Appeal (Civil) No. 861 of 2014

- The Oriental Insurance Company Ltd. Through its Divisional Manager, Branch Office Ambedkar Chowk, Ambikapur, Zilla-Sarguja, Chhattisgarh

---- Appellant/Insurer/Non-applicant No.2

Versus

1. Smt. Sini Bai W/o Late Tejuram Yadav, Aged about 22 years
2. Kumari Deventi D/o Tejuram Yadav, Aged about 2 years, minor under the Guardianship of mother Claimant No.1 Smt. Sini Bai W/o late Tejuram Yadav
3. Teeral Yadav S/o Nanhu Yadav, Aged about 50 years
4. Smt. Sonmatia W/o Tiral Yadav, aged about 45 years

   All are from Bargah Caste. All are resident of village Bisnupur Thana Jainagar, Tahsil Surajpur (C.G.)

   (Claimants)
5. Satishchandra Cherwa S/o Dashru Ram Cherwa, aged about 40 years, Resident of Parradand, Mahamaya Road Nagar Ambikapur Thana & Tahsil Ambikapur Zilla Sarguja (C.G.)

   (Driver & Owner of offending vehicle/Non-applicant No. 1)

---- Respondents

For Appellant/Non-applicant No. 2/ Insurance Company	:	Smt. Chitra Shrivastava, Advocate
For Respondents No. 1 to 4/ Claimants	:	None
For Respondent No. 5/ Non-applicant No.1/Driver & Owner	:	Shri Rahul Mishra, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J
Judgment on Board

02.05.2019

1. As both these appeals arise out of the separate award dated 02.07.2014 passed by Third Additional Motor Accident Claims Tribunal, Ambikapur Sarguja (CG) in Claim Case No. 129 of 2012 and Claim Case No. 152 of 2012, they are being disposed of by this common judgment.

2. As per averments made in the Claim Petitions, on 09.03.2012 deceased persons namely Sonu Kujur (in Claim Case No. 129 of 2012) and Tejuram (in Claim Case No. 152 of 2012) were returning from village Karjee by motorcycle, at that time motorcycle was being ridden by Tejuram and Sonu Kujur was the pillion rider of the same. When they reached village Kanthi, non-applicant No.1, driver & owner of the offending vehicle Bolera Pickup-Van bearing registration No. CG-15/AC/1404, which was insured with non-applicant No.2, the driving the said Pickup-Van in a rash and negligent manner, dashed the motorcycle. As a result thereof, both Tejuram and Sonu Kujur died on the spot.

3. On Claim Petitions being filed by the Claimants under 166 of the Motor Vehicles Act, 1988, the Tribunal considering the overall evidence on records by the impugned awards granted a total compensation of Rs.5,26,000/- with interest @ 6% per annum from the date of application till realization in favour of the Claimants in Claim Case No. 129 of 2012 and Rs.5,26,000/- with interest @ 6% per annum from the date of application till realization in favour of the Claimants in Claim Case No. 152 of 2012. In view of the decision of three Judges Bench of Supreme Court in case of *National Insurance Company Limited* Vs. *Sawarn Singh and Others, SLP (Civil) 9027/2003 decided on 05/01/2004,* the Tribunal has fastened the liability on non-applicant No.2/Insurance Company directing to pay the awarded sum to the Claimants in both claim petitions within a period of two months from the date of awards and then recover it from non-applicant No.1/driver & owner.

4. Learned counsel for the Appellant/Insurance Company submits that on the date of accident the driver of the offending vehicle was not having a valid and effective driving licence as the vehicle in question was a transport vehicle whereas the driver was having licence for LMV (Non-Transport). As such, on account of there being breach of policy conditions, the Tribunal was not justified in fastening liability on the Appellant/Insurance Company directing to pay the awarded sum to the Claimants in both claim petitions within a period of two months from the date of award and then recover it from non-applicant No.1/driver & owner of the offending vehicle. She submits that as per Ex-D/4 (registration particular certificate exhibited in records of Claim Case No. 152/2012), the vehicle being driven by non-applicant No.1/driver & owner is Bolero Pickup Normal and is a light goods vehicle (LGV). She further submits that as per Ex.-1C (driving licence of non-applicant No.1 exhibited in records of Claim Case No. 152/2012), there is no endorsement in the driving licence to drive the transport vehicle. She also submits that Pawan Kumar Sahu, AG-III in RTO, Ambikapur examined as NAW2, has proved this fact that the driving licence was issued in favour of Satishchandra Cherw/non-applicant No.1 by RTO, Ambikapur and non-applicant No.1 had a licence for motorcycle with gear (MCWG) and light motor vehicle (LMV) and validity of licence is from 20.04.2010 to 09.01.2021. She submits that NAW-2 also proved this fact that on the date of accident i.e. 09.03.2012, non-applicant No.1 was not competent to drive the transport vehicle. Therefore, the Tribunal was not justified in fastening liability on non-applicant No.2/Insurance Company of paying the awarded sum and then recovering it from non-applicant No.1.

5. On the other hand, learned counsel for Respondent No.5/non-applicant No.1 submits that he has duly assisted the Court. However, he submits that 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***, there is no requirement to obtain separate endorsement to drive transport vehicle. He submits that no appeal has been filed by non-applicant No.1 against the awards of the Tribunal.

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

7. The only issue which needs to be considered by this Court is whether in the given facts and circumstances of the case the Tribunal was justified in fastening liability on the Insurance Company to first pay the amount of compensation and then recover it from non-applicant No.1/driver & owner of the offending vehicle on the ground that the driver of the vehicle in question, which was a transport vehicle, was having licence to drive LMV only.

8. In order to ascertain the fact as to whether the driver of the vehicle in question possessed the valid driving licence or not, I have examined the driving licence on record (Ex.-1C) and perusal of it shows that he was authorized to drive the light motor vehicle. The vehicle in question is, admittedly, a "light goods vehicle". It is true that there is no endorsement in the said driving licence authorizing the driver of the offending vehicle to drive the light goods vehicle, but undisputedly as observed herein above the vehicle in question is a light motor vehicle as per the provision prescribed under Section 2(21) of the Act as its laden weight does not exceed 7500 kg. Therefore, merely for want of endorsement in this regard in the driving licence authorizing the driver to drive the vehicle in question, it cannot be said that he was not possessing the valid and effective driving licence to drive the said vehicle, as held by the learned Claims Tribunal.

9. At this juncture, the principles laid down in *Mukund Dewangan* (supra) is to be noted as the question involved herein, as to 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, was considered 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)"

10. From perusal of the registration particulars certificate (Ex.-D/4) and insurance of vehicle (Ex.-2C), which were exhibited in record of Claim Case No. 152/2012, it is apparent that unladen weight is 1190 kg and gross vehicle weight is 2880 kg of the offending vehicle and that at the time of accident, the offending vehicle was insured with non-applicant No.2. 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 and even in absence of 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 recording by the learned Claims Tribunal in 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.

11. In the result, the impugned judgments are hereby modified to the extent that it is the Appellant Insurance Company/non-applicant No.2 which is jointly and severally alongwith non-applicant No.1/driver & owner liable to satisfy the awards of the Tribunal within a period of two months from the date of receipt of certified copy of this judgment. However, rest of the conditions of the impugned awards shall remain intact.

12. With the aforesaid observations, both appeal stand disposed of.

Sd/-
(Gautam Chourdiya)
Judge

vatti