

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 552 of 2014**

- National Insurance Company Ltd. Tatibandh Business Centre, Near Bharatmata School, G.E. Road, Telibandha, Raipur, Thru-Divisional Manager, Divisional Office- Bilaspur.

----Appellant**Versus**

1. Bodhiram Nishad S/o Ganpat Aged About 50 Years R/o Village Karn Rod, Tah. Kurud, Distt. Dhamtari C.G.
2. Krishna Kumar Nishad S/o Horilal Aged About 37 Years R/o Parkhanda, Tahsil Kurud, District Dhamtari C.G.
3. Horilal Nishad S/o Sundar Nishad R/o Kurud, District Dhamtari C.G.
4. Jailal Sahoo S/o Maharaji R/o Navi, Tahsil Kurud, District Dhamtari C.G.
5. United India Insurance Company Ltd. Krishna Complex, Kuchari Chowk, Raipur C.G.

---- Respondents

For Appellant	Shri A.K. Gupta, Advocate.
For Respondent No.2	Ms. Pushplata Khalkho, Advocate.
For Respondent No.5	Smt. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board**

14/02/2019

01. This appeal is by the National Insurance Company/non-applicant no.4 against the award dated 06.11.2013 passed by the Chief Motor Accident Claims Tribunal, Dhamtari, C.G. in Claim Case No.151/2012 awarding total compensation of Rs.2,47,000/- with interest @ 6% per annum from the date of application till

realization, fastening liability on the non-applicant no.4 i.e. National Insurance Company Limited, non-applicant no.5 i.e. United India Insurance Company Limited jointly and severally along with non-applicants.

02. As per claim petition, on 19.06.2013 deceased Girija Bai, aged about 44 years, earning Rs.4,000/- as Labour, died in the motor vehicular accident caused due to rash and negligent driving of Tractor bearing no.CG04-DT-1742 and Trolley bearing no.CG04-DB-2612 by non-applicant No. 1. At the time of accident, the offending Tractor was owned by non-applicant no.2 & Trolley owned by non-applicant no.3 and Tractor insured with non-applicant no.4 and Trolley insured with non-applicant no.5.

03. On claim petition being filed by the claimant i.e. Husband of deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.12,00,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

04. Learned counsel for the appellant submits that the Tribunal has wrongly fastened the liability on the National Insurance Company as on the date of accident non-applicant no.1 driver was not having a valid and effective driving licence to drive the offending vehicle. Therefore, National Insurance Company is not liable to indemnify the owner in respect of claim of the claimants.

05. Learned counsel for the respondents oppose the contention

made by the appellant's counsel and submits that there is no breach of policy and the vehicle is light motor vehicle having weight below 7500 kg, therefore, driver of the offending was having a valid and effective driving licence on the date of accident.

06. Heard both the parties and perused the material available on record.

07. It is not in dispute that on the date of accident the Tractor bearing no. CG04-DT-1742 was duly insured with non-applicant no.4 and Trolley bearing no.CG04-DB-2612 was duly insured with non-applicant no.5. It is also not in dispute that due to rash and negligent driving of tractor and trolley by non-applicant no.1 the accident occurred in which deceased Girija Bai suffered grievous injuries and died. As per the evidence available on record, it is clear that on the date of accident non-applicant no.1 was having a licence for LMV which was valid from 15.06.2010 to 31.12.2024. In this case, the accident occurred on 19.06.2013 and on 29.07.2013 endorsement in the said licence was made thereby authorizing non-applicant no.1 for driving HMV. In view of the judgment of Hon'ble Supreme Court in the matter of ***Mukund Dewangan Vs. Oriental Insurance Company Ltd.***, reported in **(2017) 14 SCC 663**, it is clear that the person holding a licence for LMV is entitled to drive a vehicle gross weight of which is below 7500 Kg. There is no evidence adduced on behalf of the Insurance Company to show that the gross weight of tractor trolley was above 7500 Kg

and that the licence held by non-applicant no.1 does not authorize him to drive the offending vehicle.

08. In the matter of ***National Insurance Company Ltd Vs. Kushal Salma and others 2011 (2) C.G.L.J.243(DB)***, the Division Bench of this Court while considering the identical issue whether the Insurance Companies of Tractor and Trolley are liable for indemnifying the owners of Tractor and Trolleys in a case of accident resulting in death of a person, held as under:-

“Held- Trolley was insured by respondent no.4/Oriental Insurance Company who has issued policy in accordance with the provisions of Chapter X and XI of the Motor Vehicles Act- When trailer is attached with tractor then it becomes one vehicle hence if the tractor or trolley and trolley both are involved in the accident then both the owners and both the Insurance Companies are liable for the tort committed by the tractor driver – Contention that dispute is between two public undertakings hence matter should go first before the High Power Committee- Negatived because dispute is between the two persons i.e. owner of the tractor and the owner of the trolley and if they are held liable then the insurance companies shall be liable to indemnify their respective insured according to 147 of the Act – Both the owners i.e. owner of the tractor and the trailer and insurers are jointly and severally liable for payment of compensation to the claimants- Appeal partly allowed.”

09. Thus, having regard to the over all evidence including the pleadings of the respective parties, in view of the decision of this Court in the matter of ***Kushal Salma and others*** (supra), this Court is of the opinion the Tribunal was fully justified in fastening liability on the non-applicant no.4 i.e. National Insurance Company Limited, non-applicant no.5 i.e. United India Insurance Company Limited jointly and severally along with non-applicants.

11. In the result, the appeal being without any substance is liable to be and is, accordingly, dismissed.

12.The amount, if any, already deposited by non-applicant no.4/National Insurance Company shall be adjusted accordingly.

Sd/-
Gautam Chourdiya
Judge

Akhilesh