

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 966 OF 2012**

Smt. Devmati Wd/o Late Govardhan Chauhan Aged About 60 Years
R/o Bhilai, Thana-Balanda, Distt. Janjgir-Champa Chhattisgarh, At
Present Address Chingrapara, Bilaspur, District Bilaspur Chhattisgarh.

---- Appellant**Versus**

1. Shekh Aleem Aged About 50 Years R/o Javaharpara, Akaltara, P.S. Akaltara, District Janjgir-Champa, Chhattisgarh.
2. Ramesh Kumar Tulsiyan S/o Late Nandkishor Tulsiyan R/o Akaltara, District Jangir-Champa, Chhattisgarh.
3. The Oriental Insurance Co. Ltd. Through Manager, Rama Trade Center, Near Bas Stand, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondents

For Appellant	:	Mr. Samir Singh, Advocate.
For Respondent No. 3	:	Ms. Chitra Shrivastava, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Judgment On Board

16/01/2019

1. By this instant appeal, appellant/claimant (injured) assailed the legality, validity and propriety of the impugned award dated 10/07/2012 passed by Fifth Motor Accident Claims Tribunal, Bilaspur (hereinafter referred to as 'Claims Tribunal') in Claim Case No.59/2012, whereby the learned Claims Tribunal partly allowed the

claim application filed by appellant/claimant and awarded a sum of Rs.25,816/- as compensation in an injury case.

2. Brief facts for disposal of this appeal, are that, on 22/08/2010 when appellant/claimant was returning from Mahanadi river at Shivrinarayan and going to Baloda Shiv Temple as pedestrian, at that relevant time, one Bus bearing its registration No. CG11/A/5139 (hereinafter referred to as 'offending vehicle') driven by respondent No.1 rashly and negligently run over the part of the foot of appellant/claimant, due to which, she sustained grievous injury.
3. On matter being reported, a criminal case was registered against respondent No.1 for offences punishable under Sections 279, 337 and 338 of Indian Penal Code. After investigation, charge sheet has been filed.
4. Due to the aforesaid injuries sustained by appellant/claimant, she took treatment at Chhattisgarh Institute of Medical Science ('CIMS') at Bilaspur from 23/08/2010 to 09/10/2010. Even after taking treatment as indoor patient for about one month, she could not be cured fully. For the reasons stated above, appellant/claimant filed a claim application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before the competent Claims Tribunal claiming Rs.8,00,000/- in total as compensation on all heads.

5. Respondents No. 1 and 2 who are owner and driver of the offending vehicle, even after service of notice, did not choose to appear before the learned Claims Tribunal and remained *ex parte*.
6. Respondent No. 3/insurance company after service of notice, made its appearance and submitted reply to the claim application, in which, it has been pleaded that the accident has not taken place on account of negligence on the part of driver of the offending vehicle, but it took place on account of negligence of the appellant/claimant herself. It has been further pleaded that on the date of accident, the offending vehicle was running in violation of the conditions of the insurance policy, therefore, the insurance company is having no liability to pay the amount of compensation, if any, awarded by learned Claims Tribunal. It has been lastly pleaded that on the date of accident, appellant/claimant was aged about 70 years, therefore, she is not having any source of income as also the claim has been made on the higher side.
7. After considering the pleadings, evidence and material available on record, learned Claims Tribunal arrived at a finding that in the aforementioned accident, appellant/claimant sustained permanent disability to the extent of 25%, but while assessing the functional disability to the extent of 10%, learned Claims Tribunal awarded Rs.25,816/- in total as compensation.

8. Learned counsel appearing for appellant/claimant submitted that learned Claims Tribunal has not considered the gravity of the injury sustained by appellant/claimant, who is an aged lady about 70 years of age on the date of accident and also awarded very meager sum on other conventional heads like pain and suffering and special diet. He further submitted that learned Claims Tribunal had not awarded any amount towards attendant though she took treatment as indoor patient for about more than one month, which is also evident from Exhibit P-27 i.e. discharge ticket. He further submitted that learned Claims Tribunal erroneously exonerated the insurance company from its liability to pay compensation on the ground that on the date of accident, the driver was having 'Light Motor Vehicle', but he was driving 'Light Public Service Vehicle'. He lastly submitted that the persons having the licence of a particular category then, under the law, he is permitted to drive any type of vehicle of that particular category and it is not required that there should be an endorsement to drive particular type of vehicle.
9. On the other hand, learned counsel appearing for respondent No.3/insurance company supported the award impugned. She submitted that the learned Claims Tribunal has rightly exonerated the insurance company from payment of compensation as on the date of accident, the driver who was driving the offending vehicle was having

the licence only to drive the 'Light Motor Vehicle' and not having any endorsement to drive the 'Light Public Service Vehicle' which is different type of vehicle and requires additional endorsement in the licence. She further submitted that learned Claims Tribunal has adequately awarded compensation to the appellant/claimant on the basis of material available on record.

- 10.** I have heard learned counsel appearing for the parties and perused the record carefully.
- 11.** While considering the grounds of erroneous exoneration of the insurance company from payment of liability, I have perused the copy of the license (Exhibit D-1C) and verification report of the Regional Transport Office, Bilaspur (Exhibit D-2) wherein it is categorically mentioned that the license was issued on 28/01/1981 and there is an endorsement from the competent authority to drive the 'Light Motor Vehicle + Medium Goods Vehicle' (Transport) w.e.f. 15/03/2002, which was renewed from time to time and on the date of accident also, the license was valid and effective.
- 12.** On perusal of the document attached along with original records, a copy of the registration certificate of the Bus bearing its registration No.CG11/A/5139 is enclosed though that document has not been exhibited, but it is being perused for passing just decision in this case. It appears that unladen vehicle weight of the Bus has been

shown as 5395 kgs., the gross vehicle weight is mentioned as 7250 and class of vehicle shown as LPSV Bus. Under the M.V. Act, 'Light Motor Vehicle' has been defined in Section 2(21) of the M.V. Act which reads as under :-

“2. **Definitions.**-In this Act, unless the context otherwise requires.-

X X X X

(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 [7500] kilograms;”

13. From perusal of the aforementioned definition of the 'Light Motor Vehicle' and considering the weight and class of vehicle as mentioned in R.C. Book of the offending vehicle (Omnibus bearing No. CG11/A/5139), it is crystal clear that the offending vehicle having the weight below 7.500 kms, therefore, undisputedly, the Omnibus (offending vehicle) comes within the definition of 'Light Motor Vehicle'.
14. The issue with respect to the persons having a particular class of license authorizing to drive a particular type of vehicle, but on the date of accident found driving the vehicle other than the type of vehicle mentioned in the licence, but of the same category, has been considered by the Hon'ble Supreme Court in the matter of **Mukund Dewangan v. Oriental Insurance Company Limited**¹ and held as under:-

1 (2017) 14 SCC 663

“25. Form 6 provides for ‘light motor vehicle’ and ‘transport vehicle’ separately. Though the form contains separate validity period for a motor vehicle other than transport vehicles, the aforesaid form and period of validity have to be understood in the light of the aforesaid discussion made by us of the light motor vehicle and transport vehicle. The form cannot govern the interpretation of the provision of Sections 10(2)(d) and 10(2)(e) otherwise also form has to be interpreted harmoniously with the Act and cannot be in conflict with the statutory provisions. The provision of the Light motor vehicle has to be given full effect and it is enjoined upon the authorities to issue the licence in terms of the discussion made by us in the order and validity period has to be construed accordingly. The validity period of transport vehicle of light motor vehicle licence which means the vehicle as defined in Section 2(21), has to be the same as that of other light motor vehicle of non-transport category and there cannot be any distinction made with respect to the validity period of the class of light motor vehicle. The separate prescription for the validity of transport vehicle in Form 6 is only to take care of the provisions inserted in Section 10(2)(e) by deleting the provisions of Sections 10(2)(e) to (h). It would apply to those categories.

28. The aforesaid Rule 34 also makes a distinction between light motor vehicle, medium passenger motor vehicle, medium goods vehicle, heavy passenger motor vehicle and heavy goods vehicles. For all types of vehicles, it is necessary that prototype of every motor vehicle qualify a test by the Vehicle Research & Development Establishment of the Ministry of Defence of the Government of India or Automotive Research Association of India as provided in Rule 126. The vehicles must conform to the provisions of the Rules made under Section 110 of the Act. The relevant information has to be inserted as per Section 41

of the Act in the registration particulars as may be prescribed by the Central Government i.e. class of vehicle, gross vehicle weight, as well as unladen weight, are required to be mentioned in the registration particulars in Form 20.

30. The State Government has to maintain a register of motor vehicles under Rule 75 as provided in Form 41 which includes gross vehicle weight, unladen weight etc. The Central Government has the power to frame rules under Section 27, *inter alia*, regarding minimum qualification, forms, and contents of the licences etc. Thus, we are of the considered opinion that the definition of "light motor vehicle" under Section 2(21) of the Act includes transport vehicle of the class and weight defined therein. The transport vehicle or omnibus would be light motor vehicle, gross vehicle weight of which, and also a motor car or tractor or road roller, unladen weight of which, does not exceed 7500 kg., and can be driven by holder of licence to drive light motor vehicle and no separate endorsement is required to drive such transport vehicle."

15. In the light of aforementioned law laid down by the Hon'ble Supreme Court, if I consider the fact of the case in hand, it is clear that on the date of accident the driver of offending vehicle was having the licence to drive the 'Light Motor Vehicle'. The gross weight of the offending vehicle is 7250 kgs., which is below 7,500 kgs. and has been shown as 'Light Public Service Vehicle' (LPSV).
16. The facts of the case would clearly show that the vehicle which met with an accident driven by respondent No.1 was a 'Light Motor Vehicle' though it is being used as 'Light Public Service Vehicle', therefore, in view of the law laid down by Hon'ble Supreme Court in

the matter of **Mukund Dewangan** (supra), the respondent No.1 was authorized to drive the 'Light Public Service Vehicle' with the licence of 'Light Motor Vehicle'.

17. The findings recorded by the learned Claims Tribunal with respect to exoneration of the insurance company from liability of payment of compensation is hereby set aside. The insurance company is liable to satisfy the award.
18. So far as awarding of the compensation towards lower side, the learned Claims Tribunal has considered disability certificate, in which, it has been mentioned that the appellant has sustained disability of mild nature and looking to the part of the body, on which, the appellant/claimant sustained injury, in my considered opinion, the learned Claims Tribunal has rightly considered the functional disability of the appellant/claimant to the extent of 10%, which do not call for any interference. Looking to the age of the appellant to be shown as 70 years as on the date of accident, I am not inclined to interfere the amount as assessed by the learned Claims Tribunal towards loss of future earning.
19. So far as awarding of the compensation on other conventional heads with respect to special diet and pain and suffering as well as conveyance expenses, the learned Claims Tribunal has definitely awarded a meager amount of compensation. In the opinion of this

Court, the appellant is aged person of more than 70 years, therefore, she would have required special care with respect to special diet etc., particularly, she has been treated as indoor patient for about one month, in my considered opinion, the appellant/claimant is entitled for Rs.5,000/- instead of Rs.2,000/- towards special diet. The injury over her foot, which the appellant/claimant sustained on her advanced stage of 70 years, due to which, she is unable to perform work, this Court is of the view that the appellant is entitled for a sum of Rs.10,000/- instead of Rs.2,000/- towards pain and suffering. The appellant/claimant is also entitled for a sum of Rs.3,000/- towards attendant as she took treatment for more than one month as indoor patient in the hospital and looking to the injury, she required future care day in and day out also.

- 20.** In view of the above, now the appellant/claimant will be entitled for an amount of Rs.15,600/- towards loss of working efficiency, Rs.2,216/- towards medical expenses, Rs.3,000/- towards loss of income, Rs.5,000/- towards special diet, Rs.10,000/- towards pain and suffering, Rs.1,000/- towards conveyance expense and Rs.3,000/- towards attendant. Thus, the appellant/claimant is entitled for total compensation of Rs.39,816/-. This amount of compensation is now to be paid by respondents No.1 and 3 jointly and severally. This amount of compensation shall carry interest @ 7.5% per annum as awarded

by the learned Claims Tribunal from the date of filing of the claim application till its realization. The other conditions imposed by the learned Claims Tribunal shall remain intact.

- 21.** In the result, the appeal filed by the appellant/claimant is allowed in part and the award impugned stands modified to the extent indicated herein-above.
- 22.** No order as to costs.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh