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HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 963 of 2013

The Oriental Insurance Company Limited Bilaspur, District- Bilaspur C.G.

---- Appellant

Versus

1. Phool Bai Wd/o Late Falitram, Aged About 35.
2. Manjulata D/o Late Falitram, Aged About 19 Years.
3. Kalpana D/o Late Falitram, Aged About 16 Years.
4. Kavita D/o Late Falitram, Aged About 11 Years.
5. Avika D/o Late Falitram, Aged About 7 Years.
6. Ravina D/o Late Falitram, Aged About 3 Years.
7. Sembai W/o Late Nohardas, Aged About 60 Years.

   Respondent Nos. 3 to 6 are minor through natural guardian mother Smt. Phool Bai Wd/o. Late Falitram.

   R/o. Village- Sagonadih, P.S. Pandaria, Tah. Pandariya, Distt. Kawardha C.G.
8. Dilip Singh S/o Dwarika Rajput, Aged About 22 Years R/o Ranigaon, Lormi, Tah. Lormi, Distt. Bilaspur C.G.
9. Virendra Singh Thakur S/o Bhalbhadra Singh Thakur, R/o Chachedi, P.S. & Tah. Lormi, Distt. Bilaspur C.G.

--- Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate.
For Respondents	:	None.

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

08/05/2019

1. This appeal has been filed by appellant/Insurance Company under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 31/07/2013 passed by Additional Motor Accident Claims Tribunal, Mungeli, District Bilaspur (C.G.)

(hereinafter referred to as 'Claims Tribunal') in Claim Case No.89/2011 whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.4,47,000/- as compensation to claimants in a death case.

2. Brief facts necessary for disposal of this appeal are that on 06/04/2010, Falitram along with Laxman was travelling on a Tractor bearing registration No.CG10/A/8968 and Trolley bearing registration No. CG10/A/8969 and when they were returning from village Khamhi after unloading the fire woods to village Sagonadeeh, at that relevant time, one Pick-Up Jeep bearing registration No.MP54/0165 (hereinafter referred to as 'offending vehicle') driven by respondent No.8 dashed the tractor, due to which, Falitram sustained grievous injuries on his head, leg and other internal parts of body. Looking to the severe injuries, he was taken to hospital and during the course of treatment, he succumbed to those injuries.

3. Claimants/respondents No.1 to 7, who are wife, children and widow mother of deceased have filed claim application under Section 166 of M.V. Act claiming Rs.33,50,000/- as compensation on account of accidental death of Falitram.

4. Respondents No.8 and 9, who are driver and owner of offending vehicle submitted reply to claim application and denied that accident took place due to rash and negligent driving of respondent No.8. It has been further pleaded that as on the date of accident,

driver of offending vehicle was having valid permit, registration and effective insurance policy, therefore, the liability, if any, would be on Insurance Company because on the date of accident, offending vehicle was insured with it.

5. Appellant/Insurance Company submitted its reply to claim application and pleaded that driver of offending vehicle i.e. respondent No.8 was not possessing valid and effective driving licence at the time of accident, therefore, there was violation of condition of insurance policy. It was further pleaded that as the accident was between two motor vehicles, therefore, owner, driver and insurance company of other vehicle were also to be made as necessary party, but they were not impleaded, and therefore, on account of non-joinder of necessary party, claim application is liable to be dismissed.

6. Learned Claims Tribunal while appreciating pleadings and evidence available on record held that accident took place due to negligence of respondent No.8 i.e. driver of offending vehicle, there was no violation of conditions of insurance policy and while allowing claim application in part, awarded a total sum of Rs.4,47,000/- as compensation.

7. The only ground urged by learned counsel appearing for appellant/Insurance Company is that on the date of accident, driver of offending vehicle was only possessing licence authorizing him to drive Motorcycle with Gear and Light Motor Vehicle (Non-Transport)

with DL No.D/9810/10, whereas he was driving offending vehicle (Pick-up), which is Light Transport Vehicle and there is no endorsement of Licensing Authority permitting him to drive Light Transport Vehicle.

8. In view of above, he submitted that as on the date of accident, driver of offending vehicle i.e. respondent No.8 was possessing licence authorizing him to drive a particular type of vehicle, but he was driving another type of vehicle, therefore, there was violation of conditions of insurance policy and liability, if any, to indemnify the insured cannot be fastened upon it.

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

10. Undisputedly, licence bearing DL No. D/9810/10 was issued by the competent Licensing Authority. Perusal of Ex. NA-1 which is particulars of DL No.9810/2010 issued in the name of Mr. Dilip Singh would show that the licence is authorizing the holder to drive Motorcycle with Gear and Light Motor Vehicle (Non-Transport). The copy of particulars of licence have been issued by Licensing Authority i.e. Regional Transport Office, Bilaspur.

11. Even it is not a case of appellant that licence is fake or driver was not possessing a valid and effective driving licence, his only argument is that respondent No.8 is driving another type of vehicle at the time of accident, which is not mentioned in the licence issued by competent authority.

12. The issue with respect to 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:-

> "59. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28-03-2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in Section 2(21) and the provisions of Section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the

1 **(2017) 14 SCC 663**

validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act ‘Transport Vehicle’ would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in Section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed.

60. Thus we answer the questions which are referred to us thus:

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 No.54 of 1994.

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 28-03-2001 in the form.

60.3. The effect of the amendment made by virtue of Act No.54 of 1994 w.e.f. 14-11-1994 while substituting clauses (e) to (h) of Section 10(2) which contained “medium goods vehicle” in Section 10(2)(e), “medium passenger motor vehicle” in Section 10(2)(f), “heavy goods vehicle” in Section 10(2)(g) and “heavy passenger motor vehicle” in Section 10(2)(h), with expression “transport vehicle” as substituted in Section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of Section 10(2)(d) and Section 2(41) of the Act i.e. light motor vehicle.

60.4. The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the 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 as it was and has not been changed and there is 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."

13. In view of above, the law laid down by Hon'ble Supreme Court in the matter of **Mukund Dewangan** (supra) if the facts of the present case is taken into consideration, this Court is of the opinion that on the date of accident, driver of offending vehicle was possessing licence to drive Light Motor Vehicle as defined in Section 2(21) of M.V Act which also includes transport vehicle not exceeding 7500 Kg. Weight of offending vehicle as mentioned in policy is 2826 kg. gross vehicle weight, therefore, learned Claims Tribunal has not committed any illegality in passing the impugned award holding that driver of offending vehicle was possessing valid and effective driving licence to drive offending vehicle and fastening the liability on Insurance Company.

14. No other ground is raised in this appeal.

15. For the foregoing discussions, the appeal filed by appellant/Insurance Company is devoid of any substance, is liable to be and is hereby dismissed.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh