NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1290 of 2015

Branch Manager, I. F. F. C. O. Tokio General Insurance Co. Limited , 3rd Floor, Shop No. 345-347, Ganga Shopping, G. E. Road, Raipur, Tehsil And District Raipur, Chhattisgarh ....Insurer, **---- Appellant**

Versus

1. Tigga @ Tila Bai W/o Late Shri Manohar @ Murli Manohar Ram, Aged About 38 Years R/o Devdand Chataniya, Thana- Chando, Tehsil- Samri Kusmi, District- Balrampur-Ramanujganj, Chhattisgarh, Presently R/o Fundurdihari Beechpara Ambikapur, District- Sarguja, Chhattisgarh ....Claimant,
2. Anil Kumhariya S/o Birva Kumhariya, Aged About 28 Years R/o Village Javakhada Kandri, Thana- Chando, Tehsil- Samri Kusmi, District- Balrampur-Ramanujganj, Chhattisgarh ....Driver,
3. Md. Ajad Hussain S/o Abdul Gaffar, Aged About 50 Years R/o Village Shahpur, Thana- Chando, Tehsil- Samri Kusmi, District- Balrampur-Ramanujganj, Chhattisgarh ....Owner **---- Respondents**

For Appellant: : Shri Amrito Das
For Respondents: : None.

Single Bench:Hon'ble Shri Sanjay Agrawal, J
Order On Board

05.07.2019

1. This Miscellaneous. appeal has been preferred by the Non-applicant No. 3/I.F.F.C.O. Tokio General Insurance Company Limited under Section 173 of the Motor Vehicle Act, 1988(hereinafter referred to as the 'Act' of 1988), questioning the propriety of the award dated 19.06.2015 passed by the Motor Accident Claims Tribunal, Sarguja(hereinafter referred to as the 'Claims Tribunal') in Claim Case No. 212 of 2014, by which, the learned Claims Tribunal while allowing the claim petition in part has awarded total amount of compensation to the tune of Rs. 5,36,000/- (Rupees five lacs thirty six thousand only) with 6% interest per annum from the date of filing of Claim Petition till its realisation.

2. Briefly stated the facts of the case are that on 16.06.2014, deceased Harilal, aged about 90 years, a labourer, was coming by his motorcycle bearing its registration No. CG-15-CG 2038 and as soon as he reached near the village Chako Chekhapara, he was dashed vehemently by the offending Vehicle (Picup van) bearing its registration No. CG 15 AC 3091 which was being driven rashly and negligently by its driver Anil Kumhariya, Non-applicant No. 1, owned by Non-applicant No. 2 Mohd. Ajad Hussain. The vehicle in question was insured by Non-applicant No. 3, the insurance Company and owning to the alleged accident deceased Harilal sustained injuries and expired on the same day. According to the claim petition, the deceased, who was unmarried, used to earn Rs. 6000/- per month and thus, claimed total amount of compensation to the tune of Rs. 8,78,000/-

3. The aforesaid claim petition has been contested by Non-applicants No. 1 and 2, Driver and owner of the vehicle in question by submitting inter-alia that the deceased himself was responsible for the alleged accident and pleaded further that since the vehicle in question was insured with the appellant insurance company, therefore, in case of any liability being fastened, the same could be indemnified by the said Insurance Company. While Non-applicant No. 3, the Insurance Company contested the claim mainly on the ground that the vehicle in question (Picup Van), a goods and transport vehicle, was being driven in violation of the Insurance policy as the Driver of the said offending vehicle was not holding the effective and valid driving licence to drive the same.

4. After considering the evidence led by the parties, the learned Claims

Tribunal, vide its award impugned dated 19.06.2015 has arrived at a conclusion that the alleged accident occurred on 16.06.2014 due to rashness and negligent driving of its driver Anil Kumhariya, resulting the sad demise of Harilal. It held further that though endorsement was not made in the driving licence of said driver authorising him to drive the said transport vehicle, however, the vehicle in question which was a light motor vehicle, therefore, even in absence of such an endorsement, it cannot be said that he was not authorized to drive the same. In consequence, it was held that vehicle in question was not being driven in violation of the policy and that by assessing the monthly of the deceased at Rs. 3,000/-, awarded total amount of compensation to the tune of Rs. 5,36,000/- (Rupees five lacs thirty six thousand only) with 6% interest per annum from the date of filing of the claim petition till its realisation while fastening the liability upon the Insurance Company.

5. Being aggrieved, the Non-applicant No. 3, the Insurance Company has preferred this appeal. Shri Das learned counsel for the appellant submits that the award impugned as passed by the learned claims tribunal while fastening the liability upon the Insurance Company by holding that the driver of the offending vehicle was authorized to drive the alleged transport vehicle is apparently contrary to law. He submits further that in absence of endorsement made in the said driving licence authorising him to drive the same, it cannot be held that he was holding the effective and valid driving licence. Without considering the said fact in its proper manner, the Claims Tribunal has committed an illegality in fastening the liability upon the Insurance Company.

6. I have heard learned counsel for the Appellant and perused the entire

record carefully.

7. The main contention of the appellant herein is that the driver was not holding the valid and effective driving licence and in absence of requisite endorsement authorising him to drive the alleged offending vehicle, It cannot be said that he was entitled to drive the same. However, the question which has been raised herein remains no more res-intigra as held by the Supreme Court in the matter of ***Mukund Dewangan Vs. Oriental Insurance Company*** reported in **(2017) 14 SCC 663** wherein, a similar situaltion as involved herein, as to whether a driver who is having a license to drive the "light motor vehicle" and who is driving the "Transport Vehicle" of that class in absence of such an endorsement was considered and it was held therein at paragraphs 60.1, 60.2 and 60.4 as under

> **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 trnasport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 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 28.3.2001 in the form.
>
> **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 license 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 license to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.

8. By applying the aforesaid principles to the case in hand, it is clear that the driver of the offending vehicle was hodling the valid and effective driving license and even in absence of any endorsement as such in his driving license authorising him to drive the said transport vehicle, it cannot be held that he was not possessing the valid and effective driving license at the relevant time. The finding so recorded by the learned Claims Tribunal in this regard is, therefore, deserves to be and is hereby affirmed.

9. In view of the above, the appeal being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE

vivek