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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1047 of 2018

- The Oriental Insurance Company Limited, Division Office, Manendragarh Road, Near Ambedkar Chowk, Ambikapur, District Sarguja (C.G.)

---- Appellant/Insurer

Versus

1. Panmeshwari, Wife of Late Pratap Singh, aged about 33 years
2. Manoj Kumar, Son of Late Pratap Singh, aged about 16 years
3. Sonkumari, Daughter of Late Pratap Singh, aged about 14 years
4. Anita, Daughter of Late Pratap Singh aged about 11 years
5. Sarita, Daughter of Late Pratap Singh, aged about 8 years
6. Dhirendra Singh, Son of Late Pratap Singh, aged about 5 years
7. Ramaram, son of Sidhan, aged about 75 years
8. Hirondiya, wife of Ramaram, aged about 70 years

   Respondent No. 2 to 6 being minor through their natural guardian mother Panmeshwari, wife of Late Pratap Singh

   All Respondent No.1 to 8 by Caste Gond, resident of Village Tilsiwa, Thana, Tahsil and District Surajpur (Chhattisgarh)

9. Sharif Khan, Son of Jarif Khan, aged 31 years, Caste Musalmman, resident of Village Kotal (Mahuaripara), Thana and Tahsil Premnagar, District Surajpur (Chhattisgarh)
   (Driver/non-applicant No.1)

10. Harjeet Singh Juneja, Son of Late Indersingh Juneja, aged about 55 years, resident of Hotel Giriraj Gali, Jail Road, Raipur, Thana Ganj, District Raipur (Chhattisgarh)
    (Owner/non-applicant No.2)

---- Respondents

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

Hon’ble Shri Justice Gautam Chourdiya, J

Judgment on Board

03.01.2019

1. Being aggrieved with the award dated 11.04.2018 passed in M.A.C.C. No. 165 of 2016 by the Third Additional Motor Accident Claims Tribunal, Surajpur, District Surajpur (C.G.), the Appellant/Insurance Company has preffered this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the liability fastened upon it and the quantum.

2. Facts of the case, in brief, are that on 04.10.2016 when deceased- Pratap Singh was going to his maternal uncle's village- Kashipur (Gauripur) Premnagar from village- Tilsiwa, Respondent No.9- Sharif Khan, driver of the offending vehicle Tata 407 bearing registration No. CG-04/ZB/0181, driving the said vehicle in a rash and negligent manner dashed the deceased, as a result thereof head of the deceased came under the rear wheels of the offending vehicle and he died on the spot.

3. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.13,60,240 in favour of the Claimants/Respondents 1 to 8 with interest @ 9% per annum from the date of filing of the application till realization and fastened the liability upon the Appellant/Insurance Company along with driver and owner/Respondents 9 & 10 to pay compensation.

4. Learned counsel for the Appellant/Insurance Company submits that the offending vehicle was running without fitness at the time of accident because the fitness of the offending vehicle was upto 23.07.2016, whereas the accident occurred on 04.10.2016. He also submits that the driver of the offending vehicle was not having valid and effective driving licence to ply the said vehicle because he was holding a licence to drive a light motor vehicle, not the transport vehicle. As such, on account of there being breach of policy conditions, the Tribunal was not justified in fastening liability on the Insurance Company. He further submits that the income of the deceased has wrongly been considered by the Tribunal as Rs.200/- per day which is on the higher side and also award of interest @ 9% per annum is liable to be reduced to 6% per annum.

5. No counter appeal has been filed by the Respondents.

6. Heard the learned counsel appearing for the Appellant/Insurance Company and perused the impugned award including the records of the Claims Tribunal.

7. The issue involved in this case has already been considered by the Hon'ble Supreme Court in the matter of ***Mukund Dewangan*** Vs. ***Oriental Insurance Company Limited*** reported in ***(2017) 14 SCC 663*** 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, and it was held therein as under:-

> "Held, the effect and 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 Statues - 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)."

8. From perusal of the insurance policy, Ex.-NA-2, it is apparent that gross wait of the offending vehicle is 5300 Kg and it is not in a dispute that the driver was having a valid and effective licence to drive the light motor vehicle. 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 (Ex.-NA-1-C) and even in absence of the 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 valid and effective driving licence at the relevant time. Further, according to Ex.-NA-4, investigation report of Anup Mehta, the fitness certificate was neither seized by the police nor produced before the Tribunal. The Tribunal relying upon a decision of the Delhi High Court in ***New India Assurance Co. Ltd.*** Vs. ***Kumud Devi & Ors., MAC A PP. 520/2010***, wherein it was held that absence of fitness certificate does not empower insurance company to avoid its liability under Section 149(2) of the Act, has held the Insurance Company liable for paying compensation. This Court finds no illegality or infirmity in the findings recorded by the Tribunal holding the Insurance Company liable for satisfying the award jointly and severally along with driver and owner of the offending vehicle.

9. As regards quantum of compensation, considering the facts and circumstances of the case, fact that accident occurred in the year 2016, the income of the deceased assessed by the Tribunal as Rs.6,000/- per month, looking to the price index at the relevant time the minimum wages cannot be faulted with. Likewise, the rate of interest ordered by the Tribunal in this case also appears to be just and proper.

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

11. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

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