**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 861 of 2013**

1. Vimal Kumar Jain S/o Akhraj Jain, Aged About 50 Years, R/o Village & Post- Baikunthpur, Tahsil Tilda, Police Station Tilda, Civil and Revenue District Raipur (CG),

**---- Appellant**

**Versus**

1. Smt. Sharda Sharma, W/o Shivkumar Sharma Aged About 40 Years
2. Shivkumar Sharma S/o Ramcharan Sharma Aged About 44 Years
3. Subhasha Sharma S/o Shivkumar Sharma Aged About 20 Years.
4. Kumari Khushbu Sharma D/o Shivkumar Sharma Aged About 18 Years

   All R/o Village & Post- Nawapara, Hathband, P.S. Suhela, Tahsil Simga, Tahsi, Civil & Revenue District Raipur (C.G.)
5. Dinesh Singh S/o R.P. Singh, R/o Village & Post- Bhadar, P.S. Piparpur, Distt. Sultanpur U.P., At Present R/o Swarn Enterprises, Baikunthpur, Tah. Simga, P.S. Nevra-Tilda, Tah. Civil & Revenue Distt. Raipur C.G.
6. I.C.I.C.I. Lombard General Insurance Company Ltd. Through In-Charge Officer, I.C.I.C.I. Lombard General Insurance Company Ltd., R/o Lalganga Shopping Mall Complex, 3rd Floor, G.E.R. Raipur, Tahsil, Civil & Revenue District Raipur C.G.

   (Insurer of offending vehicle Volvo Truck No.CG05-JB-1018)
7. The New India Insurance Company Ltd., Through: The New India Insurance Company Ltd., R/o Madina Manjil, Kachhari Chowk, Raipur C.G.

**---- Respondents**

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| For Appellant | : | Shri M.K. Bhaduri, Advocate |
| For Respondent No.7 | : | Shri Dashrath Gupta, Advocate. |

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**Order On Board By Hon'ble Shri Justice Parth Prateem Sahu**

**14/05/2019**

1. Appellant - owner of offending vehicle bearing registration No.CG05-JB-1018 has preferred this appeal questioning correctness of award dated 12.7.2013 passed by learned Additional Motor Accident Claims Tribunal, Bhatapara (for short 'the Claims Tribunal') in Claim Case No.11/09 whereby the Claims Tribunal partly allowed claim application, awarded compensation of Rs.3,79,500/- along with interest @ 6% p.a. and saddled liability of payment of compensation on appellant herein on the ground that offending vehicle was plied in breach of conditions of insurance policy.
2. Brief facts relevant for disposal of this appeal are that on 17.1.2009 Sudhir Kumar (since deceased) along with his friend Vinay Verma was going on his motorcycle bearing registration No.CG04-CU-4494 towards his village Rawan. One Volvo truck bearing registration No.CG04-JB-1018, which was coming from Hirmi side and driven by respondent No.5 herein, dashed his motorcycle as a result of which said Sudhir Kumar sustained injuries on his face, hand & legs and died on spot. Vinay Verma also sustained injuries in the said accident. Accident was reported to Police Station Suhela based on which Crime No.12/09 for commission of offence under Sections 279, 337 & 304A of the Indian Penal Code was registered against respondent No.5 herein.

3. Claimants/respondents No.1 to 5 herein, who are parents, brothers & sisters of deceased respectively, have filed a claim application claiming compensation to the tune of Rs.10,00,000/- against non-applicants therein.

4. Appellant & respondent No.5 herein i.e. owner & driver of offending vehicle respectively, filed their reply to claim application denying averments made therein. They have pleaded that on the date of accident, driver was having valid and effective driving license to drive offending vehicle and as the offending vehicle was fully insured with respondent No.6 herein (insurance company), therefore, the insurance company is liable to indemnify owner in case any compensation is awarded by the Claims Tribunal to claimants.

5. Respondent No.6 Insurance Company filed its separate reply and denied averments made in claim application except the fact that on the date of accident the offending truck was insured with it. It was pleaded that accident in question occurred due to negligence on the part of driver of motorcycle himself, therefore, claimants are not entitled for any amount of compensation. It was also pleaded that there was violation of condition of insurance policy as on the date of accident the driver of offending vehicle was not having valid & effective driving license and therefore the insurance company is not liable to indemnify insured.

6. Respondent No.7- Insurer of motorcycle in question also

submitted its reply to claim application. It was admitted that motorcycle was insured with it, but pleaded that on the date of accident motorcycle was being driven in violation of condition of insurance policy.

7. The Claims Tribunal on appreciation of pleadings and evidence placed on record (oral and documentary both) by the respective parties has held that accident was result of rash and negligent driving by respondent No.5, driver of offending vehicle; there was contributory negligence on the part of deceased driver of motorcycle and accordingly, partly allowed claim application and awarded compensation of Rs.3,79,500/- along with interest @ 6% p.a.. The Claims Tribunal saddled liability upon owner of offending vehicle to pay compensation on the ground that at the time of accident driver of offending vehicle was not possessing valid and effective driving license and thus there was breach of condition of insurance policy.

8. Learned counsel for appellant-owner of offending vehicle argued that on the date of accident driver was possessing valid and effective driving license. Referring to provisions contained in Sections 10 & 14 of the Act of 1988, he submits that when there is an endorsement in license authorizing a person to drive transport vehicle, then said person is authorized to drive any type of transport vehicle. He further submits that though driver of offending vehicle did not appear before the Claims Tribunal but license issued to him by

concerned licensing authority has been filed before the Claims Tribunal. The insurance company in order to get the relief of absolving itself from liability was required to prove that driving license produced was fake, but in the present case the insurance company failed to prove that driving license produced by owner of offending vehicle was not a valid license.

9. Learned counsel appearing on behalf of respondent No.6 supported the impugned award passed by the Claims Tribunal and submitted that original driving license was not exhibited and from perusal of photocopy of driving license available on record it is clear that there is a hand written endorsement to drive 'LMV + MGV (T)'. Thus, it is apparent that driver of offending vehicle was only authorized to drive light motor vehicles or medium goods vehicle (transport). The offending vehicle involved in accident comes within the category of 'heavy goods vehicle' and as such, the driver of offending vehicle was not having valid and effective driving license to drive offending vehicle and therefore the Claims Tribunal has rightly exonerated insurance company from its liability.

10. Learned counsel for respondent No.7 supported the impugned award.

11. I have heard learned counsel for the parties and perused the record.

12. Sole question involved in this appeal is whether on the date of

accident, driver was having valid and effective driving license to drive offending vehicle?

13. Section 10 (2) of the Act of 1988 reads as under:-

> “(2) A learner's license or, as the case may be, driving license shall also be expresses as entitling the holder to drive a motor vehicle of one or more of the following classes, namely;-
> (a) motorcycle without gear;
> (b) motorcycle with gear;
> (c) invalid carriage;
> (d) light motor vehicle
> (e) transport vehicle
> (i) road-roller;
> (i) motor vehicle of a specified description.”

14. Perusal of above quoted provision would reveal that in Clause (e) the word 'transport vehicle' has been substituted w.e.f. 14.11.1994 for different medium categories of vehicles like goods vehicle and heavy goods vehicle etc. which were specifically mentioned therein prior to 1994. Meaning thereby, a person authorized to drive transport vehicle is also competent to drive any type of vehicle specifically described in Clause (c) to (h) of sub-section 2 of Section10 of the Act of 1998, as it stood prior to 1994.

15. Section 14 of the Act of 1988 deals with currency of licenses and sub-section (2) (a) prescribes that license to drive a transport vehicle shall be effective for a period of three years.

16. Hon'ble Supreme in **Mukund Dewangan v. Oriental Insurance Company Limited** reported in **(2017) 14 SCC 663** while dealing with issue as to whether driver possessing

license of a particular type is authorized to drive vehicle of different type or class has held thus:-

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

17. A bare reading of above decision makes it clear that expression mentioned in Section 10 (2) (e) of the Act of 1988 '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) of the Act of 1988.

18. Perusal of record would show that duplicate license of respondent No.5 i.e. driver of offending vehicle, has been filed before the Claims Tribunal, which is available at Page No.99 of record. This duplicate license has been issued by the office of Licensing Authority, Motor Vehicles Department, Sultanpur (Uttar Pradesh) in the name of Dinesh Kumar Singh (driver of offending vehicle) authorizing him to drive private light motor vehicles, transport vehicle etc. It also contained a handwritten endorsement authorizing license holder to drive light motor vehicles and medium goods vehicle (transport). A further glance of license would demonstrate that it was valid from 17.10.2007 to 16.10.2010 i.e. for a period of three years. License available on record bears tick mark on private light motor vehicle and transport vehicle. Validity period of license for transport vehicle as provided under Section 14 of the Act of 1988 is of three years and said license was also issued for a period of three years only.

19. The Claims Tribunal while deciding issue with respect to violation of condition of insurance policy in Para-13 of its award has held that as license bears only an endorsement regarding 'light motor vehicle and medium goods vehicle (transport) and on the date of accident non-applicant No.1-

driver was driving heavy goods vehicle, therefore, he was not having valid and effective license to drive heavy goods vehicle. The Claims Tribunal lost sight of the fact that license available on record and considered by it also bears tick-mark on transport vehicle and arrived at a wrong conclusion.

20. In view of specific provision contained in Section 10 (2) (e) & 14 (2) (a) of the Act of 1988 and the law laid down by Hon'ble Supreme Court in Mukund Dewangan's case (supra) that if a person possess a driving license to drive a transport vehicle, he can drive vehicles of all categories i.e. light, medium & heavy goods vehicle, the aforesaid finding of Claims Tribunal is not sustainable in law and the same is accordingly hereby set aside. It is hereby held that on the date of accident, non-applicant No.1/ respondent No.5-driver was having valid and effective driving license to drive offending vehicle.

21. Since license of driver of offending vehicle is already on record, I.A. No.2/19 filed on behalf of appellant under Order 41 Rule 27 of CPC for taking photocopy of driving license on record stands dismissed.

22. For the foregoing discussion, the appeal is allowed. Appellant-owner of offending vehicle is exonerated from its liability and non-applicant No.3/respondent No.6-Insurance

Company is directed to satisfy the impugned award passed by the Claims Tribunal. Rests of the conditions of impugned award shall remain intact. Amount, if any, deposited by appellant-owner of offending vehicle and disbursed to claimant, shall be refunded to him from the amount of award so deposited by insurance company.

23. The award impugned is modified to the extent indicated above.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-.