AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 588 of 2017

- Branch Manager, National Insurance Company Limited, Branch Office Kamthi Line, Rajnandgaon, District- Rajnandgaon (C.G.).

----Appellant/Insurer

Versus

1. Begdas Sahu S/o Late Maniram Sahu, aged about 70 years.
2. Lakhi Bai W/o Begdas Sahu, aged about 65 years.
3. Omin Bai Wd/o Late Kishorilal Sahu, aged about 35 years.
4. Ku. Takeshwari Sahu D/o Late Kishorilal Sahu, aged about 18 years.
5. Ku. Rameshwari Sahu D/o Late Kishorilal Sahu, aged about 15 years.
6. Angdeep Sahu S/o Late Kishori Lal Sahu, aged about 10 years.

   Respondent No. 6 minor through natural guardian mother Respondent No. 3 Omin Bai.

   All are R/o Village Alikhuta, post Singhola, Tahsil and District Rajnandgaon(C.G.) (Claimants No. 1 to 6)

7. Premlal Yadav S/o Suresh Yadav, aged about 21 years, R/o Village Chandelibhatha, Dallirajhara, District- Balod (C.G.).
8. Shanti Bai Motwani W/o Basharam Motwani, R/o New Market, Dallirajhara, District- Balod (C.G.).

---- Respondents

For Appellant	: Mr. Raj Awasthi, Advocate.
For Respondent Nos. 1 to 6.	: Ms. S. Soni, Advocate
For Respondent No. 7 & 8.	: Mr. Rahul Kumar, Advocate on behalf of Shri R. S. Marhas, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

12.04.2019

1. Heard on IA No. 01, application for condonation of delay of 74 days in filing the appeal.
2. For the reason mentioned in the application which is duly supported by the affidavit, the same is allowed and delay in filing the MAC is condoned.
3. Heard on admission.
4. This is an appeal filed by the Insurance Company against the award dated 27.10.2016, passed by the Motor Accident Claims Tribunal, Rajnandgaon (henceforth "Claims Tribunal") in claim case No. 127/2015 whereby the Claims Tribunal, in a death case, has awarded a total compensation of Rs. 12,20,000/- along with interest @ of 6% p.a. from the date of application till its realization, fastening the liability on the appellant/Insurance Company.
5. As per claim petition, on 24.03.2015, when one Kishori Lal Sahu was riding his bicycle and going towards Rajnandgaon from village Aalikhuta, non-applicant No. 1/Respondent No. 7- Premlal Yadav while driving rashly and negligently the offending vehicle (Tata Magic) bearing registration No. C.G.-07-CA-4276, owned by non-applicant No. 2/Respondent No. 8 and insured with the appellant/Non-applicant No.

3/Insurance Company, dashed the bicycle of Kishorilal Sahu, as a result of which, he sustained grievous injuries and he was taken to the District Hospital, Rajnandgaon from where he was referred to the Higher Medical Center for treatment but on the way, he died.

6. On claim petition being filed by the claimants, who are unfortunate parents, wife & children of deceased – Kishori Lal Sahu under Section 166 of the Motor Vehicles Act, 1988, the learned Tribunal considering the evidence led by both the parties awarded compensation as mentioned above.
7. Learned counsel for the appellant/Insurance Company submitted that the Claims Tribunal was not justified in fastening the liability upon the insurance company as driver of the offending vehicle did not have valid and effective driving licence to drive the transport vehicle whereas the driver of the offending vehicle is holding driving licence to drive the non-transport vehicle (LMV Private)
8. Learned counsel for the respondent Nos. 1 to 6/claimants would support the award impugned.
9. On the other hand, learned counsel for the respondent Nos.7 & 8/driver & owner of the offending vehicle while supporting the impugned award submits that the Claims Tribunal after considering all the relevant aspects of the matters has rightly fastened liability on the insurance company and awarded compensation which needs no

interference by this Court.

10. Heard learned counsel for the appellant and perused the material available on record including the impugned award.

11. As regards the competence of the driver to drive the vehicle in question, the issue raised by the insurance company has already been settled by the Hon'ble Supreme Court in the matter of **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in ***(2017) 14 SCC 663*** that a person holding LMV (non-transport) is competent to drive the transport vehicle even without there being any endorsement to this effect in the driving licence if the unladen weight of the vehicle does not exceed 7,500 Kg. The relevant part of the aforesaid decision is being reproduced as under:-

> "Held, the effect of 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 Statutes – 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)”

12. In view of above, this Court finds no substance in the argument of the insurance company that the driver was not having a valid and effective driving licence to drive the vehicle in question on the date of accident as the offending vehicle was admittedly a Light Goods Vehicle unladen weight of 2180 kg as per certificate issued by Regional Transport Authority vide Ex.D/2 and as such, it falls in the category of LMV and that the driver was having a valid and effective licence to drive LMV as per Ex. D/1 driving licence.

13. On the basis of aforesaid discussions, this Court finds that the Tribunal was fully justified in passing the impugned award and fastening the liability on the appellant/insurance company.

14. Accordingly, the appeal being without any substance deserves to be dismissed at the admission stage itself and is, accordingly, dismissed.

Sd/-

(Gautam Chourdiya)
Judge

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