

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 60 of 2014**

- The Oriental Insurance Company Ltd Through- Divisional Manager, Divisional Office, Manendragarh Near Ambedkar Chowk, Distt. Surguja C.G.

----Appellant**Versus**

1. Smt. Amrawati W/o Dharam Say Aged About 47 Years, Occupation House wife.
2. Kumari Preeti @ Pinkey D/o Dharam Say Aged About 19 Years
3. Vishnu @ Lallu S/o Dharam Say Aged About 15 Years Occupation-student through legal guardian Mother Smt. Amrawati W/o Late Dharamsaye.

Address All are reisdent of Gram Champajhar, Thana Patna, Tahsil Baikunthpur, Zilla Sarguja, Chhattisgarh.

4. Lokeshwar Prasad Tripathi S/o K.P. Tripathi Aged About 42 Years R/o Gram- Moharpara, Ward No. 10, Post- Manendragarh, Distt. Korla C.G.
5. Raju Yadav S/o Late Madan Yadav Aged About 25 Years R/o Gram- Kapildhara Colony, Post- Bijuri, Thana And Tah. Bijuri, Distt. Anuppur M.P.

---- Respondents

For Appellant

Smt. Chitra Shrivastava, Advocate.

For Respondents

None.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board****07/02/2019**

1. This is an appeal by the Insurance Company against the award dated 07.11.2013 passed by the Additional Motor Accident Claims Tribunal, FTC, Baikunthpur, District Korla,

C.G. in claim case no. 114/2013 whereby the Tribunal in a death case has awarded a total compensation of Rs. 3,89,000/- with interest at the rate of 6 percent from the date of application till its realization, fastening the liability on the non applicants jointly and severally.

2. As per claim petition, on 01.01.2011 deceased Dharam Sai, aged about 50 years, earning Rs.15,000/- per month as Labour and by doing agriculture work, died in the motor vehicular accident caused due to rash and negligent driving of TATA Magic bearing registration no. CG16-B-2445 by non-applicant No.2, owned by non-applicant no.1 and insured with non-applicant no.3.
3. On claim petition being filed by the claimants under Section 166 of the Motor Vehicle Act, the learned Tribunal considering the evidence led by both the parties awarded compensation as mentioned above.
4. Learned counsel for the appellant submits that the Tribunal was not justified in fastening the liability on the insurance company because at the time of accident the Driver was not having a valid and effective licence since the vehicle was a transport vehicle whereas, the driver was holding LMV for non transport vehicle.
5. Heard learned counsel for the appellant and perused the material available on record including the impugned award.
6. 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)”

7. 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 having gross weight of 1600 kg as per Ex.D-5 i.e. Insurance Policy and as such, it falls in the category of LMV and that the driver was having a valid and effective licence to drive LMV.

8. 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 along with non applicants no.1 & 2 owner & driver jointly and severely. Accordingly, the appeal being without any substance is liable to be dismissed and is hereby dismissed.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh