

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 345 of 2014

1. Rakesh @ Pappu Yadav S/o Dilip Kumar Aged About 26 Years R/o Shivpara, Ward No. 34, Durg, Tah. And Distt. Durg C.G.
2. Saroj Singh W/o R.K. Singh R/o Mohlai, Mohan Nagar, P.S. Pulgaon, Tah. And Distt. Durg C.G.

---- Appellants

Versus

1. Gomati Sahu W/o Late Mangal Das Aged About 60 Years.
2. Gyan Das Sahu S/o Late Mangal Das Aged About 38 Years.
3. Karan Das Sahu S/o Late Mangal Das Aged About 35 Years.
4. Sundariya Bai D/o Late Mangal Das Aged About 33 Years.
5. Durpati Bai D/o Late Mangal Das Aged About 32 Years.
6. Sulochana D/o Late Mangal Das Aged About 31 Years.
7. Mahesh Das S/o Late Mangal Das Aged About 30 Years.
8. Sunita Bai D/o Late Mangal Das Aged About 28 Years.
9. Uday Das S/o Late Mangal Das Aged About 26 Years.

All are R/o Parrikala, P.S. Lalbag, Tah. And Distt. Rajnandgaon C.G.

10. Branch Manager Chola Mandalam M.S. General Insu. Co. Ltd.,
Paras Nagar Chowk, Devendra Nagar, Raipur, Tah. And Distt.
Raipur C.G.

---- Respondents

For Appellants	:	Shri Shikhar Bhakhtiyar, Advocate on behalf of Shri B.P. Singh, Advocate.
For Respondent No.1 to 9	:	None.
For Respondent No.10	:	Shri S.S. Rajput, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

27/06/2019

- 1 Appellants/non-applicants no.1 & 2 -driver & owner of Tata Ace bearing registration No.CG07-C-8784 respectively, have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging legality and validity of award dated 18.12.2013 passed by learned Motor Accident Claims Tribunal, Rajnandgaon, C.G (for short 'the Tribunal') in Claim Case No.72/2012 whereby the Tribunal allowed claim application in part,

awarded total sum of Rs.1,74,000/- as compensation alongwith interest @ 6% p.a. and fastened liability upon non-applicant nos.1 & 2/appellants -herein.

- 2 Brief facts relevant for disposal of this appeal are that on 23.01.2012, deceased - Mangal Das was returning to his village Parikala on his bicycle. On the way near Bawriya Tiles shop, Tata Ace Truck bearing registration No.CG07-C-8784 (hereinafter shall be referred to as "the offending vehicle"), driven by non-applicant no.1-Rakesh @ Pappu Yadav, dashed his bicycle, as a result he fell down and suffered grievous injuries over his person. He was taken to district hospital- Rajnangaon and looking to grievousness of injuries he was referred to hospital at Raipur where during the course of treatment he succumbed to those injuries on 28.01.2012. Matter was reported to concerned police station and criminal case was registered against driver of offending vehicle.
- 3 Claimants, who are widow & children of deceased, filed claim application under Section 166 of the Act of 1988 before competent Claims Tribunal claiming Rs.13,50,000/- as compensation on the grounds mentioned therein.
- 4 Non-applicants no.1 & 2/appellants -herein submitted reply to claim application stated that on the date of accident driver of offending vehicle was possessing valid and effective driving license and offending vehicle was insured with non-applicant-3-insurance company, therefore, liability if any for payment of compensation would be on insurance company.

- 5 Non-applicant no.3-Insurance Company/respondent no.10 -herein submitted reply to claim application and pleaded that on the date of accident driver of offending vehicle was not possessing valid and effective driving license to drive 'transport vehicle', he was possessing driving license to drive 'light motor vehicle' only and, therefore, there was violation of conditions of insurance policy.
- 6 On appreciation of pleadings and evidence placed on record by respective parties, the Tribunal held that there was violation of condition of insurance policy as on the date of accident driver of offending vehicle was not possessing valid and effective driving license and accident took-place due to rash and negligent driving of driver of offending vehicle. After recording aforesaid findings, the Tribunal allowed claim application in part and awarded total sum of Rs.1,74,000/- as compensation to claimants and fastened liability on non-applicants no.1 & 2/appellants.
- 7 Learned counsel appearing for appellants submitted that the Tribunal committed error in exonerating insurance company from its liability by holding that on the date of accident driver of offending vehicle was not possessing valid and effective driving license, which is erroneous and contrary to law and in support of this submission he relied on the judgment passed by the Hon'ble Supreme Court in the matter of **Mukund Dewangan v. Oriental Insurance Company Limited** reported in **(2017) 14 SCC 663**.
- 8 Per contra, learned counsel appearing for respondent No.10- insurance company supported impugned award and pleaded that

the Tribunal has rightly arrived at a finding that there was violation of condition of insurance policy. As on the date of accident offending vehicle was registered as 'light goods vehicle' and for it specific and separate endorsement was required in license of driver of offending vehicle authorizing him to drive commercial/light goods vehicle.

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

10 Certificate of registration of offending vehicle is placed on record as (Ex.D-1). Particulars of driving license issued by Regional Transport Office, Durg has also been placed on record as (Ex.D-5) and according to which, license bearing registration no. CG/07/20100014085 has been issued in name of Rakesh Kumar Yadav authorizing him to drive 'light motor vehicle'. Perusal of (Ex.D-1) would show that gross vehicle weight of offending vehicle is 1845 Kgms. Section 2(21) of the Act of 1988 defines 'light motor vehicle' which reads as under :-

“2. Definitions.-In this Act, unless the context otherwise requires.-

x x x x

(21) “Light Motor Vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed [7500] kilograms;”

11 Undisputably, offending vehicle comes within a category of 'light motor vehicle'. Issue with respect to the persons having a particular class of license authorizing him to drive a particular type of vehicle, but on the date of accident found driving the vehicle other than the type of vehicle mentioned in the license, but of the same category,

has been considered by the Hon'ble Supreme Court in the matter of

Mukund Dewangan (Supra) and held as under :-

“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.

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

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.

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.

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.

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.”

12 In the light of aforesaid law laid down by Hon'ble Supreme Court in

Mukund Dewangan (supra) that if a person or driver of a vehicle is possessing valid and effective driving license to drive 'light motor vehicle' and offending vehicle comes within the category of 'light motor vehicle', as defined under Section 2(21) of the Act of 1988,

then the license will be valid and effective to drive 'light motor vehicle' falling within the definition of Section 2(21) irrespective of its being used as 'light passenger vehicle' - 'light goods vehicle'.

13 In view of aforementioned law laid down by the hon'ble Supreme Court and discussion made above, this Court is of the considered opinion that the Tribunal committed error in holding that there was violation of condition of insurance policy as on the date of accident driver of offending vehicle was not possessing valid and effective driving license to drive offending vehicle, which is not sustainable and is hereby set aside.

14 Now respondent no.10-insurance company will be liable to pay the amount of compensation.

15 In the result, appeal filed by the appellants is allowed and award impugned stands modified to the extent that appellants are absolved of their liability to pay compensation to the claimants and respondent no.10/insurance company is directed to pay the amount of compensation to claimants as awarded by the Tribunal.

16 Appellants will be entitled to recover the amount so deposited by them in pursuance of the award after depositing of the entire amount by respondent no.10-insurance company with the Tribunal.

17 The conditions imposed by the Tribunal will remain intact.

Sd/-
(Parth Prateem Sahu)
Judge