

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1024 of 2013

The Oriental Insurance Co. Ltd Thru- Divisional Manager, Divisional Office- Madina Building, Zail Road, Raipur C.G.

---- Appellant

Versus

1. Bholaram S/o Manorath Sahu Aged About 23 Years R/o, village-Bhalera, Thana- Arang, Distt. Raipur C.G.
2. Lalitram Sahu S/o Dukaluram Sahu Aged About 35 Years R/o Govinda, Thana- Arang, Distt. Raipur C.G.
3. Lekhram Sahu S/o Dukaluram, R/o Govinda, Thana- Arang, Distt. Raipur C.G.

---- Respondents

For Appellant	:	Smt. Chitra Shrivastava, Advocate.
For Respondent No.1	:	None.
For Respondent Nos.2 & 3	:	Shri Pawan Kesharwani, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

29/11/2019

- 1 By the instant appeal, appellant/Insurance Company is challenging the legality and validity of the impugned award dated 25.07.2013 passed by the learned First Additional Motor Accident Claims Tribunal, Raipur, C.G (in short 'the Tribunal') in Claim Case No.53/2012, whereby the Tribunal allowed claim application in part and awarded total sum of Rs.63,000/- as compensation in injury case.
- 2 Brief facts necessary for disposal of this appeal are that on 31.07.2011 Bholaram Sahu (claimant) was traveling as 'pillion rider' on Motorcycle bearing registration No.CG04/DX/6884, which was driven by his friend Jagan Nath. They were going from village-Aarang to village- Bhalora. When they reached near Govinda Talab, one Vehicle bearing registration No.CG04-ZB-3291,

(hereinafter shall be referred to as “offending vehicle”), driven by respondent No.2- Lalitram Sahu dashed his motorcycle, as a result of which claimant/respondent No.1 herein suffered grievous injuries on his left leg. He was taken to the Government Hospital, Aarang, however, looking to grievousness of injuries, he was referred to Raipur Hospital & Research Centre at Raipur, where he remained admitted from 01.08.2011 to 08.08.2011. During the course of treatment, his leg was operated and a rod was inserted. Matter was reported to PS- Aarang, on which, criminal case was registered against driver of offending vehicle. After some recovery from injuries, claimant filed claim application under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act of 1988') before competent Claims Tribunal claiming Rs.13,50,000/- as compensation under various heads on the grounds mentioned therein.

- 3 Non-applicant Nos.1 & 2/Respondent Nos.2 & 3, driver & owner of offending vehicle, submitted reply to claim application and denied the fact of accident from his vehicle. It was further pleaded that amount of compensation claimed by claimant is on higher side and that he has not suffered any permanent disability in the said accident. It was also pleaded that on the date of accident driver of offending vehicle was possessing valid and effective driving license and said vehicle was insured with non-applicant-3-insurance company, therefore, liability, if any, for payment of compensation would be on insurance company.

- 4 Appellant/Insurance Company also submitted reply to claim application and pleaded that accident took place due to negligence of driver of motorcycle and not of offending vehicle. It was further pleaded that on the date of accident, driver of offending vehicle was not having valid and effective driving license and as such, there was breach of condition of insurance policy and, therefore, insurance company is not liable to pay any amount of compensation.
- 5 Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties, partly allowed the claim application and awarded total sum of Rs.63,000/- as compensation alongwith interest @ 6% p.a and fastened liability upon Insurance Company.
- 6 Learned counsel appearing for the appellant/insurance company submits that the Tribunal committed error in holding that on the date of accident, driver of offending vehicle was possessing valid and effective driving license to drive offending vehicle, because on the date of incident, he was possessing license to drive 'motorcycle' and 'light motor vehicle' (LMV). She further submits that the offending vehicle comes withing the category of 'commercial vehicle' but on the date of accident, there was no endorsement in his license to drive 'Transport Vehicle'. Hence, he was not authorized to drive offending vehicle.
- 7 Per contra, learned counsel appearing for respondent Nos.2 & 3 supported the impugned award and submits that on the date of accident, driver of offending vehicle was having valid and effective

driving license to drive 'motorcycle with gear' and 'light motor vehicle' and that the offending vehicle comes within category of 'light motor vehicle', as defined under Section 2(21) of the Act of 1988. In support of his arguments he relied upon the judgment passed by Hon'ble Supreme Court in the matter of **Mukund Dewangan Vs Oriental Insurance Company Limited** reported in **2017 14 SCC 663**.

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

9 Short question arises before this Court is, whether on the date of accident, driver of offending vehicle was having valid and effective driving license or not ?

10 A glance of copy of driving license bearing registration no. CG/04/2009/0030684 available on record as Ex.D-2(C) records that, it has been issued in name of Lalitram Sahu on 15.12.2009, authorizing him to drive 'light motor vehicle' and 'Motorcycle with Gear'. This license is valid up to 21.03.2027, particulars of certificate of registration of offending vehicle issued by Regional Transport Office, Raipur is also available on record as (Ex.D-1(C), in which, subject of registration has been mentioned as 'light goods vehicle'. On perusal of Form-20, it shows that gross vehicle weight of offending vehicle is 1550 Kgs.

11 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;”

12 Issue as to whether a person holding license to drive 'Light Motor Vehicle' can drive other type of vehicle of the same category has come-up for consideration of the Hon'ble Supreme Court in the matter of ***Mukund Dewangan*** (supra) and it was held as under :-

“17. The definition of ‘light motor vehicle’ makes it clear that for 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 kgs. ‘Gross vehicle weight’ has been defined in section 2(15). The motor car or tractor or road roller, the unladen weight of any of which does not exceed 7500 kgs. as defined in section 2(48) of the Act, are also the light motor vehicle. No change has been made by Amendment Act of 54/94 in the provisions contained in sections 2(21) and 10(2)(d) relating to the light motor vehicle. The definition of ‘light motor vehicle’ has to be given full effect to and it has to be read with section 10(2)(d) which makes it abundantly clear that ‘light motor vehicle’ is also a ‘transport vehicle’, the gross vehicle weight or unladen weight of which does not exceed 7500 kgs. as specified in the provision. Thus, a driver is issued a licence as per the class of vehicle i.e. light motor vehicle, transport vehicle or omnibus or another vehicle of other categories as per gross vehicle weight or unladen weight as specified in section 2(21) of the Act. The provision of section 3 of the Act requires that a person in order to drive a ‘transport vehicle’ must have authorization. Once a licence is issued to drive light motor vehicle, it would also mean specific authorization to drive a transport vehicle or omnibus, the gross vehicle weight or motor car, road roller or tractor, the unladen weight of which, as the case may be, does not exceed 7500 kg. The insertion of ‘transport vehicle’ category in section 10(2)(e) has no effect of obliterating the already defined category of transport vehicles of the class of light motor vehicle. A distinction is made in the Act of heavy goods vehicle,

heavy passenger motor vehicle, medium goods vehicle and medium passenger motor vehicle on the basis of 'gross vehicle weight' or 'unladen weight' for heavy passenger motor vehicle, heavy goods vehicle, the weight, as the case may be, exceed 12000 kg. Medium goods vehicle shall mean any goods carriage other than a light motor vehicle or a heavy goods vehicle; whereas 'medium passenger motor vehicle' means any public service vehicle or private service vehicle or educational institution bus other than a motorcycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle.

"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."

13 The Hon'ble Supreme Court, considering the definition of 'light motor vehicle' given in the Act of 1988 and also considering its earlier judgments, held in the above cited judgment that, a person holding license to drive 'light motor vehicle' can drive a transport

vehicle of said category, having gross weight less than 7500 Kgs and no separate endorsement on the license is required to drive a transport vehicle of LMV category.

14 In the light of aforementioned judgments passed by Hon'ble Supreme Court, if the facts of present case are considered, it is evident that gross vehicle weight of offending vehicle is less than 7500 kgms ie. 1550 kgms as mentioned in Form -20 and in registration certificate available on record it is mentioned as 'Light Goods Vehicle'. In this circumstance, driver of offending vehicle who was holding license to drive 'light motor vehicles' will also have authorization to drive offending vehicle, which has been shown to be the category of 'light goods vehicle' without any separate endorsement on the license to drive transport vehicle.

15 In view of above, argument raised by the learned counsel for the appellant/Insurance Company that on the date of accident, driver of offending vehicle was not having valid and effective driving license to drive offending vehicle is hereby repelled.

16 In view of aforementioned law laid down by the Hon'ble Supreme Court and discussions made above, this Court is of the considered opinion that the Tribunal has rightly held that there was no violation of condition of insurance policy as on the date of accident driver of offending vehicle was possessing valid and effective driving license to drive offending vehicle.

17 No other ground is raised by the learned counsel for the appellants.

18 In the result, appeal preferred by appellant/insurance company being devoid of any substance is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal