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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 192 of 2013

1. Deepak Thawre (dead) (Owner)

through Lrs

1. Smt Kalpana Thawre, aged 37 years, w/o late Shri Deepak Thawre

2. Ku. Suhana Thawre, aged 4 years, D/o late Shri Deepak Thawre, minor through mother Smt Kalpana Thawre

Both are r/o C-26, Sector- 3 Devendra Nagar, Raipur, District Raipur (CG)

2. Dhaniram Sahu, s/o late Bisauha Ram Sahu, aged about 29 years, permanent r/o village – Nardaha, PS Mandir Hasaud, district Raipur CG. Presently residing at Rawanbhata, Banjari Raipur, Tahsil and Distt Raipur CG (Driver)

---- Appellants

Versus

1. Jai Prakash Sahu S/o Thakur Ram Sahu Aged About 25 Years R/o Village And Post Godi, P.S. Nandini, Tah. Damdha, Distt. Durg C.G., Chhattisgarh

2. The New India Insu.Co.Ltd. Thru- Zonal Manager, Zonal Office-2, Raipur, Tah. And Distt. Raipur, C.G., District : Raipur, Chhattisgarh

---- Respondents

For Appellants	:	Shri Rajesh Tiwari, Advocate
For Respondent-1	:	Shri Goutam Khetrapal, Advocate
For Respondent- 2	:	Shri Deepak Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

18.06.2019

1. Appellants/ owner and driver of offending truck bearing No. CG04/ZC 1286 have challenged impugned award dated 27.9.2012 passed in claim case No.9 of 2011 passed by 4th Additional Motor Accident Claims Tribunal, Durg, wherein learned Claims Tribunal allowed the application in part and awarded a total sum of Rs.4,07,611/- as compensation along with interest @ 6% per annum from the date of filing of claim application. Learned Claims Tribunal exonerated Insurance Company from its liability and fastened liability of payment of compensation on appellants herein.

2. Brief facts relevant for disposal of this appeal are that on 21.6.2010 when claimant/ respondent- 1 was travelling from Raipur to his village Godhi on his motorcycle (Bajaj Pulsar) bearing No.CG07-LG 3156, at that relevant time when he reached near village Kandarika at about 8.30 pm, he dashed against a stationary truck bearing No. CG04-ZC 1286 (for short, offending truck) standing on middle of road without any indication and due to this accident, he received grievous injuries and was immediately taken to Apollo BSR Hospital, Bhilai, where he took treatment as inpatient from 21.06.2010 to 10.07.2010; and thereafter from 13.09.2010 to 21.09.2010. The accident was reported to concern Police Station based on which Crime No.136 of 2010 was registered against driver of offending Truck. Claimant/respondent-1 after recovery of his injuries, filed claim application before competent Claims Tribunal claiming compensation of Rs.10,31,291/- as compensation mentioning therein that he suffered fracture on his left hand and underwent Orthopaedic and Plastic Surgery in which he incurred heavy medical expenses.

3. Non-applicants 1 & 2 who are driver and owner of offending truck submitted reply to claim application and denied all adverse pleadings made in the claim application. They further pleaded that offending truck at the time of accident was parked down the road as one of its tyres was punctured. It has also been pleaded that on the date of accident offending truck was insured with non-applicant 3/Insurance company and non-applicant-driver was having effective and valid driving license to drive offending vehicle.

4. Non-applicant-3/Insurance company submitted its reply to claim application and denied all the adverse pleadings made in the claim application and further pleaded that accident took place due to self negligence of injured claimant himself and there was contributory negligence on the part of both drivers of vehicles involved in the accident. It further pleaded that there was no violation of conditions of Insurance Policy.

5. Learned Claims Tribunal on appreciation of pleadings and evidence available on record on the basis of pleadings made by respective parties framed as many as seven issues for consideration including the issue with respect to violation of conditions of Insurance Policy. Learned Claims Tribunal further held that there was violation of conditions of the insurance policy as on the date of accident driver of offending truck was not possessing valid and effective driving license as there is no endorsement to drive 'heavy goods vehicle'.

6. Learned Claims Tribunal on the basis of aforementioned evidence exonerated insurance company from its liability and fastened the liability on appellants/owner and driver of offending truck for payment of compensation of amount of Rs.4,07,611/- along with interest @6% p.a.

7. Learned counsel for appellants who are owner and driver of offending truck submitted that on the date of accident driver of offending truck was possessing valid and effective driving license. He refers to copy of license available as Ex.D1-C and argued that license was having an endorsement and authorisation to drive vehicles of NT, LMV, MCWG, NT and TRANS, having its validity up to 05.04.2013. He further argued that license was issued for a period of three years and therefore looking to the validity period mentioned on license it is evident that it was issued in the month of April, 2010, which is prior to the date of accident i.e. 21.6.2010 and therefore on the date of accident, driver of offending truck was possessing a valid and effective driving license. He further argued that on the date of accident, learned Claims Tribunal erroneously recorded a finding that license (Ex.D1C) bears an endorsement and authorization to drive transport vehicle only, and there was no authorization and endorsement permitting driver of offending truck to drive 'heavy goods vehicle' and erroneously arrived at a conclusion that driver of offending vehicle was not possessing a valid and effective driving license which is to be set aside.

8. On the other hand, learned counsel appearing for injured claimant also referred to the document Ex.D1C and argued that perusal of copy of license itself shows that on the date of accident, driver of offending vehicle was possessing valid and effective driving license, therefore the finding recorded by learned Claims Tribunal with respect to violation of conditions of Insurance Policy only on the ground that there was no specific endorsement and authorization of competent authority permitting driver of offending vehicle to drive heavy goods vehicle is erroneous.

9. Learned Counsel for Respondent-3/ Insurance Company supports the impugned award passed by learned Claims Tribunal and submitted that as per provisions of Motor Vehicle Act, 1988 specific endorsement to drive particular class of vehicle is mandatory and in the license which is available on record it does not bear specific endorsement and authorisation to drive heavy goods vehicle. Therefore learned Claims Tribunal has rightly exonerated Insurance Company from its liability to satisfy the award of compensation.

10. I have heard Learned Counsel for the parties and perused records of Claims Tribunal minutely. It is not in dispute that license (Ex.D1C) bears endorsement of non-transport vehicle, light motor vehicle, MCWG (motor cycle with gear) showing its validity up to 20.05.2026 and there is further endorsement of TR & TRANS i.e. Authorization to drive transport vehicle. Validity period mentioned in the license to drive transport vehicle was up to 05.04.2013.

11. Section 10 of 1988 Act provides for form and contents of licences to drive which is reproduced here for ready reference:

> "10. Form and contents of licences to drive.— (1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.
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> (2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:—
> (a) motor cycle without gear;(b) motor cycle with gear;(c) invalid carriage;(d) light motor vehicle;1[(e) transport vehicle;] (i) road-roller;(j) motor vehicle of a specified description."

12. Section-10 (2) (e) provides for license and authorization to drive transport vehicles. This was inserted by way of amendment which came into effect on 14.11.1994. Prior to aforementioned amendment to Section 10 (2) (e), it provides categories for driving of vehicle, medium goods vehicle, heavy goods vehicle, medium passenger vehicle and heavy passenger vehicle which were mentioned from Clause (e) to (h) of Section (2), prior to the amendment. After amendment of Clause, other vehicles i.e. medium goods vehicle, heavy goods vehicle, medium passenger vehicle and heavy passenger vehicle have been included in one category i.e “Transport Vehicle”.

13. Section-14 of the act provides for currency of licences to drive motor vehicles and Section 14 (2) (a) provides that license of transport vehicle will be effective for a period three years.

14. License which is exhibited as Ex.D1C was not disputed by any of the parties. Ex.D1C bears validity period of authorization to drive transport vehicle till 05.04.12013. Considering the currency of license to drive transport vehicle as provided under Section 14 of the act, license must have been issued prior to three years from the date of its validity ending period ie 05.04.2013. The license would have been issued on 06.04.2010, whereas the accident took place much after the date of endorsement and authorization to drive transport vehicle i.e. on 21.06.2010.

15. From perusal of aforementioned provisions of act of 1988 and document Ex.D1C, it is apparent that on the date of accident non-applicant 1 driver was possessing a valid and effective driving license to drive the transport vehicle and transport vehicle covers all types of vehicles such as medium goods vehicle, heavy goods vehicle, medium passenger vehicle and heavy passenger vehicle. Un-disputedly on the date of accident, driver / appellant No.2 was driving heavy goods vehicle.

16. Hon’ble Supreme Court has held categorically in the matter of **Mukund Dewangan Vs Oriental Insurance Company Limited** reported in 2017(14)

SCC 663, held that once endorsement and authorization was obtained with respect to drive transport vehicle, it will cover all the four categories of vehicles i.e. medium goods vehicle, heavy goods vehicle, medium passenger vehicle and heavy passenger vehicle, after amendment which came into effect from 14.11.1994.

17. Hon'ble Supreme Court in **Mukund Dewangan** (supra) while considering the issue whether the person holding license with an endorsement of LMV can be held to be authorised to drive any other type of vehicle ie any light transport vehicle, held as under:

> "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 section 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.54/1994.
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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 28.3.2001 in the form.
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> 60.3 The effect of the amendment made by virtue of Act No.54/1994 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."

18. In view of aforementioned discussion, finding recorded by learned Claims Tribunal that driver of offending vehicle was not having valid and effective driving license on the date of accident as there is no specific endorsement in licence (Ex.D1C) to drive heavy goods vehicle is not sustainable and it is hereby set aside.

19. No other ground is raised by learned counsel for parties.

20. As the Insurance Policy and its effective period has not been disputed by Insurance Company, and therefore in view of above discussion respondent-2/Insurance Company is liable to satisfy the award passed by learned Claims Tribunal in the terms mentioned therein.

21. In the result, the appeal is allowed on aforementioned terms. Appellant-owner of offending vehicle is entitled to file an application for withdrawal of any amount so deposited by him in pursuance to the impugned award from the amount, now to be deposited by Insurance Company to satisfy the award.

22. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma