NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 770 of 2013

The Oriental Insurance Company Limited Branch Office, Behind Amar Talkies, Dhamtari, Tah. And Distt. Dhamtari C.G.

---- Appellant

Versus

1. Premlal Jagat S/o Late Murha Jagat Aged About 46 Years R/o Gad-Dongri, Thana Sihawa, Distt. Dhamtari C.G.
2. Mannu Lal Markam S/o Videshi Ram Aged About 30 Years R/o Sonjhari, Thana- Magarlod, Distt. Dhamtari C.G.
3. Lalit Markam S/o Pati Ram Markam Aged About 39 Years R/o Sonjhari, Thana- Magarlod, Distt. Dhamtari C.G.

---- Respondents

For Appellant	:	Shri Sudhir Agrawal, Advocate.
For Respondent No.1	:	Shri Samir Singh, Advocate.
For Respondent No.2 & 3	:	Shri Adil Minhaj, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

18/06/2019

1 Appellant- Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the award dated 03.04.2013 passed by learned Principal Motor Accident Claims Tribunal, Dhamtari, (for short 'the Tribunal”) in Claim Case No.40/2011 whereby the Tribunal allowed claim application in part and awarded total sum of Rs.1,01,840/- as compensation in an injury case alongwith interest @ 6% p.a. and fastened liability upon insurance company/appellant herein to pay amount of compensation to claimant.

2 Brief facts necessary for disposal of this appeal are that on 11.07.2010 at about 5:30 pm, Premlal Jagat (injured) along with his friend Sukhau Ram was going to his home situated at Village Gad-Dongri from village-

Ghatula on his motorcycle bearing registration No.CG07/ZM/1462, (for short 'the motorcycle'). Premlal Jagat (injured) was driving said motorcycle and Sukhau Ram was traveling as pillion rider. On the way near village- Dumar Nala, one Jeep bearing registration No.CG05/6783, (hereinafter shall be referred to as “offending vehicle”), driven by non-applicant No.1/respondent No.2- herein, dashed against their motorcycle, on account of which they fell down and sustained grievous injuries. Matter was reported to Police Station – Sihawa based on which crime bearing No.67//2010 under Sections 279, 337, 338 of the Indian Penal Code was registered against driver of offending vehicle ie. respondent No.2-Mannu Lal Markam.

3 Appellant/claimant on account of injury sustained by him filed a claim application under Section 166 of the Act of 1988 claiming Rs.4,15,000/- as compensation on the grounds mentioned therein.

4 Non-applicant No.1/respondent No.2 driver of offending vehicle, submitted reply to claim application, and denied all adverse averments made in claim application except the fact of accident. He further pleaded that accident took-place due to negligence of respondent No.1 (driver of motorcycle). Claim made by claimant on different heads were also objected to be false and fabricated. He further pleaded that on the date of accident driver of motorcycle was possessing valid and effective driving license and motorcycle was insured with non-applicant no.2-insurance company, therefore, liability, if any would be of insurance company.

5 Non-applicant no.3 -owner of offending vehicle separately submitted his reply to claim application and also pleaded that accident took-place due to rash and negligent driving of driver of motorcycle ie. respondent no.1-claimant and, therefore, he is not entitled for any amount of compensation. In alternate, he pleaded that as on the date of accident driver of motorcycle was possessing valid and effective driving license, and his motorcycle was insured with insurance company, therefore, liability if any would be of insurance company. Ultimately, he prayed for dismissal of the claim.

6 Non-applicant No.2/insurance company-appellant herein also submitted reply to claim application and denied all adverse pleadings made in claim application. It was pleaded that there was contributory negligence on the part of driver of motorcycle himself in the accident. It was further pleaded that on the date of accident, driver of offending vehicle was not having valid and effective driving license and as offending vehicle was plied in breach of condition of insurance policy, therefore, insurance company is not liable to indemnify insured.

7 Learned Claims Tribunal on the basis of pleadings and evidence placed on record by the respective parties has famed as many as five issues for consideration and after appreciating evidence available on records allowed claim application in part, awarded a total sum of Rs.1,01,840/- as compensation and fastened liability upon insurance company/appellant on the ground that there was no violation of conditions of insurance policy.

8 Learned counsel for appearing for appellant/insurance company submits that appellant/insurance company had taken a very specific plea in his reply before the Tribunal that on the date of accident driver of offending vehicle was not having valid and effective driving license, therefore, there is violation of condition of insurance policy but the Tribunal has not framed any specific issue in this regard and thereby committed mistake. He further argues that on account of non-framing of specific issue, insurance company has been deprived of opportunity to lead appropriate evidence before the Tribunal with respect to genuineness of license of respondent No.2 (driver of offending vehicle) on the date of accident. The appellant/insurance company has also filed an application under Order 11 Rule 12 of CPC, which was dismissed by the Tribunal. On the aforesaid grounds, he prays that the impugned award be set aside and the matter be remanded back to the Tribunal for taking decision afresh after framing specific issue with respect to genuineness of license of respondent no.2.

9 On the other hand, learned counsel appearing for respondent No.1/ claimant supports the impugned award and submits that insurance company neither raised any objection nor led any evidence before the Tribunal with respect of validity and effectiveness of driving license of driver of offending vehicle and, therefore, ground raised by learned counsel for insurance company before this Court is not sustainable.

10 I have heard learned counsel for the parties and perused the records.

11 It is true that appellant/insurance company in its reply has specifically pleaded that on the date of accident driver of offending vehicle was not possessing valid and effective driving license, therefore, there is violation of condition of insurance policy, but perusal of documents available on records reveals that during pendency of claim application, owner and driver of offending vehicle have filed an application before the Tribunal for submission of certain documents like registration, insurance, fitness of offending vehicle and copy of license. This application filed by driver and owner of offending vehicle was allowed by the Tribunal vide order dated 19.03.2013 recording no objection on the part of respective parties appearing before the Tribunal including counsel for appellant-insurance company.

12 Copies of relevant documents filed alongwith aforementioned application are available on records. Copy of license is available at page no.4 of un-exhibited documents. Perusal of copy of driving license would show that said license was issued in name of Mannu Lal Markam authorising him to drive 'light motor vehicles' and it was valid from 17.04.2008 to 16.04.2028. As offending vehicle comes within the category of 'light motor vehicle' therefore, even if it was being used as passenger vehicle (commercial vehicle), then also driving license produced by driver and owner of offending vehicle authorizing him to drive 'light motor vehicle' will be valid and effective driving license to drive offending vehicle. Similar issue has been considered by the Hon'ble Supreme Court in its judgment rendered in the matter of ***Mukund Dewangan v. Oriental***

Insurance Company Limited reported in ***(2017) 14 SCC 663*** and 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.
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> 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.
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> 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 In the light of aforementioned 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, I am of the opinion that on the date of accident driver of offending vehicle was possessing valid and effective driving license to drive type of vehicle which he was driving.

14 So far as, non-framing of specific issues with respect to the violation of condition of insurance policy is concerned and not providing an opportunity to led specific evidence to the appellant-insurance company. Rule 230 of motor vehicle provides for framing and determination of

issues but merely non-framing of specific issues would itself not make the whole of the impugned award to be illegal. Rule 230 of Motor Vehicle reads as under :-

> "**230. Framing and determination of issues.** - (1) After considering the written statement or the result of examination of the opposite party and the result of the local inspection, if any, the Claims Tribunal shall proceed to frame the issues.
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> (2) After framing the issues, the Claims Tribunal shall proceed to record evidence thereon which each party may desire to produce.

15 Learned Claims Tribunal framed issue and granted opportunity to all the parties to lead evidence in support of their respective cases.

16 Even if the Tribunal failed to frame specific issue with respect to valid and effective license, but facts remains that appellant-Insurance company has specifically pleaded in his reply to claim application that on the date of accident driver of offending vehicle was not possessing valid and effective driving license, and therefore, he was aware about the issue to be involved in the case to be decided by the Tribunal but chosen not to produce any evidence in this regard before the Tribunal. Even insurance company not filed any application for framing additional issue.

17 Even, no witness has been examined by appellant-insurance company in support of its pleadings made in reply.

18 It is not a case that copy of driving license was not made available before the Tribunal but it is a case where driver and owner of offending vehicle themselves have filed relevant documents of vehicle including

copy of license before the Tribunal which was within the knowledge of counsel appearing on behalf of appellant-insurance company before the Tribunal. Even then, he has not made any effort to get copy of license verified from the office of concerned licensing authority.

19 In view of above ground raised by learned counsel for appellant-insurance company that he was deprived of an opportunity to lead evidence in support of his pleadings is not sustainable. It is settled position of law that claim application is to be decided by the Tribunal on the basis of enquiry to be conducted by it. It is not to be decided strictly as required to be decided a civil suit under the code of civil procedure.

20 The appellant-insurance company was well aware about the defence taken by it but had not brought any reliable piece of evidence in support of his defence on record.

21 In view of the aforesaid discussion, appeal being devoid of merit is liable to be dismissed and is hereby dismissed.

Sd /-
(Parth Prateem Sahu)
Judge

Jamal