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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 387 of 2015

- United India Insurance Company Limited Through Its Divisional Manager, Divisional Office-1st Floor Krishna Complex, Kutchery Chowk Raipur, Distt. - Raipur C.G. Through Authorized Authority Divisional Manager, Divisional Office-2nd Floor Gurukripa Towers, Vyapar Vihar Road, Bilaspur District Bilaspur, Chhattisgarh.

---Appellant

Versus

1. Goverdhan Yadav S/o Pachkaud Yadav Aged About 45 Years

2. Leela Bai W/o Govardhan Yadav Aged About 40 Years

3. Yogendra S/o Govardhan Yadav Aged About 11 Years

4. Yorendra Yadav S/o Govardhan Yadav Aged About 8 Years

5. Ku. Manisha D/o Govardhan Yadav Aged About 5 Years

   Respondent nos. 3 to 5 are Minor, Through their Father Govardhan Yadav

   Respondent Nos. 1 to 5 all are R/o Village And Post Jangada, P.S.- Bhatapara, Distt. - Balaoda Bazar Chhattisgarh.

6. Premlal Nishad S/o Dhanau Ram Nishad R/o Vill. Tandwa, P.S. Newara, Distt.- Raipur Chhattisgarh.

7. Trilochan Verma S/o Parmeshwar Verma Anarpuri Sundar Nagar, Raipur Distt.- Raipur Chhattisgarh Present Address- Vill.- Taresar, P.S. Silyari, Distt.- Raipur Chhattisgarh.

8. Pradeep Nayak S/o Ramsidh Nayak R/o Vill. Tandwa, P.S. Newra, Distt.- Raipur Chhattisgarh

---- Respondents

For Appellant	Shri Dashrath Gupta, Advocate.
For Respondents	None.

MAC No. 385 of 2015

- United India Insurance Company Limited Through Its Divisional Manager, Divisional Office-1st Floor Krishna Complex, Kutchery

Chowk Raipur, Distt. - Raipur C.G. Through Authorized Authority Divisional Manager, Divisional Office-2nd Floor Gurukripa Towers, Vyapar Vihar Road, Bilaspur Dist.- Bilaspur Chhattisgarh.

---- Appellant

Versus

1. Vimla Bai Wd/o Ramu Yadav Aged About 45 Years

2. Nohar Yadav S/o Late Ramu Yadav Aged About 19 Years

3. Rohit Yadav S/o Late Ramu Yadav Aged About 17 Years

4. Kumari Rohini Yadav D/o Late Ramu Yadav Aged About 15 Years

5. Ku. Jageshwari D/o Late Ramu Yadav Aged About 13 Years

6. Respondent Nos. 3 to 5 are minor through their Mother Vimla Bai Yadav (Respondent No.1)

7. Respondent Nos. 1 to 5 all are R/o Village and Post Bhainsa, Thana Simga, District Balauda Bazar, C.G.

6. Premlal Nishad S/o Dhanau Ram Nishad R/o Vill. Tandwa, P.S. Newara, Distt.- Raipur Chhattisgarh , District : Raipur, Chhattisgarh

7. Trilochan Verma S/o Parmeshwar Verma Anarpuri Sundar Nagar, Raipur Distt.- Raipur Chhattisgarh Present Address- Vill.- Taresar, P.S. Silyari, Distt.- Raipur Chhattisgarh , District : Raipur, Chhattisgarh

8. Pradeep Nayak S/o Ramsidh Nayak R/o Vill. Tandwa, P.S. Newra, District Raipur Chhattisgarh.

---- Respondents

For Appellant	Shri Dashrath Gupta, Advocate.
For Respondents	None.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

26/02/2019

1. Since both these appeals filed under Section 173 of the Motor Vehicles Act arises out of the same accident occurred on 19.05.2013 involving offending vehicle bearing no. CG04-

JC-1776, they are being disposed of by this common judgment.

2. As per averments made in the claim petition on the date of accident i.e. 19.05.2013 Mukesh Yadav and Ramu Yadav were going to village Jangda from village Neelja by tractor bearing no. CG04-DM-0408 attached with trolley bearing no. CG04-DM-04109. However, on the way at around 3:00 am driver of the said tractor trolley stopped the vehicle, parked the same by the side of the road with parking light on and while Mukesh Yadav and Ramu Yadav having got down from the trolley and were going to attend the call of nature (Urination), at that time non-applicant no.1 Premlal Nishad by driving the vehicle CG04-JC1776 in a rash and negligent manner hit Mukesh and Ramu, as a result of which both them suffered grievous injuries and died during treatment. At the time of accident, registered owner of the offending vehicle was non-applicant no.2, its insurer was non-applicant no.3 and the same was in possession of non-applicant no.4.

3. On claim petition being filed by the claimants i.e. widow and children of deceased Ramu Yadav under Section 166 of the Motor Vehicles Act vide award dated 18.12.2014 passed by 1st Additional Motor Accident Claims Tribunal, Raipur, in Claim Case No. 50/13, awarded a total sum of Rs.5,43,000/-

with interest @ 6% per annum from the date of claim petition till realization in favour of the claimants, fastening liability on non-applicant no.3/Insurance Company jointly and severally along with non-applicants no. 1, 2 & 4. Against this award the Insurance Company has filed appeal i.e. MAC No.385/13 challenging its liability as well as quantum.

4. On claim petition being filed by the claimants i.e. parents, brother and sister of deceased Mukesh Yadav under Section 166 of the Motor Vehicles Act, the Tribunal vide award dated 18.12.2014 passed by 1st Additional Motor Accident Claims Tribunal, Raipur, in Claim Case No. 51/13 awarded a total sum of Rs.2,90,000/- with interest @ 6% per annum from the date of claim petition till realization in favour of the claimants, fastening liability on non-applicant no.3/Insurance Company jointly and severally along with non-applicants no. 1, 2 & 4. Against this award the Insurance Company has filed appeal i.e. MAC No.387/15 challenging its liability as well as quantum.

5. Learned counsel for the appellant/Insurance Company submits that though he has also assailed the quantum of compensation in both the appeals, however, he is not pressing the same and is confining his argument only to the liability part. He submits that the Tribunal has wrongly fastened liability on the Insurance company as the driver

non-applicant no.1 was not having a valid and effective licence on the date of accident as the driver was having licence for LMV whereas the offending vehicle is a light goods' vehicle. Further, the offending vehicle was being driven without fitness certificate. However, the Tribunal did not consider the above aspects of the matter which clearly show that their was breach of policy conditions and as such Insurance Company cannot be saddled with the liability of indemnifying the owner for paying compensation to the claimants.

> Reliance has been placed on the decision of five judges bench of High Court of Kerala in the matter of ***Pareed Pillai vs Oriental Insurance Company Ltd.*** Passed in MACA No.2030/2015 on 9th October, 2018.

6. Heard learned counsel for the appellant and perused the record.

7. So far as the issue of competence of non-applicant no.1/driver for driving the vehicle is concerned, as per Ex.D-5(C), i.e. details of driving licence of non-applicant no.1, it is evident that non-applicant no.1 was having a licence for motorcycle and LMV which was valid from 15.02.2008 to 14.02.2028. Admittedly, the accident occurred in this case on 19.05.2013. As per Certificate of Registration of the offending vehicle its gross weight is 2450 kg and unladen weight is 1250 Kg. 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)"

8. In view of above, it is evident that on the date of accident non-applicant no.1 who was having a licence for LMV was fully competent to drive the offending vehicle without there being any requirement of such endorsement in his driving licence for driving the said vehicle at is gross weight is much below 7,500 kg as has been held in the matter of ***Mukund***

Dewangan (supra).

9. As regards the breach of policy conditions on account of fitness certificate being not produced by the owner, as per Ex.D-6 i.e. Insurance Policy, the Insurance Company can seek its exoneration only on the grounds of the driver not having valid and effective driving licence and the vehicle being driven in violation of the permit conditions or valid permit as per Section 66 of the Act. There is no stipulation in the insurance policy regarding fitness certificate. Insurance policy is a contract between the insurer and the insured and any breach of policy conditions is to be seen in light of the terms and conditions agreed upon by the parties while entering into such contract. From perusal of the Insurance policy, it is seen that there is no such stipulation in the insurance policy that absence of fitness certificate and the vehicle will amount to breach of policy conditions entitling the insurance company of its exoneration.

10. Under Section 149 of the Act Insurance Company can take defence on certain grounds specified under said Section. This Section nowhere contemplates that absence of fitness certificate can be taken as a defence by the Insurance Company for avoiding its liability.

11. So far as judgment in the matter of ***Pareed Pillai*** (supra) relied upon by the Insurance Company is concerned, the

same being distinguishable on facts from the present case is of no help to the Insurance Company. In the present case, the Insurance Policy Ex.D-6 specifies the person or classes of persons entitled to drive and the limitations as to use of the vehicle, which reads as under:-

> “ **Persons or classes of persons entitled to drive**
>
> Any person including Insured provided that a person holds and effective driving licence at the time of accident and is not disqualified from holding or obtaining such a licence. Provided also that the person holding an effective Learner's Licence may also drive the vehicle and such a person satisfied the requirement of Rule 3 of Central Motor Vehicle Rule, 1989
>
> **Limitations as to use**
>
> The policy covers use only under a permit within the meaning of Motor Vehicles Act, 1988 or such a carriage falling under Sub-Section 3 of Section 66 of the Motor Vehicles Act, 1988.
>
> The policy does not cover use for:
>
> a) Organized Racing
>
> b) Pace Making
>
> c) Reliability Trials
>
> d)Speed Testing”

12. On the basis of aforesaid discussions, this Court finds no substance in both the appeals filed by the Insurance Company. The same are dismissed and are, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh