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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1065 of 2015

- Branch Manager- Bajaj Allianz General Insurance Company Limited, through its authorized officer Bajaj Allianz General Insurance Company Limited, Branch office, Shiv Mohan Bhawan, Vidhansabha Road Pandri, Raipur District- Raipur (C.G.).

---- Appellant

Versus

1. Bahoran S/o Baisakhu Vishwakarma, age 55 years.
2. Ramkrishna S/o Bahoran Vishwakarma Age- 22 years.
3. Kishan S/o Bahoran Vishwakarma age- 18 years.

   All R/o Village- Bhunda, P.S. Kota, District- Bilaspur (C.G.)

4. Ramesh Kumar @ Suresh Khande, S/o Mohan Lal Khande, aged-35 years, R/o Village Pendari, P.S. Chankarbhatha, District- Bilaspur C.G.

---- Respondents

For Appellant : Shri D. L. Dewangan, Advocate.
For Respondent No.1 to 3/Claimants : Shri K. P. S. Gandhi, Advocate

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And

MAC No. 1142 of 2015

- Branch Manager- Bajaj Allianz General Insurance Company Limited, through its authorized officer Bajaj Allianz General Insurance Company Limited, Branch office, Shiv Mohan Bhawan, Vidhansabha Road Pandri, Raipur District- Raipur (C.G.).

---- Appellant

Versus

1. Bahoran S/o Baisakhu Vishwakarma, age 55 years R/o Village- Bhunda, P.S. Kota, District- Bilaspur (C.G.).

2. Ramesh Kumar @ Suresh Khande, S/o Mohan Lal Khande, aged -35 years, R/o Village Pendari, P.S. Chakarbhatha, District- Bilaspur C.G.

---- Respondents

For Appellant : Shri D. L. Dewangan, Advocate.
For Respondent No.1 /Claimant : Shri K. P. S. Gandhi, Advocate

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Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

25/02/2019:

As both these appeals filed under Section 173 of the Motor Vehicles Act by the insurer arise out of the common award dated 06.05.2015, passed by 7th Additional Motor accident Claims Tribunal, Bilaspur (CG) in Claim Cases No. 211/2014 & 218/2014, respectively, they are heard together and are being disposed of by this common judgment.

02. As per claim petitions, on 17.05.2013 at about 10.00 am when deceased Shiv kumari alongwith her husband-Bahoran and her daughter & son-in-law(damad) was travelling in Auto bearing registration No. CG10-T/3909, near village Bharari & Bhunda, Non-applicant No. 1- Ramesh Kumar @ Suresh Khande by driving the said auto rickshaw in a rash and negligent manner, lost the control of his vehicle and turned turtle, as a result of which Shiv Kumari died on the spot whereas claimant - Bahoran sustained grievous in the said accident. At the time of accident, the offending vehicle (Auto) was owned by Non-applicant No.1-Ramesh Kumar @Suresh Khande and insured with appellant- Bajaj Allianz General Insurance Co. Ltd.

03. On claim petitions being filed by the husband & children/claimant for death of deceased- Shivkumari in claim case No.211/2014 and for the injuries sustained by injured claimant- Bahoran in claim case No.

218/2014 under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award to the tune of Rs. 3,62,000/- alongwith interest @ 6% per annum for the death of deceased Shivkumari in the said accident whereas Rs. 53,000/- @ 6% per annum has been awarded to the claimant – Bahoran for the injuries sustained by him in the said accident from the date of filing of claim petition till its actual payment, respectively.

04. Learned counsel for the appellant/insurance company submits that the Tribunal has wrongly fastened liability upon the insurance company as the driver of the offending vehicle was having licence for LMV whereas he was driving the offending vehicle i.e. Auto, which is a transport vehicle, on the date of accident without there being any endorsement to this effect in his driving licence.

05. On the other hand, learned counsel for the respondents /claimants supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly fastened liability on the insurance company and awarded compensation which needs no interference by this Court. He also submits that on the date of accident the driver was holding valid and effective driving licence and as per Ex. D/3 driving licence which is valid & effective from 22.09.2004 to 22.09.2024 and even in absence of any endorsement as such in his driving license authorizing him to drive the offending vehicle.

He placed reliance upon the decision rendered by the Supreme Court in "***Mukund Dewangan Vs. Oriental Insurance Company Limited"*** reported in (2017) 14 SCC 663 in support of his submission.

06. Heard learned counsel for the parties and perused the material available on record and the award impugned.

07. As regards the issue of competence of the driver for driving the offending vehicle, admittedly, as per Ex.D/3 respondent/driver was having licence for Light Motor Vehicle which was valid from 22.09.2004

to 22.09.2024 and effective on the date of accident, and that as per unexhibited document the unladen weight of the offending vehicle is 410 kg and the laden weight is 995 kg.

08. At this juncture, the principles laid down in ***Mukund Dewangan Vs. Oriental Insurance Company Ltd.***, reported in ***(2017) 14 SCC 663***, is to be noted as the question involved herein, as to whether a driver who is having a license to drive the “light motor vehicle” is competent to drive “transport vehicle” of that class in absence of such an endorsement, was considered in the said case and it was held therein 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)””

09. Applying the ratio of law laid down by the Supreme Court in the matter of Mukund Dewangan (supra), it is apparent that the driver/owner/non-applicant No.1 was holding a valid and effective driving license and even in absence of any endorsement as such in his driving license authorizing him to drive the offending vehicle, it cannot be held that he was not possessing the valid and effective driving license at the relevant time and, as such, appellant/Bajaj Allianz General Insurance Company cannot be exonerated from its liability to pay compensation to the claimants.

10 In the result, the appeals filed by the insurance company being

devoid of merit are liable to be and are hereby dismissed at the motion stage itself.

Sd/-

(Gautam Chourdiya)

Judge

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