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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1663 of 2019

- The Oriental Insurance Company Ltd. Divisional Office Divisional Office, Madina Building, Jail Road, Raipur Tehsil And District Raipur Chhattisgarh, Through Asstt. Manager, T. P. Hub, T. P. Hub Office, Rama Trade Centre, 1st Floor, Opp. Rajeev Plaza, Near Old Bus Stand, Bilaspur Chhattisgarh Pin 495001,

---- Appellant/Respondent No.3

Versus

1. Baldev Yadav, S/o Shri Makhiyar Yadav Aged About 58 Years R/o Village Birajpali, P. O. Bhadarsi, P. S. And Tahsil Bagbahara, District Mahasamund Chhattisgarh....... Claimant,
2. Guru Prasad Rawat S/o Shri Amaru Ram Rawat Aged About 39 Years R/o Village Ganjar, Police Station And Tehsil Bagbahara, District Mahasamund Chhattisgarh ....Driver,
3. Yaadlal Yadav S/o Shri Ghanshyam Yadav Aged About 40 Years R/o Village Pandripani, Post Khatti, Police Station Komakhan, Tehsil Bagbahara, District Mahasamund Chhattisgarh ....Owner,

---- Respondents

For Appellant	:	Shri R.N.Pusty, Advocate

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

06.09.2019

1. This Miscellaneous Appeal has been preferred by non-applicant No.3/Oriental Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the legality and propriety of the award dated 07.05.2019 passed by the Motor Accident Claims Tribunal, Mahasamund in Claim Case No. H-118/2018, by which, the Claims Tribunal, while allowing the claim in part, awarded total amount of compensation to the tune of Rs.1,76,000/- with interest @ 9% per annum from the date of filing of Claim Petition till is realisation while fastening the liability upon Non-Applicant No.3/insurance company. The parties to this

Miscellaneous Appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that on 31.03.2018, when the applicant Baldev was travelling along with others for visiting Khallari Temple in a Tractor attached with its Trolley, bearing respective registration Nos. CG-06/E-4026 and CG-06/E-9650, at the relevant time, the Matador Tata 407 bearing its registration No. CG-04/JC-5579, owned by non-applicant No.2 Yaadlal Yadav, insured with non-applicant No.3/insurance company was being driven rashly and negligently by its driver Guru Prasad and as a result of which, it dashed vehemently the Tractor-Trolley. Owing to which, the applicant sustained serious injuries and was taken immediately to the Hospital at Mahasamund where he was admitted with effect from 01.04.2018 upto 09.04.2018. On account of the alleged accident, a claim enumerated under Section 166 of the Act of 1988 has been made by the applicant claiming total amount of compensation to the tune of Rs.23,96,000/-.

3. Non-applicants No.1 & 2, the driver and owner of the vehicle in question contested the claim by saying that the alleged accident has not occurred with the said offending vehicle and a false criminal case has been registered against the driver of it. It is contested further on the ground that the driver of it was holding the valid and effective driving license and since the vehicle in question was insured with Non-Applicant No.3/insurance company, therefore, in case of any liability being fastened, the same could be indemnified by the said insurance company.

4. While Non-Applicant No.3, the insurance company contested the claim mainly on the ground that the vehicle in question “Matador Tata 407” was a Goods Vehicle insured for commercial use whereas the driver of it was authorised to drive the Light Motor Vehicle only. It was, therefore, being used by a driver who was not holding the effective and valid driving license. As

such, no liability could be fastened upon it.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the accident occurred on 31.03.2018 due to rashness and negligent driving of the driver of the offending vehicle, as a result of which, the applicant Baldev Yadav was injured seriously. It held further upon considering the weight of the alleged vehicle that it was a kind of Light Motor Vehicle, therefore, even in absence of endorsement in driving license of the driver of the offending vehicle authorising him to drive the said Goods or Commercial vehicle, it cannot be said that he was not authorised to drive the same. As a consequence, while fastening the liability upon the insurance company, a total amount of compensation to the tune of Rs.1,76,000/- has been awarded with interest @ 9% per annum from the date of filing of Claim Petition till is realisation.

6. Being aggrieved, Non-Applicant No.3 has preferred this appeal. Shri R.N.Pusty, learned counsel for the appellant submits that the award impugned as passed by the Claims Tribunal holding that the driver of the offending vehicle was holding the effective and driving license to drive the alleged vehicle is apparently contrary to law. It is contended by him, that the vehicle in question was a Goods Vehicle and was insured for commercial purposes, however, the driver, who possessed the license to drive the Light Motor Vehicle, was not competent to drive the same. Without considering the said material fact, vis-a-vis, the evidence led by the insurance company in its proper manner, the Claims Tribunal has committed an illegality in fastening the liability upon the insurance company. The award impugned is, therefore, liable to be set aside and/or modified.

7. I have heard learned counsel for the appellant perused the award impugned carefully.

8. The main contention of the appellant herein is that since the vehicle in

question, which was a Goods Vehicle and was insured as a Commercial Vehicle, was being driven by a driver, who was authorised to drive the Light Motor Vehicle only, therefore, the insurance company cannot be held liable. The contention of learned counsel for the appellant in this regard is, however, noted to be rejected as the gross weight of the vehicle in question was found to be 4450 kilograms and it is, thus a Light Motor Vehicle as per the definition provided in clause (21) of Section 2 of the Act, 1988. True it is that the vehicle in question was a Goods Vehicle and was insured for the commercial use, but merely on this ground and particularly when the alleged vehicle was a Light Motor Vehicle, it cannot be said that the driver of it, who possessed the driving license to drive the Light Motor Vehicle, was not authorised or entitled to drive the same. The issue so raised herein is, however, remains no more res integra in view of the principles laid down in the matter of ***Mukund Dewangan*** vs. ***Oriental Insurance Company Limited*** reported in **(2017) 14 SCC 663** as relied upon by the Claims Tribunal. In the said matter, the question, as was involved herein also, as to whether a driver, who is having a license to drive the "Light Motor Vehicle", was driving the "Transport Vehicle" of that class in absence of such an endorsement was held to be authorised to drive the same.

9. Considering the facts and circumstances of the case and based upon the principles laid down in the above mentioned judgment, it cannot be held that the driver of the offending vehicle was not authorised to drive the same.

10. Consequently, I do not find any infirmity in the award impugned so as to call for any interference by this Court. The appeal being devoid of merit is accordingly dismissed at the admission stage itself. No order as to costs.

Sd/-

(**Sanjay Agrawal)**
Judge

Anjani