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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No.1300 of 2014

The United India Insurance Company Ltd., Through Divisional Manager, Divisional Office Opposite Girls Degree College, Main Road, Bhavana, District Meerut U.P., 01233-274570, Branch Office Brahma Road, Ambikapur, District Surguja, Chhattisgarh (Non-Applicant No.3/Insurance Compnay).

---- Appellant

Versus

1. Priyanka Patel, W/o Late Dhyanchand Patel, Aged About 28 Years, R/o Gowardhanpur, Tahsil Pratappur, District Surajpur, Chhattisgarh (Applicant No.1)

2. Ku. Omi Patel, D/o Late Dhyanchand Patel, Aged About 11 Years, Minor Through Mother Smt. Priyanka Patel, W/o Late Dhyanchand Patel, R/o Gowardhanpur, Tahsil Pratappur, District Surajpur, Chhattisgarh (Applicant No.2)

3. Subhchin Patel, S/o Late Dhyanchand Patel, Aged About 7 Years, Minor Through Mother Smt. Priyanka Patel, W/o Late Dhyanchand Patel, R/o Gowardhanpur, Tahsil Pratappur, District Surajpur, Chhattisgarh (Applicant No.3)

4. Rajendra, S/o Champat Singh, Aged About 50 Years, R/o Village Kunda, Post Gadhiayana, Thana Falavada, Tahsil Bhawana, District Merrut, Uttar Pradesh (Owner/Non-Applicant No.1).

5. Annu Kumar Bhati, S/o Rajendra, Aged About 21 Years, R/o Village Kunda, Post Gadhiayana, Thana Falavada, Tahsil Bhawana, District Merrut, Uttar Pradesh (Driver/Non-Applicant No.2).

6. Santosh Kumar, S/o Suresh, R/o Village Gowardhanpur, Tahsil Pratappur, District Surajpur, Chhattisgarh (Non-Applicant No.4).

---- Respondents

For Appellant	:	Smt. Chitra Shrivastava, Advocate.
For Respondent Nos.1 to 3	:	Shri D. N. Prajapati, Advocate.
For Respondent Nos.4 to 6	:	None, though served.

D.B: Hon'ble Chief Justice &
Hon'ble Shri Justice Sanjay S. Agrawal, J

Award/Order on Board

Per Sanjay S. Agrawal, J

16.10.2020

1. The United India Insurance Company Limited has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988'), questioning the legality and propriety of the award dated 30.09.2014 passed by the Additional Motor Accident Claims Tribunal Pratappur, District Surajpur (C.G.) in Claim Case No. 49/2013, whereby the learned Tribunal while fastening the liability upon the insurance company has allowed the claim in part by awarding the total amount of compensation to the tune of Rs.8,94,000/- with 7.5% interest per annum from the date of filing of the claim petition till the date of actual payment.

The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 25.06.2013 at about 05:00 pm deceased Dhyanchand Patel was going to Rewti Bazar from the Village Gowardhanpur by motorcycle of his friend while sitting behind him. At the relevant time, it was dashed vehemently from its back-side by the offending vehicle *'Tata 407'* bearing Registration No.UP-15-AT-0262 owing to rash and negligent driving by its driver, Annu Kumar Bhati/Non-Applicant No.2. As a result of the alleged accident, deceased fell down on the road and the alleged offending vehicle crushed the head of him, who succumbed to the injuries on the spot, giving rise to the filing of the claim petition by his legal representatives, who are widow and two minors, by claiming total amount of compensation to the tune of Rs.33,02,250/- under various heads.

3. The Non-Applicants have contested the aforesaid claim. According to the insurer of the alleged offending vehicle, the driver of it was authorized to drive the light motor vehicle and motorcycle with gear only, as such, was not authorized to drive the same, as it was insured as a "Go*ods Carrying (other than 3WH-) Public Carrier",* i.e., a kind of a transport vehicle. It is contested further on the ground that the alleged offending vehicle was being used without any valid permit and fitness certificate in violation of the insurance policy, and therefore, no liability could be fastened upon it.

4. The Tribunal after analyzing the evidence led by the parties,

arrived at a conclusion that the alleged accident occurred due to rash and negligent driving by the driver of the alleged offending vehicle, which led to the sad demise of deceased Dhyanchand Patel. It held further that it was not being used in violation of the insurance policy, as alleged by the insurer and, in consequence while fastening the liability upon the insurance company awarded the aforesaid amount of compensation along with its interest as mentioned hereinabove. This liability part as held by the Tribunal alone is under challenge in this appeal.

5. According to Smt. Chitra Shrivastava, learned counsel appearing for the Appellant/Insurance Company, the vehicle in question was a transport vehicle, therefore, it cannot be used without having its valid permit and fitness certificate. While inviting attention to the driving license of the driver of the vehicle in question, it is contended further that he was authorized to drive the light motor vehicle and motorcycle with gear only and was not at all entitled to drive the alleged transport vehicle, which was insured as a "Go*ods Carrying (other than 3WH-) Public Carrier-Package Policy".* Having failed to consider the same in its proper manner, the Tribunal has committed an illegality in fastening the liability upon the insurance company.

6. On the other hand, Shri D. N. Prajapati, learned counsel appearing for the Respondent Nos.1 to 3/Claimants has supported the award impugned as passed by the Tribunal.

7. We have heard learned counsel for the parties and perused the entire record carefully.

8. Undisputedly, the vehicle in question was a *'Transport Vehicle',* insured as a "Go*ods Carrying (other than 3WH-) Public Carrier-Package Policy",* as evidenced by its Policy (Ex.D-1) commencing with effect from 07.08.2012 upto 06.08.2013. It appears further that the Permit (Ex.D-2C) and the Fitness Certificate (Ex.P-15) of the alleged offending vehicle were issued by the Regional Transport Authority, Meerut (U.P.) and were in existence on the date of the accident. It appears further from a bare perusal of the Driving License (Ex.D-3C) issued in the name of Annu Kumar Bhati, the driver of the alleged offending vehicle that he was authorized to drive *'the light motor vehicle and motorcycle with gear only',* as evidenced by the endorsement made therein. Although, the vehicle in question was a *'Transport Vehicle',* but a bare perusal of its Registration Certificate, marked as (Ex.D-1C) would reveal the unladen weight of it as 2288 Kilograms. It was, thus, a kind of a light motor vehicle as defined under Section 2 (21) of the Act of 1988, as its unladed weight is below 7500 Kilograms as prescribed therein. In view of that, it cannot be said that he was not entitled to drive the alleged offending vehicle, as contended herein by Smt. Chitra Shrivastava, learned counsel appearing for the Appellant/Insurance Company.

9. At this juncture, the principles laid down by the Supreme Court in the matter of ***Mukund Dewangan Versus Oriental Insurance Company Limited*** reported in **(2017) 14 SCC 663** is to be seen. In the said matter, a similar issue, as to, whether a driver, who was holding a license to drive the light 'motor vehicle' and was

driving the 'transport vehicle' of that class in absence of such an endorsement, was considered and it was held therein at paragraphs 60.1, 60.2 and 60.4 as under:-

> **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 54 of 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 roadroller, "unladen weight" of which does not exceed 7500 kg and holder of a driving license 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 roadroller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the license is required to drive a transport vehicle of light motor vehicle class as enumerated above. A license issued under Section 10(2)(d) continues to be valid after Amendment Act 54 of 1994 and 28-3-2001 in the form.
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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 license 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 license to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.

10. In the light of the principles laid down in the aforesaid judgment, it is, thus, clear that the driver of the alleged offending vehicle, though was authorized to drive the light motor vehicle was, however, entitled to drive the alleged transport vehicle, a kind of light motor vehicle, as well. In view of the said background, the finding of the Tribunal fastening the liability upon the Appellant/Insurance Company cannot be held to be illegal.

11. In view of the foregoing discussions, we do not find any substance in this appeal. The appeal, being devoid of merits, is hereby dismissed. No order as to costs.

Sd/-
(P.R. Ramchandra Menon)
Chief Justice

Sd/-
(Sanjay S. Agrawal)
Judge

Deepti Jha