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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1096 of 2014

1. Manoj Kumar Tarekar S/o Radheshyam Tarekar Aged About 33 Years R/o Parrikala, P.S., Tah. And Distt. Rajnandgaon C.G., Chhattisgarh
2. Virendra Kumar Tarekar S/o Radheshyam Tarekar Aged About 29 Years R/o Parrikala, P.S., Tah. And Distt. Rajnandgaon C.G., District : Rajnandgaon, Chhattisgarh

---- Appellants

Versus

1. Baniharin Bai W/o Late Makhan Nishad Aged About 39 Years R/o Karamtara, Post- Dangarh, P.S., Tah. And Distt. Rajnandgaon C.G., Chhattisgarh
2. Deepak S/o Late Makhan Nishad Aged About 21 Years R/o Karamtara, Post- Dangarh, P.S., Tah. And Distt. Rajnandgaon C.G., District : Rajnandgaon, Chhattisgarh
3. Kamalesh S/o Late Makhan Nishad Aged About 13 Years Minor, Thru- Mother Smt. Baniharin Bai, R/o Karamtara, Post- Dangarh, P.S., Tah. And Distt. Rajnandgaon C.G., District : Rajnandgaon, Chhattisgarh
4. Chandra Prakash S/o Late Makhan Nishad Aged About 6 Years Minor, Thru- Mother Smt. Baniharin Bai, R/o Karamtara, Post- Dangarh, P.S., Tah. And Distt. Rajnandgaon C.G., District : Rajnandgaon, Chhattisgarh
5. Shriram General Insu.Co.Ltd. S/o Thru- Shriram Transport Finance Co.Ltd., Keeka Bai Complex, Rajnandgaon, P.S., Tah. And Distt. Rajnandgaon C.G., District : Rajnandgaon, Chhattisgarh

---- Respondents

For Appellant	:	Shri RN Jha, Advocate
For Respondents- 1 to 4	:	Shri Arvind Dubey, Advocate with Shri Anand Gupta, Advocate

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Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

16.03.2020

1. Challenge in this appeal is to the award dated 18.08.2014 passed in Claim Case-47 of 2013 whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.4,25,000/- as compensation along with interest @ 6% per annum from the date of filing of claim application till its realisation in a death case and while exonerating Insurance Company, fastened liability upon driver and owner of vehicle.

2. Facts of the case in a nutshell are that on 28.04.2013 at about 1.30 pm, Makhan Nishad (since deceased) along with his friend Manoj were travelling in Mahindra Maximo bearing registration No.CG 08/L/1357 (for short, 'offending vehicle') and going to Dhangarh from village Karamtara. Vehicle was being driven by non-applicant 1. On the way, offending vehicle turned turtle and as a result, Makhan Nishad suffered grievous injuries on his person and succumbed to those injuries on the spot. Accident was reported to concerned Police Station. Claimants, who are widow and children of deceased, filed claim application before competent Claims Tribunal claiming Rs.20,00,000/- as compensation on account of untimely death of Makhan Nishad.

3. Non-applicant1 and 2, who are driver and owner of offending vehicle, submitted reply to claim application and pleaded that accident took place on account of bursting of tyre of offending vehicle. Non-applicant 1 was possessing effective and valid driving license on the date of accident and offending vehicle was insured with non-applicant 3/Insurance Company on the date of accident.

4. Non-applicant 3/Insurance Company submitted its reply and denied all adverse pleadings made against it. It was pleaded that on the date of accident, driver of offending vehicle was not possessing a valid and effective driving license; there was no valid live and fitness of the offending vehicle. The vehicle was plied in violation of conditions of Insurance Policy.

5. On appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal arrived at a finding that on the date of accident, offending vehicle was being plied in violation of conditions of Insurance Policy as on the date of accident, driver of offending vehicle was not possessing valid and effective driving license to drive the offending vehicle and he was having license to drive only 'Light Motor Vehicle' and thus exonerated the Insurance Company from its liability. Learned Claims Tribunal also recorded that deceased was travelling in the offending vehicle for which no premium has been paid by the owner of offending vehicle.

6. Learned counsel for the appellant submitted that learned Claims Tribunal committed error in holding that there was no valid and effective driving license with non-applicant 1 to drive offending vehicle which comes within the category of 'Light Motor Vehicle'. He was possessing license to drive Light Motor Vehicle. He also points out that as per Ex,D3C, certificate of registration, unlathen weight has been shown as 850 kg and gross vehicle weight has been shown as 1800 kg, which is less than 7500 kg. Therefore, vehicle comes within the category of 'Light Motor Vehicle'. He also submits that even in the registration certificate, the vehicle has been shown to be registered as 'Light Goods Vehicle'. To strengthen the pleadings made by learned counsel for the appellant, he referred to the decision of Supreme Court in the case of **National Insurance Company Vs Swarn Singh and others** reported in (2004) 3 SCC 297 and submitted that Insurance Company cannot be exonerated merely on the ground that driver of offending vehicle was possessing license to drive a particular

type of vehicle. Learned counsel for the appellant also placed reliance in the matter of **Mukund Dewangan Vs Oriental Insurance Company Limited** reported in 2017 14 SCC 663 to support his submission, that driver possessing license to drive 'Light Motor Vehicle', is authorised to drive any transport vehicle or Omnibus, whose weight is less than 7500 kg.

7. Per contra, learned counsel appearing for claimants supports the impugned award.

8. So far as the finding recorded by learned Claims Tribunal with respect to violation of conditions of Insurance Policy on account of not possessing valid and effective driving license is concerned, a copy of particulars of license has been filed as Ex.D1 which was issued in the name of Manoj Kumar Tarekar. This license has been initially issued to drive MCWG (Motorcycle with gear) and LMV (Light Motor Vehicle). Copy of license has been filed as Ex.D2C, in which it has been mentioned that non-applicant 1 is authorised to drive LMV/MCWG. Copy of certificate of registration has been filed as Ex.D3C in which offending vehicle has been shown as 'Light Goods Vehicle', whose unladen weight is 850 kg and Gross Vehicle Weight is 1800 kg.

9. 'Light Motor Vehicle' has been defined in Section 2 (21) of the Motor Vehicle Act, 1988, which reads as under:

> “light motor vehicle” means 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 7,500 kilograms.”

10. From perusal of above definition, it is amply clear that 'LMV' means any vehicle gross weight of which does not exceed 7500 kg. Admittedly, as per Ex.D3C, registration certificate, Gross Vehicle Weight of offending vehicle is only 1800 kg, which is much less than the maximum limit of 7500 kg prescribed for LMV.

11. In the matter of **Mukund Dewangan** (supra), Hon'ble Supreme Court while considering the issue whether a person holding license with an endorsement of LMV is authorised to drive any other type of vehicle ie any light transport vehicle has held as under:

> “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 section 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.54/1994.
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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 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 28.3.2001 in the form.

> 60.3 The effect of the amendment made by virtue of Act No.54/1994 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.”

12. In the above judgment, Hon'ble Supreme Court has held in categorical terms that a person having license of LMV is also authorised to drive 'Light Goods Vehicle' and no separate endorsement on the license is required to drive Light Transport Vehicle.

13. Hon'ble Supreme Court has taken note of amendment made in Section 10 in the year 1994, by which Clause (e) to (h) of said Section, which relates to Medium goods vehicle, Medium passenger motor vehicle, Heavy goods vehicle and Heavy passenger motor vehicle have been substituted by the word 'Transport Vehicle'.

14. Copy of Insurance Policy is filed as Ex.D4C. Perusal of Ex.D4C would show that the certificate or Insurance Policy is a package policy which was valid from 27.03.2013 to 26.03.2014. Gross vehicle weight is mentioned as 1810 kg. In liability part of the document it mentioned that owner of the vehicle has paid premium for owner driver, paid cleaner, one in number, premium for two coolies and for paid driver , apart from basic TP cover. The vehicle was having seating capacity of 2 as shown in certificate of registration Ex.D3C. As the case of the claimants, the deceased was travelling with driver of the vehicle in a place which was

provided in the vehicle. Premium was also charged for other two persons though, on the head of coolies other than owner driver, Driver and cleaner.

15. There is no material/evidence brought on record by the Insurance Company to the effect that the deceased was travelling as paid passenger. In fact, witness AW1 in her evidence has stated during cross-examination in para-C that her husband took goods. If he was travelling with goods in place provided for seating in the vehicle, the deceased looking to his nature of work can very well fall in the category of coolie as he has to load and unload good himself.

16. For the foregoing discussion, as also looking to the contents of Ex.D2c, Ex.D3c Registration Certificate, Ex.D4c Copy of Insurance Policy and also the law laid down by Hon'ble Supreme Court in case of **Swarn Singh** (supra) and **Manoj Dewangan** (supra), in the opinion of this Court, learned Claims Tribunal erred in holding that there was violation of conditions of Insurance Policy and exonerating Insurance Company from its liability. The above finding is set aside.

17. In view of above, the appeal is allowed in part. Part of award fastening liability on owner of offending vehicle is set aside. Resultantly, now respondent- 5/Non-applicant-3/Insurance Company will be liable to satisfy the amount of compensation awarded by the Tribunal to the claimants.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma