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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 105 of 2012

{Arising out of order dated 23.07.2011 passed by learned 1st Additional Motor Accident Claims Tribunal, Manendragarh at Baikunthpur, District Korea in Claim Case No.13 of 2010}

Devlal S/o Moharsai aged about 58 years Caste Panika, R/o village Aamgaon (Basparihapara) Police Station Charcha, Tahsil Baikunthpur, District Korea, Chhattisgarh

---- Appellant

Versus

1. Rampyare Singh S/o Lalman Singh aged about 45 years Caste Gond R/o Gadbadi Tahsil Baikunthpur, District Korea, Chhattisgarh
2. Maheshwar Kumar S/o Devlal aged about 28 years Caste Panika R/o village Aamgaon (Basparihapara) Police Station Charcha Tahsil Baikunthpur District Korea, Chhattisgarh
3. United India Insurance Company Limited, Near Kumkum Hotel, Ambikapur, District Surguja, Chhattisgarh

---- Respondents

For Appellant	:	Shri Anil Gulati, Advocate.
For Respondent No. 3	:	Shri Dashrath Gupta, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

09.06.2020

1. The appeal has been preferred at the instance of owner/insured of the vehicle.

2. Grievance is against the award dated 23.07.2011 passed by the First Additional Motor Accident Claims Tribunal, Manendragarh at Baikunthpur, District Korea in Motor Accident Claim Case No.13 of 2010, whereby the compensation awarded to the claimant in connection with the accident involving the vehicle bearing No.CG16/A/1626 owned by the appellant

has been directed to be satisfied by the appellant, virtually exonerating the Insurance Company.

3. Heard Shri Anil Gulati, the learned counsel appearing for the Appellant and also Shri Dashrath Gupta, the learned counsel appearing for the 3rd Respondent/Insurance Company.

4. The undisputed facts remain that the claim petition was allowed and the compensation has to be directed to be satisfied by the appellant/owner of the vehicle, accepting the version put-forth by the Insurance Company, that the Insurance Company had no liability to satisfy the claim because of the breach of conditions of the policy in causing the offending vehicle to be driven without authorization to drive 'transport vehicle'.

5. The learned counsel for the appellant submits that, by virtue of law declared by the Hon'ble Supreme Court in the matter of **Mukund Dewangan vs Oriental Insurance Company Limited** reported in **(2017) 14 SCC 663,** a person who is having a driving license to drive a 'Light Motor Vehicle' is competent to drive any such vehicle, i.e. passenger carrying vehicle or goods vehicle. The said decision has been rendered with reference to the definition of the different terms including 'Light Motor Vehicle' as defined under Section 2(21) of the Motor Vehicles Act, 1988.

6. This Court is aware of the fact that the verdict passed by the Apex Court in **Mukund Dewangan vs Oriental Insurance Company Limited** reported in **(2017) 14 SCC 663** has been doubted and referred to Larger Bench for re-consideration as per the decision in **Bajaj Alliance (sic Allianz) General Insurance Company Limited vs Rambha Devi & Others** reported in **(2019) 12 SCC 816**. The reference was mainly for the reason that some of the significant provisions in the Motor Vehicle Act,

1988 and the Central Motor Vehicles Rules 1989 **(Section 4(1) & 2; Section 7, Section 14 & proviso to Section 14(2)(a); Rule 5, Rule 31(2), (3), (4) etc were unfortunately not brought to the notice of the Court in Mukund Dewangan (supra))**. However, the Apex Court, still applied the law in **Mukund Dewangan (supra)** in **M.S. Bhati vs National Insurance Company Limited** reported in **(2019) 12 SCC 248** which is virtually to the effect that the binding nature of the dictum in **Mukund Dewangan (supra)** continues, until the reference is answered by the Larger Bench, to the contrary.

7. We do not find it necessary to go into these aspects in the present case, for the reason that the very same award passed by the Tribunal was already subjected to challenge at the instance of the Insurance Company by filing MAC No.1256 of 2011 before this Court. Notice was ordered in the said proceeding and the present appellant who is the owner of the vehicle, was also served with notice as noted by this Court in the proceedings dated 20.03.2014. After final hearing, a learned Judge of this Court, as per judgment dated 08.12.2017, declined interference and the appeal preferred by the Insurance Company was dismissed, making it clear that the Insurance Company shall deposit the entire amount; however, it shall be with liberty to recover the same by initiating appropriate recovery proceedings against the 'owner-cum-driver'. Since the present appellant was very much a party to the said verdict passed after completion of service of notice, the said judgment stands final and binding as on date and we are not in a position to revisit/reappraise the correctness of the same.

8. Accordingly, the appeal stands dismissed. We are not making any observation with regard to the rights and liberties of the appellant, if there

is grievance against the judgment dated 08.12.2017 in MAC No.1256 of 2011 passed by learned Single Judge. It is made clear that the appellant will be at liberty to approach this Court, if he succeeds in getting any favourable order, to the requisite extent, in connection with the finding and direction given in MAC No.1256 of 2011.

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

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh