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HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 465 of 2015

Rakesh Kumar Gupta S/o Ramchandra Gupta, Aged About 40 Years, R/o Darripara, Ambikapur, District Surguja Chhattisgarh.
(Owner of the alleged vehicle bearing registration No.CG.-15-AB-0113).

---- Appellant

Versus

1. Smt. Aruna Devi Wd/o Late Vijay Rajwade, Aged About 24 Years.
2. Mayank Rajwade S/o Late Vijay Rajwade, Aged About $2^{1/2}$ Years minor through natural guardian mother Smt. Aruna Devi.
3. Hanshraj Rajwade S/o Shyam Lal, Aged About 60 Years.
4. Smt. Tiharo W/o Hanshraj Rajwade, Aged About 55 Years. All are R/o Village Budhar (Khalpara) Police Station Patna, Tahsil Bikunthpur, District- Korea Chhattisgarh. (*Claimants*)
5. Satish Pandey S/o Rajaram Pandey R/o Ambikapur, C/o Gupta Bus, Owner Rakesh Kumar Gupta S/o Ramchandra Gupta R/o Darripara, Ambikapur, District -Surguja Chhattisgarh.
(Driver of the alleged vehicle bearing registration No.CG.-15-AB-0113).
6. Branch Manager, United India Insurance Company Limited Branch Office, Bramh Road, Ambikapur District Surguja Chhattisgarh.
(Insurer of the alleged vehicle bearing registration No.CG.-15-AB-0113).

---- Respondents

For Appellant	: Shri Pravin Kumar Tulsyan, Advocate on behalf of Shri Anil Gulati, Advocate
For Respondents No.1 to 4	: Shri Ashok Kumar Shukla, Advocate
For Respondent No.5	: Shri Sunil Tripathi, Advocate on behalf of Shri Apoorva Tripathi, Advocate
For Respondent No. 6	: Shri Sudhir Agrawal, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

27.10.2020

1. Appellant/non-applicant No.2/owner of the offending vehicle has filed this appeal under Section 173 of the Motor

Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 31.01.2015 passed by the Additional Motor Accident Claims Tribunal (F.T.C.) Baikunthpur, District Koriya Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.55 of 2013 whereby learned Claims Tribunal allowed the claim application filed under Section 166 of the M.V. Act in part and awarded Rs.6,50,000/- as compensation in a death case.

2. Facts of the case in nutshell, are that, on 16.11.2012, Vijay Rajwade was travelling on a Motorcycle bearing No.CG-16/BA/2964 from his village Budhar to his in-laws house at village Umjhar. While he was travelling on the highway road of Ambikapur-Manendragarh, one Bus bearing No.CG-15/AB/0113 (hereinafter referred to as 'offending vehicle') coming from Manendragarh (opposite direction), driven by non-applicant No.1 rashly and negligently dashed the motorcycle of Vijay Rajwade. In the aforementioned accident, Vijay Rajwade suffered grievous injuries over his person. He was taken to Baikunthpur District Hospital, but looking to the grievousness of injuries, Vijay Rajwade was referred to Dr. B.R. Ambedkar Memorial Hospital, Raipur, where he succumbed to injuries during the course of treatment on 21,11,2012.

3. Claimants, who are widow, child and parents of deceased

Vijay Rajwade filed an application under Section 166 of the M.V. Act before the learned Claims Tribunal seeking compensation of Rs.1,36,00,000/- pleading therein that on the date of accident, deceased was aged about 25-26 years and earning Rs.30,000/- per month.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle submitted reply to claim application denying the fact of accident, pleaded that offending vehicle has been falsely implicated in the criminal case. It was further pleaded that accident was on account of head on collision between two motor vehicles, hence, driver of motorcycle is also contributory negligent in the accident. Offending vehicle was insured with non-applicant No.3/Insurance Company, driver of offending vehicle was possessing valid and effective driving licence, as such, liability to satisfy the amount of compensation would be on non-applicant No.3/Insurance Company.

5. Non-applicant No.3/Insurance Company submitted reply to claim application mainly pleading that on the date of accident, non-applicant No.1 was not possessing valid and effective driving licence. There was no endorsement in the licence of non-applicant No.1 authorizing him to drive 'Passenger Carrying Vehicle', hence, there was breach of policy conditions. There was no valid permit and fitness of offending vehicle.

6. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that non-applicant No.1 while driving the offending vehicle dashed other motorcycle resulting in death of driver of motorcycle i.e. Vijay Rajwade, there was no valid and effective driving licence with non-applicant No.1, there was breach of policy conditions. Tribunal upon holding the age of deceased as 26 years, income as Rs.4,500/- per month, awarded compensation of Rs.6,50,000/-, exonerated the Insurance Company from its liability and fastened liability upon non-applicants No.1 and 2/driver and owner of offending vehicle to satisfy the amount of compensation.

7. Shri Pravin Kumar Tulsyan, learned counsel for the appellant submits that learned Claims Tribunal erred in arriving at a finding that non-applicant No.1/respondent No.5 was not possessed with valid and effective driving licence on the date of accident. He further submits that offending vehicle was a Mini Bus, which comes within the purview of 'Light Motor Vehicle', driver of offending vehicle was possessing licence with an endorsement of 'Light Motor Vehicle and Heavy Goods Vehicle'. It is contended that for driving any motor vehicle of falling under category of 'Light Motor Vehicle', there is no requirement of further endorsement from the Licensing Authority to drive 'Light Passenger Vehicle'. It is further contended that the issue

with regard to further endorsement in the licence of 'Light Motor Vehicle' to drive 'Transport Vehicle/Light Goods Vehicle/Light Passenger Vehicle' has been considered by Hon'ble Supreme Court in case of **Mukund Dewangan v. Oriental Insurance Company Limited** reported in **(2017) 14 SCC 663** and facts of the present case is squarely covered with the judgment passed by Hon'ble Supreme Court on the point.

8. Per contra, Ashok Kumar Shukla, learned counsel for respondents No.1 to 4/claimants supported the impugned award to the extent of amount of compensation. With regard to fastening of liability, he supported the argument raised by learned counsel for the appellant.

9. Shri Sunil Tripathi, learned counsel for respondent No.5/driver of offending vehicle adopted the submissions made by Shri Tulsiyan and further submitted that Tribunal even after recording that under rule 16 of the Central Motor Vehicles Rules, 1989 no differentiation is made between 'Light Motor Vehicle' and 'Light Taxi Vehicle' has held that there was breach of policy conditions, which is contrary to law laid down by Hon'ble Supreme Court in case of **Mukund Dewangan** (supra).

10. Shri Sudhir Agrawal, learned counsel for respondent No.6/Insurance Company submits that learned Claims Tribunal has rightly arrived at a conclusion that on the date

of accident, non-applicant No.1 was not possessing valid and effective driving licence. He further submits that as per licence particulars enclosed on record as Ex.D/3, there is endorsement authorizing non-applicant No.1 to drive 'Light Motor Vehicle and Heavy Goods Vehicle', but there is no endorsement in the licence of non-applicant No.1 authorizing him to drive 'Light Passenger Vehicle'. It is contended that award passed by learned Claims Tribunal is just and proper, which does not call for any interference.

11. I have heard learned counsel for the respective parties and perused the record carefully.

12. Accident with offending vehicle is not in dispute. Issuance of insurance policy by respondent No.6 and effective on the date of accident is also not in dispute. Challenge in this appeal is only with regard to the finding of exoneration recorded by learned Claims Tribunal on the ground of non-applicant No.1 was not possessing valid and effective driving licence.

13. To appreciate the submission made by learned counsel for the appellant, I have perused the record of claim case minutely. Copy of licence particulars is filed as Ex.D/1, copy of insurance policy is placed on record as Ex.D/2 and copy of licence is placed on record as Ex.D/3. Though the copy of registration certificate, fitness certificate as well as permit are not marked as exhibit, but the same are available on

record. Perusal of registration certificate of Bus bearing No.CG-15/AB/0113 would show that Class of Vehicle is 'Bus', Type of Body is 'Bus', Seating Capacity is '35 + 2', Gross Vehicle Weight is '7490 Kgs.'. The licence particulars and copy of licnece available on record vide Ex.D/1 and Ex.D/3 would show that non-applicant No.1 was possessing licence of 'Light Motor Vehicle and Heavy Goods Vehicle'.

14. 'Light Motor Vehicle' is defined under Section 2(21) of the M.V. Act, which reads as under :

> "**2. Definitions.-**In this Act, unless the context otherwise requires,-
>
> xx xx xx
>
> (21) "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;"

15. In definition, the vehicles which are below 7500 Kgs., have been placed under category of 'Light Motor Vehicles'. Admittedly, the Gross Vehicle Weight of offending vehicle as per copy of registration certificate available on record is 7490 Kgs., which is less than 7500 Kgs. In view of above, offending vehicle will fall within the category of 'Light Motor Vehicle'.

16. The issue with respect to persons having a licence authorizing to drive Light Motor Vehicle, but on the date of

accident found driving the commercial vehicle, but of the same category, has been considered by the Hon'ble Supreme Court in case of **Mukund Dewangan** (supra) and held thus :

> "59. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28-03-2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in Section 2(21) and the provisions of Section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport

Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in Section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed.

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 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 No.54 of 1994.

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 28-03-2001 in the form.

60.3. The effect of the amendment made by virtue of Act No.54 of 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.

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 licence 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 licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.”

17. In the aforementioned judgment, Hon'ble Supreme Court in categorical terms held that 'Light Motor Vehicle' as defined in Section 2(21) of the M.V. 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 'Light Motor Vehicle' and to drive such Light Motor Vehicles i.e. Transport Vehicle and Omnibus, there is no requirement of separate endorsement on the licence to this effect.

18. In the light of aforementioned judgment passed by Hon'ble Supreme Court, if the facts of the case at hand is considered, the vehicle involved in the accident is a 'Bus' having Gross Vehicle Weight as '7490 Kgs.', which is less than 7500 Kgs. In these facts of the case, there is no requirement of further endorsement authorizing non-applicant No.1 to drive 'Light Passenger Vehicle' for the purpose of driving the offending vehicle. In view of above, I am of the considered view that learned Claims Tribunal erred in arriving at a finding that non-applicant No.1 was not possessing valid and effective driving licence, there was breach of policy conditions and exonerating the Insurance Company from its liability. The said finding of exoneration of

Insurance Company on the ground of breach of policy conditions is not sustainable in the eye of law and is hereby set aside.

19. For the aforementioned reasons and discussions, now, the liability to satisfy the amount of compensation would be upon respondent No.6/non-applicant No.3/Insurance Company. The appeal is allowed in part and impugned award is modified to the extent indicated herein-above. Other conditions imposed by learned Claims Tribunal shall remain intact.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh