IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.506 of 2017

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United India Insurance Company Ltd. Patna Through Mritunjay Kumar Ray Cum and Duly constituted Attorney United India Insurance Company Ltd. Regional Office 3rd Floor Chanakya Complex B.C. Patel Road P.O. G.P.O., P.S. Sachiwalaya Patna District Patna.

... ... Appellant/s

Versus

1. Nand Lal Rai son of S. Rai 45 Stand Bank Road Jagar Nath Ghat Kolkata 7 at present Ghar Road Danapur P.S. Danapur Dist. Patna Owner.
2. Udai Kumar Son of Sri Meba Lal Rai Resident of Sahglin Chak Maner P.S. Maner District Patna Driver.
3. Vikash Kumar Singh Son of Sri Ram Layak Singh Resident of Village Mathawaliya P.S. Ara Muffasil P.O. Daulatpur, District Bhojpur.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Ashok Priyadarshi, Advocate.
For the Respondent/s : Mr. Upendra Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date : 10-09-2024

1. This Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as “Act”) on behalf of the United India Insurance Company Ltd.-Appellant assailing the Judgment dated 06.12.2016 and Award dated 14.12.2016 passed by the learned M.A.C.T.-cum-4th Additional District Judge, Bhojpur at Ara (hereinafter referred to as “Learned Tribunal”) in Motor Vehicle Claim Case No. 23 of 1999 to the extent it has not granted right of recovery from the owner of offending vehicle i.e. respondent no. 1.

2. Heard the learned counsel for the appellant as well as the learned counsel for the respondent no. 3. Despite service of notice, respondent nos. 1 & 2 have not appeared in this appeal after given sufficient opportunities.

3. The relevant facts is that on 12.02.1999 Vikas Kumar Singh (claimant) along with Jitendra Prasad was returning to attend the call of the nature then during crossing of the Road he was hit by Truck No. WB-03-6155 which was driven rashly and negligently causing injury in his leg which was treated in Hospital at Patna and other Hospitals. He filed the claim of Rs.14,00,000/- as compensation amount and amount of expenses in his treatment. He has claimed that at the time of accident he was 21 years old and was doing business of grocery with his brother-in-law from which he was earning Rs.4,000/- per month. No one appeared on behalf of owner and driver of the offending vehicle. The appellant Insurance Company filed written statement claiming that the claim is not maintainable, the amount claimed is exaggerated and the victim was 21 years old having no permanent income. The driver of offending vehicle had got no valid driving license at the alleged date of accident and there is breach of condition of the Insurance Policy and thus, the Insurance Company has no liability to pay.

4. The necessary issues were framed by the learned Tribunal. In support of the claim petition, claimant has examined eight witnesses. The claimant has filed documentary evidence in support of their claim petition. i.e., Disability Certificate issued by Civil Surgeon (Ext.1), Certificate issued by Dr. R.N. Singh (Ext.2), Partnership deed (Ext.3), Signature of the informant on *Fardbeyan* (Ext.4), photo copy of Insurance policy of the offending truck (Ext.5), photo copy of Driving License (Ext.6) of the driver of offending vehicle, photo copy of Admit Card of matriculation of claimant (Ext.7), photo copy of Chargesheet (Ext.8) in the P.S. Case no: 32 of 1999, photo copy of Release Order of the offending Truck (Ext.10), photo copy of receiving receipt of the offending truck from the Police Station (Ext.11), photo copy of Certificate of Registration of the offending truck(Ext.12) and photo copy of valid permit of the offending truck (Ext. 13).

5. After hearing the parties and the materials on record, the learned Tribunal held that the claimant was injured due to rash and negligent driving by the driver of the offending vehicle which was insured with the appellant/ Insurance Company at the relevant period of time and the said Insurance

Company is liable to pay the amount of compensation to claimant. The learned Tribunal has held that the claimant is entitled for compensation to the tune of Rs.3,00,525/- along with simple interest at the rate of 6% *per annum* from 28.07.1999.

6. The learned Tribunal has given categorical finding that Nand Lal Rai was owner of the offending vehicle/ Truck and from perusal of the driving license of driver of the said offending Truck the said driving license was for Light Motor Vehicle (L.M.V.) for the period 27.03.1996 to 26.03.1999 i.e., at the time of incident on 12.02.1999 his driving license was valid and the offending vehicle was duly insured with Insurance Company on the day of incident.

7. The learned Tribunal has also given finding to the effect that claimant was 21 years old unmarried boy and taken notional income as Rs.2,000/- per month, multiplier 17, deducted 50% of income towards personal and living expenses and made calculation of compensation amount.

8. The details of the calculation made by the learned Tribunal is as under :-

S.N.	Particular	Calculation	Net Amount
1.	Annual income	Rs.2,000x 12	Rs.24,000/-
2.	Multiplier (17)	Rs.24,000x17	Rs.4,08,000/-

3.	Additional: Future Prospect	40% of Rs. 4,08,000/-	Rs.1,63,200/-
4.	Total income	Rs.4,08,000/- + Rs.1,63,200/-	Rs.5,71,200/-
5.	50% of Rs.5,71,200 (Personal expenses as injured was unmarried)	----	Rs.2,85,600/-
6.	85% disability	85% of Rs.2,85,600	Rs.2,42,760/-
7.	Expenses on treatment	----	Rs.47,763/-
8.	Pain and Suffering		Rs.10,000/-
9.	**Total**		**Rs.3,00,525/-**

9. Learned counsel for appellant-Insurance Company has submitted that the learned Tribunal has observed that mere perusal of *Exhibit*-6, the driving license of the driver of offending vehicle, which shows that he was only authorized to drive Light Motor Vehicle (L.M.V.) and not Heavy Motor Vehicle (H.M.V.), which he was driving at the time of accident. Learned counsel for Insurance Company submits that despite the said finding, the learned Tribunal has ignored the principle of 'Pay and Recover' in the impugned judgment which required modification. It has been further submitted that the driver of the offending vehicle was not holding a driving license which amounts to violation of Section 3 of the Act and the policy conditions of the appellant and thus, the appellant cannot be made liable to satisfy the award, when there is violation of policy conditions. It is submitted that the learned Tribunal ought to have granted liberty to Insurance Company to recover the paid amount by Insurance Company from the owner/insured. As per the provisions of the Act no person shall drive motor vehicle in any public place unless he holds an effective driving license. Admittedly, at the time of accident the driver of the offending vehicle while he was holding license of L.M.V. and he was driving H.M.V. As per Section 10 of the Act classification of vehicles is done. L.M.V. is categorized in one category and Heavy Goods Vehicle (H.G.V.) in other category. The driver is holding L.M.V. license, it does not mean that he can drive H.G.V.

10. The learned Counsel for the respondent/claimant submitted that despite the Judgment/Award passed by the learned Tribunal, the claimant has not received any amount. He has further submitted that the Insurance Company is liable to pay the amount so awarded .

11. In the present case, the awarded compensation amount has not been contested by the appellant-Insurance Company rather it is contended to be decided based on the principle of “pay and recover”. The only question that would arise for consideration before this Court is *"whether the appellant/Insurance Company is entitled to recover the amount payable to the claimant from the owner of the offending vehicle ?"*

12. As per definition of H.G.V. enumerated under Section 2(16) of Act it means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of which, exceeds 12,000Kg. As per section 2(21) L.M.V. 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 7,500Kg. So there is difference between H.G.V. and L.M.V. about carrying of weight. Section 7(1) of the Act, states about restriction on the granting of learner's license for certain vehicle *"No person Shall be granted a learner's licence to drive a transport vehicle unless he has held a driving license to drive a Light Motor Vehicle for at least one Year..."* This Section prescribe one year minimum driving experience in L.M.V. before a person issuing driving license to drive a transport Vehicle.

13. In the present case, the driver of the offending vehicle admittedly possessed only a driving license to drive

L.M.V. and he does not possess driving license to drive Heavy Transport Vehicle (H.G.V.).

14. In **National Insurance Co. Ltd. v. Swaran Singh and Ors.** reported in **(2004) 3 SCC 297**, a three Judge Bench of the Hon'ble Supreme Court dealt with the interpretation of Section 149 of the Act. It was observed that an Insurance Company which wished to avoid its liability is not only required to show that the conditions laid down in Section 149(2)(a) and (b) are stratified but is further required to establish that there has been a breach on the part of the insured. Such breach on the part of the insured must be established by the insurer to show that the insured used or caused or permitted to be used the insured vehicle in breach of the provision. It must prove a willful violation of the law by insured. It is further observed that the proposition of law is no longer *res integra* that the person who alleges breach must prove the same, the insurance breach by cogent evidence and in the event an Insurance Company fails to prove that there has been breach of the conditions of the policy on the part of insured, such as Insurance Company cannot be absolved of its liability.

15. Three Judge Bench of Hon'ble Supreme Court in **Mukund Dewangan v. Oriental Insurence Ltd.** reported in

(2017) 14 SCC 663 held that Section 10 of the Act requires a driver to hold a license with respect to class of vehicles and not with respect to type of vehicle. In one class of vehicle, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement in required to drive such vehicle. As L.M.V. license includes transport vehicle also, a holder of L.M.V. license can drive all the vehicles of the class including transport vehicle. Transport vehicle would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle. A transport vehicle and omnibus, the gross weight of either of which does not exceed 7,500Kg would be an L.M.V. and also motor car or tractor or a road-roller, 'unladen weight', of which does not exceed 7,500kg and a 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 does not exceed 7,500Kg or a motor car or tractor or road-roller, the unladen weight, of which does not exceed 7,500Kg. That is to say, no separate endorsement on license is required to drive a transport vehicle of L.M.V. as enumerated above.

16. In Mukund Dewangan ***(supra)*** the Hon'ble

Supreme Court has held that a transport vehicle, whose gross weight does not exceed 7,500 Kg would be a L.M.V. and holder of the driving license to drive class of L.M.V. as provided under Section 10 (2) (d) is competent to drive as transport vehicle, the gross vehicle whose weight does not exceed 7,500 Kg. The word gross vehicle weight is defined in Section 2 (15) of the Act which means, in respect of any vehicle, the total weight of vehicle and load certified and registered by registering authority as permissible for that vehicle.

17. The Hon'ble Supreme Court in **Shamanna and Anr. v. Divisional Manager Oriental Insurance Co. Ltd.** reported in **(2018) 9 SCC 650** held that if the driver of the offending vehicle does not possess a valid driving license, the principle of ‘Pay and Recover’ can be ordered to direct to the Insurance Company to pay the victim, and then recover the amount from the owner of the offending vehicle.

18. The Hon’ble Supreme Court in the case of **Parminder Singh v. New Indian Assurance Company Ltd. & Ors.** reported in **(2019) 7 SCC 217** and in the case of **Kurvan Ansari Alias Kurvan Ali v. Shyam Kishore Mummu** reported in **(2022) 1 SCC 317** has also followed the principle of ‘Pay and Recover’ in such case where driver of the offending vehicle had not possessed valid driving license.

19. Since, it is not in dispute and which is also apparent from the record that the driver of the offending Truck (Heavy Goods Vehicles) had been possessing only L.M.V. license and was not entitled to drive H.M.V. i.e. he had not possessed a valid driving license to drive the offending truck at the relevant time of occurrence, in view of principle of law as discussed above, with respect to 'Pay and Recover' in opinion of this Court, the Insurance Company is entitled to recover the compensation amount paid by the Insurance Company to claimant from the owner of the offending truck.

20. In view whereof, the Judgment dated 06.12.2016 and Award dated 14.12.2016 passed by the learned Tribunal stands modified to the aforesaid extent. Accordingly, this appeal is **allowed** with the aforesaid modification in the impugned Judgment and Award. The remaining part of the said judgment and award shall remain intact.

21. There shall be no order as to costs.

22. Pending applications, if any, shall stand disposed of.

23. Let the Trial Court Record of this case be returned back forthwith to the concerned Court/ Tribunal.

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	29.08.2024
Uploading Date	
Transmission Date	NA