(2010) 06 CHH CK 0018

In the Chhattisgarh High Court

Case No : M.A. (C) No. 994 of 2009

Bajaj Allianz Insurance Co. Ltd. — APPELLANT

Vs

Saty Kumar Harivyasi and Others — RESPONDENT

Date of Decision : 15-06-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 173, 2(35), 2(47)

Citation : (2011) 1 CGLJ 67

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prashant Kumar Mishra, J.—In this appeal u/s 173 of the Motor Vehicles Act preferred by the Insurance Company a challenge has been thrown to the award passed against the Appellant/Insurance Company by the Motor Accident Claims Tribunal (in short the Tribunal) awarding compensation of Rs. 2,72,440/- to the claimant/Respondent No. 1.

2. The claimant was going on his Motor Cycle on 16/02/08 along with his wife and two children. Near forest barrier Gathula Nala the Tempo Taxi bearing registration No. C.G. 08 ZA 6046 came from the opposite direction being driven by the Respondent No. 2 in a rash and negligent manner. The said vehicle caused the accident as a result of which the claimant suffered injuries. At the end of enquiry, the learned Tribunal has allowed above stated amount of compensation in favour of Respondent No. 1.

3. The only question raised by the Appellant/Insurance Company in this appeal is that the Tempo Taxi being a commercial vehicle the driver Yogeshwar Prasad was not competent to drive the vehicle as under the driving license issued in his favour, he was permitted to drive light motor vehicle only and as such, since he was driving commercial vehicle the Insurance Company is not liable to indemnify the owner of the vehicle, because at the time of accident the vehicle was driven

by an unauthorized person.

4. Learned Counsel for the Appellant submits that reliance placed by the Tribunal on the Supreme Court judgment in National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, is not correct in as much as the said decision has subsequently been explained and distinguished by the Hon''ble Supreme Court in the case of Oriental Insurance Company Ltd. v. Angad Kol and Ors. AIR 2009 SCW 2747. Learned Counsel submits that in view of the subsequent decision in the case of Oriental Insurance Company Ltd. v. Angad Kol and Ors. AIR 2009 SCW 2747 (Supra) the Insurance Company is not liable to satisfy the award.

5. Per contra learned Counsel for the Respondent submits that the driver of the vehicle was having a valid driving license to drive a light motor vehicle and that Tempo Taxi is a kind of light motor vehicle and is not a goods vehicle, therefore the impugned award, at the Instance of Insurance Company cannot be interfered.

6. In the matter of National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, the Hon''ble Supreme Court has held that prior to 28/03/2001, light goods vehicle was covered under the light motor vehicle, therefore holder of a LMV driving license driving a light goods vehicle would be a valid license.

7. In the matter of Oriental Insurance Company Ltd. v. Angad Kol and Ors. AIR 2009 SCW 2747 the Hon''ble Supreme Court has held that there is distinction between ''light motor vehicle'' and ''transport vehicle'' and that a transport vehicle may be light transport vehicle, but for the purpose of driving a definite license is required to be obtained.

8. A copy of the registration certificate of the offending vehicle has not been placed on record of the Tribunal by any of the parties. The certificate-cum-policy of insurance (Ex.P-2) of the offending vehicle refers to the type of the vehicle as passenger carrying three wheel vehicle with carrying capacity not more than six person. The product name is mentioned as commercial vehicle.

9. The word ''transport vehicle'' has been defined u/s 2(47) of the Motor Vehicles Act 1988 (herein referred to as Act 1988), it means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. The connotation ''public service vehicle'' has been defined u/s 2(35) which means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, motorcab, contract carriage, and stage carriage, thus the Auto Taxi is a public service vehicle because it was adapted to carry passengers for hire or reward. Since it is a public service vehicle having insurance for commercial purposes it becomes a transport vehicle as defined in Act 1988.

10. In view of the above, this Court is of the opinion that the law laid down by Hon''ble Supreme Court in the case of Oriental Insurance Company Ltd. v. Angad Kol and Ors. AIR 2009 SCW 2747 (Supra) is squarely applicable in the present

case. It is not disputed that the driver was having a license to drive a light motor vehicle which is different than the transport vehicle, for the purpose of issuance of driving license. Thus, it is found that the driver was not having valid driving license to drive a transport vehicle and as such since the vehicle was driven by an unauthorized person, the Insurance Company is not liable to indemnify the damages and satisfy the award.

11. In the result, the appeal preferred by the Insurance Company is allowed.

12. The award against the Insurance Company is set aside, the award shall now be satisfied by the owner and the driver.

13. There shall be no order as to costs.