(2020) 08 CHH CK 0012

In the Chhattisgarh High Court

Case No : Misc. Appeal (C) No.462 Of 2014

National Insurance Company Limited APPELLANT

Vs

Avinash Nag And Ors RESPONDENT

Date of Decision : 07-08-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 3, 10(2), 10(2)(j)
Central Motor Vehicles Rules, 1989 — Rule 9

Citation : (2020) 08 CHH CK 0012

Hon'ble Judges : P.R. Ramachandra Menon, CJ;Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Goutam Khetrapal

Final Decision : Allowed

Judgement

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1. The appeal is at the instance of the insurer of the offending vehicle.

Challenge is against the award passed by the Claims Tribunal mulcting the liability upon the Appellant-Insurer in respect of the compensation payable

on account of the deceased, despite the violation of statutory/policy conditions causing the vehicle to be driven without a valid licence to drive the

vehicle carrying 'hazardous goods'.

2. The sequence of events is as follows : On 22.07.2011, the Truck bearing registration No.CG-04/E/2588 owned by the 4th Respondent, driven by the

3rd Respondent and insured by the Appellant, knocked down a minor boy, aged 14 years, causing fatal injuries leading to his death. This was sought to

be compensated by filing the claim petition by the parents. The liability was disputed by the Appellant mainly contending that the offending vehicle was carrying LPG Cylinders, which comes under the category of 'hazardous goods'. In terms of the relevant provisions of law, the driver ought to have

obtained a separate endorsement in the driving licence, on the basis of training obtained, enabling him to drive the vehicle carrying hazardous goods,

which was conspicuously absent in the instant case. Challenge was raised also with regard to negligence and quantum as well.

3. On completion of evidence, the Claims Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the driver

of the offending vehicle. Reckoning the annual income of the deceased as Rs.30,000/- and adopting the multiplier of 15, loss of income has been

worked out. Some amounts have been awarded under other conventional heads and accordingly, a total sum of Rs.4,57,000/- was fixed as the

compensation; which was directed to be satisfied with interest @ 6% per annum from the date of filing of claim application, till realization. Observing

that the vehicle was insured by the Appellant, the amount due was directed to be satisfied by the Appellant, which made them to feel aggrieved and

hence, the appeal.

4. Despite completion of service of notice, neither the claimants nor the driver or owner has turned up.

5. We heard Shri Goutam Khetrapal, the learned counsel appearing for the Appellant at length.

6. The learned counsel for the Appellant points out that, nobody shall drive a motor vehicle in a public place without obtaining the driving licence as

stipulated under Section 3 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'Act of 1988'). AS per the contents of the licence to be

mentioned under Section 10(2) (particular reference is made to the entry at Section 10(2)(j) of the Act of 1988 i.e. 'motor vehicle of a specified

description') it has to be specifically shown in the licence entitling the holder to drive such vehicle. The learned counsel makes a further reference to

Section 14 as to the currency of licences to drive motor vehicles. Sub-section (2) of Section 14 stipulates that the licence to drive a transport vehicle,

be effective for a period of 'three years'. However, as specified under the proviso, in case of licence to drive a transport vehicle carrying goods of

'dangerous or hazardous' nature, it will be effective for a period of 'one year' and renewal thereof shall be subject to the condition that the driver undergoes 'one day refresher course' of the prescribed syllabus. The learned counsel points out that since no such special endorsement is there in the

licence of the 3rd Respondent, there is clear violation of statutory/policy condition and under such circumstance, the Claims Tribunal ought to have

granted the 'right of recovery' from the owner and driver of the offending vehicle after satisfying the claim towards the third party. It is stated that the

scope of this appeal stands confined only to the said extent.

7. As mentioned already, despite completion of service of notice, nobody has turned up from the part of the Respondents, particularly, the driver or the

owner.

8. We have referred to the various provisions in the statute as cited by the learned counsel for the Appellant, including Rule 9 of the Central Motor

Vehicles Rules, 1989 (hereinafter referred to as 'Rules of 1989') stipulating the educational qualification, for drivers of goods carriages carrying

'dangerous or hazardous goods' and Rule 132 of the said Rules, which deals with the responsibility of the transporter or owner of the goods carriage.

Sub-rule (5) of the said Rule casts a duty upon the owner to ensure that the driver of the goods carriage carrying 'dangerous or hazardous goods' holds

a driving licence as per provisions of Rule 9 of aforesaid Rules.

9. Scope of the above Rules and the consequences on violation had come up for consideration beforea Single Bench of this Court in MAC No.1255 of

2012 (Hon'ble Shri Justice Parth Prateem Sahu). After elaborate hearing on the said appeal filed by the insurer, the final verdict was passed on

09.06.2020, whereby it was held that the insurer cannot be mulcted with the liability on violation of such mandatory requirements under the relevant

provisions of law. Placing reliance on the verdict passed by the Apex Court in Amrit Paul Singh and another v. TATA AIG Genral Insurance

Company Limited and others reported in (2018) 7 SCC 558, it was held that by virtue of the settled position of law, the insurer, under such

circumstance involving breach of statutory/policy condition, had to satisfy the entire compensation at the first instance and thereafter can get it

recovered from the owner and driver of the offending vehicle jointly and severally.

10. In the given facts and circumstances, we are of the view that the materials brought on record clearly reveal that the offending vehicle was

carrying 'hazardous goods' at the relevant time (LPG) and the 3 rd Respondent/

driver was not having the requisite endorsement enabling him to drive

the said vehicle carrying hazardous; by virtue of which the violation stands substantiated.

11. In the said circumstance, we hold that the Appellant/Insurance Company is entitled to recover the award amount (after paying the same to the

claimants) from the driver and owner of the offending vehicle i.e. 3 rd and 4th Respondents respectively, jointly and severally. The award passed by

the Claims Tribunal stands modified to the said extent.

12. The appeal is allowed to the above limited extent.