(2019) 03 CHH CK 0150

In the Chhattisgarh High Court

Case No : MAC No. 539 Of 2019

National Insurance Company Limited APPELLANT

Vs

Ganeshi Bai And Ors RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 03 CHH CK 0150

Hon'ble Judges : Gautam Chourdiya, J

Bench : Single Bench

Advocate : Dashrath Gupta

Final Decision : Dismissed

Judgement

Gautam Chourdiya, J

1. Heard on admission.

2. This is an appeal by the Insurance Company against the award dated 17.01.2019 passed by the Additional Motor Accident Claims Tribunal, Dhamtari, District Dhamtari, C.G. in claim case no. 42/2017 whereby the Tribunal in a death case has awarded a total compensation of Rs. 6,66,368/- with interest at the rate of 6 percent from the date of application till its realization, fastening the liability on the Insurance Company.

3. As per claim petition, on 03.07.2016 deceased Dharmendra Som, aged about 21 years, earning Rs.300-400/- per day as Coolie, died in the motor vehicular accident caused due to rash and negligent driving of vehicle bearing registration no.CG04-JB-9833 by non-applicant No.1, owned by non- applicant no.2 and insured with non-applicant no.3.

4. On claim petition being filed by the claimants under Section 166 of the Motor Vehicle Act to the tune of Rs.45,00,000/-, the learned Tribunal considering the evidence led by both the parties awarded compensation as mentioned above.

5. Learned counsel for the appellant submits that the Tribunal was not justified in fastening the liability on the insurance company because at the time of accident the Driver was not having a valid and effective licence since the vehicle was a transport vehicle whereas, the driver was holding LMV for non transport vehicle.

6. Heard learned counsel for the appellant and perused the material available on record including the impugned award.

7. As regards the competence of the driver to drive the vehicle in question, the issue raised by the insurance company has already been settled by the Hon'ble Supreme Court in the matter of Mukund Dewangan Vs. Oriental Insurance Company Limited reported in (2017) 14 SCC 663 that a person holding LMV (non-transport) is competent to drive the transport vehicle even without there being any endorsement to this effect in the driving licence if the unladen weight of the vehicle does not exceed 7,500 Kg. The relevant part of the aforesaid decision is being reproduced as under:-

"Held, the effect of amendment of Form 4 by insertion of "transport vehicle" related only to 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 - There was 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 - Further held, even otherwise the Form could not control the substantive provisions carved out in Ss. 10(2)(d) and 10(2)(e) and the interpretation of the Form has also to be in tune with the Statement of Objects & Reasons and the provisions of the Act inserted by virtue of the amendment - Interpretation of Statutes - Basic Rules - Harmonious Construction - Subordinate/Delegated Legislation/Rules Under the Act - Central Motor Vehicles Rules, 1989, Form 4 and R.14 (before and after 28.03.2001)"

8. In view of above, this Court finds no substance in the argument of the insurance company that the driver was not having a valid and effective driving licence to drive the vehicle in question on the date of accident as the offending vehicle was admittedly a Light Goods Vehicle having gross weight of 3600 kg as per evidence of AW-1 Rajesh Kumar Agrawal, Assistant Manager, National Insurance Company and as such, it falls in the category of LMV and that the driver was having a valid and effective licence to drive LMV.

9. On the basis of aforesaid discussions, this Court finds that the Tribunal was fully justified in passing the impugned award and fastening the liability on the appellant/insurance company. Accordingly, the appeal being without any substance deserves to be dismissed at the admission stage itself and is, accordingly, dismissed.