(2018) 06 CHH CK 0118

In the Chhattisgarh High Court

Case No : M. A. (C) No. 461 Of 2013

National Insurance Company Limited — APPELLANT

Vs

Puni Bai Gupta And Ors — RESPONDENT

Date of Decision : 25-06-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Central Motor Vehicle Rules, 1989 — Rule 8

Citation : (2018) 06 CHH CK 0118

Hon'ble Judges : Parth Prateem Sahu, J

Bench : Single Bench

Advocate : B. N. Nande

Final Decision : Dismissed

Judgement

Parth Prateem Sahu, J

1. By the instant appeal, the Insurance Company is challenging the legality and propriety of the impugned award dated 04/02/2013 passed by the Motor Accident Claims Tribunal, Raigarh (C.G) (in short 'Claims Tribunal') in Claim Case No.29/2010 whereby the learned Claims Tribunal have held liable the Insurance Company jointly and severally with the owner & driver i.e. respondents No.4 & 5.

2. The brief facts of the case, are that the respondent No. 1 is widow of deceased Jagdish Gupta and the respondents No. 2 & 3 are her sons. On 09/06/2010 when the deceased was travelling in a Bolero Jeep (offending vehicle) bearing registration No.C.G.13/C/2876 along with one patient, namely, Chetan Gupta and few other villagers, which was driven by respondent No. 5. On the way to Raipur at National Highway No. 06 near Darripali Padhav. The aforementioned vehicle was met with an accident with a standing Truck from back side. As a result of which, Jagdish Gupta sustained several injuries and he was immediately taken to the Mahasamund Hospital, but during the course of treatment, he succumbed to the injuries. The matter was reported to Police Chowki Patewa, District

Mahasamund. On the basis of the said report, criminal case was registered against respondent No. 5 for driving the vehicle rashly and negligently along with other offences. Therefore, respondents No. 1 to 3/claimants have filed claim application under Section 166 of the Motor Vehicles Act, 1988 (in short 'M.V. Act') before the competent Claims Tribunal claiming Rs. 13,55,000/- in total on all heads on the ground that on the date of accident, deceased Jagdish Gupta was aged about 45 years and working as Senior Mechanic at a Printing Press and thereby earning Rs. 6,000/- per month. The claimants pleaded that all of them were dependent on the deceased, therefore, they may be granted aforesaid claim compensation.

3. The Owner-cum-Driver i.e. respondents No. 4 & 5 became ex parte after filing of the written statement. In their written statement, they have pleaded that they have denied all the adverse allegations against them but have stated that on the date of accident the vehicle was insured with the appellant/Insurance Company and the liability, if any, for payment of compensation is on the Insurance Company.

4. The appellant/Insurance Company have submitted its separate written statement and have denied the fact of accident and also with regard to the status of employment of the deceased prior to the date of accident. In their additional pleadings, the appellant/Insurance Company have pleaded that on the date of accident the driver was not having a valid and effective driving licence to drive the offending vehicle and further that there is non-joinder of the parties. The plea of contributory negligence was also taken.

5. Considering the pleadings made by the respective parties and also considering the evidence available on record led by the respective parties, learned Claims Tribunal had arrived at a conclusion that there was no violation of conditions of the Insurance Policy and the vehicle was duly insured with the appellant/ Insurance Company, therefore, the Insurance Company is liable for payment of the amount of compensation.

6. The learned Claims Tribunal while assessing the compensation have assessed the income of deceased as Rs. 4,000/- per month and Rs.48,000/- per annum. By applying the multiplier of 12, the Claims Tribunal had awarded Rs.5,76,000/- towards the loss of income. In addition, the Claims Tribunal had further awarded Rs.4,000/- towards other conventional heads. In total Rs.5,80,000/- compensation has been awarded to the claimants. It is this award which is under challenged by the Insurance Company on the ground that the policy was issued under the head of Passengers Carrying Commercial Vehicle (Package Policy), but the driving licence of the driver does not bear the endorsement to drive transport vehicle, therefore, there is a violation of conditions of the Insurance Policy and it may be exonerated. The other ground which is raised is with regard to the assessment of the income of the deceased by the learned Claims Tribunal to be on the higher side by submitting that the income of the deceased has not been duly proved.

7. I have heard the learned counsel for the appellant/Insurance Company and perused the record carefully.

8. While considering the first point as raised by the appellant/Insurance Company with regard to the violation of the conditions of the Insurance Policy. On perusal of the certificate of registration of the offending vehicle i.e. Bolero Jeep bearing Registration No. C.G.13/C/2876, it reveals that the said vehicle is registered with the Registration Authority, Raigarh, and in the column of Class of Vehicle, it was mentioned as 'Light Motor Vehicle' and the Gross Vehicle Weight which has been mentioned in the registration certificate was 2580/- kg.

9. The issue with regard to the driver having licence with respect to Light Motor Vehicle and driving the light motor passenger carrying vehicle, the Hon'ble Supreme Court in its decision rendered in Mukund Dewangan v. Oriental Insurance Company Limited reported in (2017) 14 SCC 663 has held as under :-

"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."

10. In the light of the aforementioned law laid down by the Hon'ble Supreme Court in Mukund Dewangan (supra), the 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. In view of above, I do not find any force in the arguments of the learned counsel for the appellant/Insurance Company being contrary to law.

11. The other ground with regard to the assessment of income of the deceased by the learned Claims Tribunal to Rs. 4,000/-, it is evident from the record that the claimants have produced the income certificate issued by Deepak Sharma (AW-3) with whom the deceased was under employment as Senior Mechanic at Printing Press claiming that the deceased on the date of accident was earning Rs. 6,000/- per month. The employer, Deepak Sharma was also examined as AW-3 to prove the income certificate issued by him, but the learned Claims Tribunal had not believed the income certificate in its entirety and had assessed the income of the deceased on the date of accident as Rs.4,000/-

per month, which cannot be said to be on the higher side, looking to the price index prevailing on the date of accident, I am not inclined to consider this ground.

12. For the reasons stated above, the impugned award passed by the learned

Claims Tribunal does not call for any interference. In the result, the appeal is liable to be and is hereby dismissed.

13. No order as to costs.

