
(2019) 06 CHH CK 0117

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal (Civil) No. 1165 Of 2014

Oriental Insurance Company Limited

APPELLANT

Vs

Pustak Bai And Ors

RESPONDENT

Date of Decision : 27-06-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 66, 166, 173

Citation : (2019) 06 CHH CK 0117

Hon'ble Judges : Gautam Chourdiya, J

Bench : Single Bench

Advocate : H.B. Agrawal, Pankaj Agrawal, Ravi Maheshwari

Final Decision : Dismissed

Judgement

Gautam Chourdiya, J

1. Being aggrieved with the award dated 15.09.2014 passed in Claim Case No. 89 of 2011 by the Additional Motor Accident Claims Tribunal, Mungeli, District Bilaspur (C.G.), the Appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the liability fastened upon it and the quantum.

2. The Claimant/Respondent No.1, unfortunate wife of deceased- Laxman, claimed compensation of Rs.8,19,262/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of Laxman in the motor accident.

3. Facts of the case, in brief, are that on 06.04.2010 due to rash and negligent M.A.(C) Nos. 1165 of 2014 driving of the offending vehicle Pickup bearing registration No. MP-54/0165 by Respondent No.2/Non-applicant No.1, owned by Respondent No.3/non-applicant No. 2 and insured with the Appellant/non-applicant No.3, the said offending vehicle dashed the Tractor which was being driven by deceased- Laxman. As a result thereof, Laxman sustained grievous injuries and succumbed to those injuries.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.3,15,000/- in favour of the Claimant/Respondent No.1 with interest @ 6% from the date of filing of the application till realization and has fastened the liability upon the Appellant/Insurance Company along with driver & owner jointly and severally to pay compensation.

5. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

6. Learned counsel for the Appellant/Insurance Company submits that the driver of the offending vehicle was not having valid and effective driving licence to drive the same. He further submits that at the time of accident, there was no valid permit and fitness certificate of the offending vehicle, therefore, on account of there being breach of policy conditions, the Tribunal was not justified in fastening liability on the Insurance Company. He also submits that there was contributory negligence on the part of the deceased.

7. On the other hand, learned counsel for Respondent No.1/Claimant opposes the contention made by learned counsel for the Appellant/Insurance Company and supports the impugned award passed by the Tribunal.

8. Heard learned counsel for the parties and perused the material available on record.

9. It is not disputed that accident occurred due to rash and negligent driving of the offending vehicle- Pickup No. MP-54/0165 by Respondent No.2/Non-applicant No.1, owned by Respondent No.3/non-applicant No. 2 and insured with the Appellant/non-applicant No.3 and deceased- Laxman died. As per Ex.-P/1 (FIR) lodged and as per Ex.-P/4 (Charge-sheet) filed against Dilip Singh, Respondent M.A.(C) Nos. 1165 of 2014 No. 2/non-applicant No.1. As per Ex.-NA 1, insurance policy, the offending vehicle was light motor vehicle and was duly insured with the Appellant/Insurance Company for a period from 19.10.2009 to 18.10.2010 and the accident occurred on 06.04.2010 and it is apparent that G.V.W. is 2826 Kg of the offending vehicle. As per Section 66 of the Motor Vehicles Act deals with necessity for permits. Clause (i) of sub-section (3) of Section 66 of the Act provides that the provisions of sub- section (1) of Section 66 shall not apply to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms. Therefore, no permit is required under sub-section (3)(i) of Section 66 of the Act.

10. As per document Ex.-NA 3, driving licence, produced before the Tribunal and the particulars given in that document only licence for Motorcycle with Gear + L.M.V. (Non Transport Vehicle) issued in favour of non-applicant No.1- Dilip Singh which was valid from 26.02.2010 to 25.02.2030.

11. The issue involved in this case has already been considered by the Hon'ble Supreme Court in the matter of Mukund Dewangan Vs. Oriental Insurance Company Limited reported in (2017) 14 SCC 663 whether a driver who is having

a licence to drive the "light motor vehicle" is competent to drive "transport vehicle" of that class in absence of such an endorsement, and it was held therein as under:-

"Held, the effect and 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)."

12. From perusal of the insurance policy of the offending vehicle (Ex.-NA 1), it is apparent that G.V.W. is 2826 Kg of the offending vehicle as also at the time of accident, the offending vehicle was insured and it is not in dispute that the driver was having a valid and effective licence to drive the light motor vehicle. Thus, applying the ratio of law laid down by the Supreme Court in the matter of Mukund Dewangan (supra), it is apparent that the driver of the vehicle in question was holding a valid and effective driving licence (Ex.-NA 3) and even in the absence of any endorsement as such in his driving licence authorizing him to drive the said Pickup, it cannot be held that he was not possessing the valid and effective driving licence at the relevant time. This Court finds no illegality or infirmity in the findings recorded by the Tribunal holding the Insurance Company liable for satisfying the award jointly and severally along with driver and owner of the offending vehicle.

13. It was argued that there is contributory negligence on the part of the deceased. No any evidence adduced before the Tribunal by the non-applicants No.1 to 3 regarding contributory negligence on the part of the deceased. Therefore, the Tribunal was justified in not assessing the contributory negligence on the part of the deceased.

14. As regards quantum of compensation, considering the facts and circumstances of the case, fact that accident occurred in the year 2010, the income of the deceased assessed by the Tribunal as Rs.2,500/- per month, looking to the price index at the relevant time the minimum wages and the amount awarded under other permissible heads, the same cannot be faulted with. Likewise, the rate of interest ordered by the Tribunal in this also appears to be just and proper.

15. In the result, the appeal being without any substance is liable to be

dismissed and is accordingly dismissed.

16. No order as to costs.