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(2011) 01 CHH CK 0056

In the Chhattisgarh High Court

Case No : M.A. (C) No''s. 495 and 476 of 2010

Oriental Insurance Company Ltd. APPELLANT

Vs

Shivratan Singh and Others RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 14

Citation : AIR 2011 Chh 107

Hon'ble Judges : Prashant Kumar Mishra, J;I.M. Quddusi, J

Bench : Full Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—Heard.

2. The above two appeals i.e. M.A. (C) Nos. 495/10 and 476/10, are being disposed of by this common order as both these appeals have been filed by the Appellant Insurance Company against the common award dated 15-12-2009 passed by the learned Additional Motor Accidents Claims Tribunal, Katghora, District Korba (for short ''the Tribunal'') in Claim Case Nos. 206/07 & 207/07 partially allowing the claim applications of the injured claimants.

3. Facts of the case, in brief, are that the claimants-injured have filed two separate claim applications seeking compensation of Rs. 15,95,000/- & Rs. 14,87,000/-respectively for the permanent disability sustained by them in a motor accident took place on 5-2-2007 at about 10.00 p.m. due to rash and negligent driving of the driver of the jeep bearing registration number CG12-8083. They have also pleaded that due to their permanent disablement, they have sustained loss of earning capacity as prior to incident he was earning Rs. 3000/- per month.

4. After service of summons, the Respondents/non-applicants appeared before the Tribunal and filed their separate written statements denying the claim of the injured claimants.

5. The learned Tribunal, on close scrutiny of evidence led, material placed and submissions made by the parties, has partly allowed the claim applications of the injured claimants and held the Appellant/Insurance Company liable to pay compensation to the injured claimants on the ground that the Insurance Company has failed to prove breach of terms & conditions of the policy.

6. Mr. Agarwal, learned Counsel for the Appellant-Insurance Company has submitted that driver of the offending vehicle was not authorized to drive the offending vehicle as he was having driving license to drive private light motor vehicle only and not the goods or transport vehicle. He has further submitted that there is not only breach of insurance Policy conditions but the provisions of Section 14 of the Act, 1988 have also been violated and in these circumstances, the Tribunal has erred in fastening liability to pay compensation to the claimants on the insurance company. Reliance is placed on the judgment of Hon''ble Supreme Court delivered in the matter of New Indian Assurance Co. Ltd. Vs. Roshanben Rahemansha Fakir and Another, .

7. On the Ors. hand, learned Counsel for the Respondent No. l has supported the impugned award.

8. We have heard learned Counsel for the parties. We have also perused the records of the Tribunal as also the impugned award.

9. Section 14 of the Act, 1988 reads thus:

14. Currency of licences to drive motor vehicles.-

(1) A learner''s licence issued under this Act shall, subject to the Ors. provisions of this Act, be effective for a period of six months from the date of issue of licence.

(2) A driving licence issued or renewed under this Act shall,-

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature 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; and

(b) in case of any other licence,-

(i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of (fifty years) on the date of issue or, as the case may be, renewal thereof-

(A) be effective for a period of twenty years from the date of such issue or renewal; or

(B) until the date on which such person attains the age of (Fifty Years).

(ii) xxx

Provided that every driving licence shall, notwithstanding its expiry under this Sub-section continue to be effective for a period of thirty days from such expiry.

10. In the matter of Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, , the Hon''ble Supreme Court has held thus:

Although the definition of ''light motor vehicle'' brings within its umbrage both "transport vehicle" or "omnibus", indisputably, a distinction between an effective driving licence granted for transport vehicle and passenger motor vehicle exists. The distinction between a ''light motor vehicle'' and a ''transport vehicle'' is evident. A transport vehicle may be a light motor vehicle but for the purpose of driving the same, a distinct licence is required to be obtained. The distinction between a "transport vehicle" and a "passenger vehicle" can also be noticed from Section 14 of the Act. Section 14(2) provides for duration of a period of three years in case of an effective driving licence to drive a ''transport vehicle'', whereas in case of any Ors. licence, it may remain effective for a period of twenty years. Thus, it is evident that a transport vehicle may be a light motor vehicle but for the purpose of driving the same, a distinct licence is required to be obtained....

11. In the case of New India Assurance Co. Ltd. Vs. Prabhu Lal, it was held thus:

30. Now, it is the case of the Insurance Company that the vehicle of the complainant which met with an accident was a "transport vehicle". It was submitted that the insured vehicle was a "goods carriage" and was thus a "transport vehicle. The vehicle was driven by Ram Narain, who was authorized to drive light motor vehicle and not a transport vehicle. Since the driver had no licence to drive transport vehicle in absence of necessary endorsement in his licence to that effect, he could not have driven Tata 709 and when that vehicle met with an accident, the Insurance company could not be made liable to pay compensation.

12. In the matter of New Indian Assurance Co. Ltd. Vs. Roshanben Rahemansha Fakir and Another, the Hon''ble Supreme Court repelling the submission of learned Counsel for the Respondent that it did not matter as to whether the driving licence issued for auto rickshaw was adapted for carrying passengers or goods has held that the driver was not holding an effective driving licence to drive auto rickshaw delivery van.

13. Indisputably, the District Transport Officer, Korba (CG) in the letter dated 14-8-2006 (Ex. D-4), addressed to Ms. Anita Chacko, Advocate, has informed that on 22-7-2003 driving licence was issued to the driver of offending vehicle, and the same was valid up to 21-7-2023. Further, by appearing a note at the bottom of the said letter has clarified that the said driving licence is not valid to drive that particular vehicle i.e. the offending vehicle.

14. Thus, in view of the admitted fact that the licence has been granted for a

period of 20 years, it can be safely said that the same has been issued for the purpose of a vehicle Ors. than a transport vehicle, as had it been granted for transport vehicle, the tenure thereof could not have exceeded to three years, as per Section 14(2)(a) of the Act, 1988, and since the driver had no licence to drive transport vehicle, in absence of necessary endorsement in his licence to that effect, he could not have driven the offending vehicle and when that vehicle met with an accident, the Appellant Insurance company could not be made liable to pay compensation.

15. On the basis of aforesaid discussions, we allow this appeal and hold that the Appellant-Insurance Company is not liable to pay compensation and that part of the impugned award is hereby set aside. We further direct that the liability to pay the compensation involved in the award is of the owner of the offending vehicle i.e. CG12-8083. In case any amount deposited by the Appellant Insurance Company has been withdrawn by the injured claimants, it will be open for it to recover the same from the owner of the vehicle. However, if the amount, so deposited, has not been withdrawn so far, the Appellant shall be allowed to withdraw the same. Rest of the conditions and findings of impugned award are hereby confirmed. It is hereby clarified that claimants are free to execute the award against the owner of the vehicle.

16. A copy of this order be placed in M.A. (C) No. 476/10.

17. Certified copy as per rules.

