NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Misc. Appeal (C) No. 562 of 2021

1. United India Insurance Co. Ltd. Through Manager United India Insurance Co. Ltd. Paras Complex State Bank of India Near Gurudwara Station Road Durg, Police Station Mohan Nagar, District Durg, Chhattisgarh. Through T.P. Hub / Divisional Manager United India Insurance Co. Ltd. Magarpara Road Bilaspur District Bilaspur, Chhattisgarh.

--- Appellant

Versus

1. Smt. Madhuri Verma W/o Pokhraj Verma Aged About 41 Years
2. Pokhraj Verma S/o Late Vishesar Verma Aged About 47 Years
3. Rupesh Kumar Verma S/o Pokhraj Verma Aged About 22 Years

   All are R/o Bajrang Nagar Utai Ward No. 15, Utai District Durg, Chhattisgarh. Present Address Santara Badi Police Station Mohannagar, District Durg, Chhattisgarh (Claimant).
4. Ajit Kumar Sahu S/o Banshilal Sahu Aged About 26 Years R/o Kopedih Police Station Somani, District Rajnandgaon, Chhattisgarh (Driver of Offending Vehicle)
5. Banshilal S/o Shriram Aged About 53 Years R/o Kopedih Police Station Somani District Rajnandgaon, Chhattisgarh (Owner of the Offending vehicle).

---- Respondents

For Appellant	:	Shri Praveen Kumar Tulsyan, Advocate.
For Respondent	:	None.

Hon'ble Shri Justice Ravindra Kumar Agrawal

Award on Board

29.02.2024.

1. This is insurer’s appeal under Section 173 of the Motor Vehicles Act, 1988 (in short, MV Act) against the award dated 14.07.2021 passed by the Additional Motor Accident Claims Tribunal, Durg (in short, the Tribunal) in Claim Case No.262/2019, whereby the Tribunal has awarded total compensation of Rs.12,12,900/- in favour of the claimants/respondents No.1 to 3 on account of death of Neeraj Verma who is son of claimants

No.1&2 and brother of claimant No.3. Challenging the liability party, the insurance company has filed this appeal.

2. Brief facts of the case are that, on 25.01.2019 at about 6 pm when Neeraj Verma (since deceased) was returning to his house by Activa Scooty bearing registration No.CG-07-BA-1035, near village Medesara, the offending vehicle i.e. Mahendra Pickup bearing registration No.CG-08-V-7022 came from his back side and dashed the Activa of Neeraj Verma by which the deceased received grievous injuries and died on the spot. The matter was reported to the police and driver of the offending vehicle i.e. non applicant No.1/respondent No.4 herein have been prosecuted by the police for the offence under Sections 304-A, 279, 337, 338 IPC and also for the offence under Section 56/192 of the MV Act.

3. The claimants have filed claim application before the concerned Claims Tribunal claiming compensation to the tune of Rs.17,15,000/- on account of death of the deceased Neeraj Verma stating themselves to be dependent upon the income of the deceased who died in the accident. In the claim case, the claimants have pleaded that at the time of accident the deceased was bachelor aged about 19 years and was earning Rs.10,000/- per month from the business of DJ and claimed a total compensation of Rs.17,15,000/-.

4. Non applicant No.1&2 filed their written statement before the Tribunal and denied involvement of their Pickup vehicle bearing registration No.CG-08-V-7022 in any accident. They have further pleaded that at the time of accident the driver of the vehicle was having valid and effective driving license and therefore, liability to pay compensation, if any, is upon the insurance company.

5. Non applicant No.3/Insurance Company has also filed their written statement separately and contested the claim and pleaded that as per

FIR, the offending vehicle was not involved in the accident. At the time of accident, the deceased himself was driving his Activa Scooty, but the owner and insurance company of the said vehicle was not made party respondent. The insurance company would be liable to pay compensation only if there is no breach of policy conditions.

6. The claimants have examined Smt. Madhvi Verma, AW-1, Hemchand Sahu, AW-2 in their support, whereas, the insurance company has examined NAW-1 Ramsharan Ratre, NAW-2 and Mukesh Prasad Mishra in their support.

7. After appreciation of oral as well documentary evidence available on record, the Tribunal has awarded total compensation of Rs.12,12,900/- in favour of the claimants and the liability to pay the same has been fastened upon the insurance company/non applicant No.3. Hence this appeal.

8. Learned counsel for the appellant would submit that the Tribunal has ignored the fact that the driver was having license to drive Light Motor Vehicle whereas, at the time of accident he was driving a Light Transport Vehicle in violation of policy conditions. He would further submit that at the time of accident the offending vehicle i.e. Pickup bearing registration No.CG-08-V-7022 was not having any valid fitness certificate and therefore there is a breach of policy condition and the insurance company is not liable to pay compensation. He would further submit that FIR has been lodged against the unknown vehicle, but subsequently the offending vehicle was involved in the accident to get the compensation amount and on this ground also the insurance company is not liable to pay compensation.

9. Despite service of notice, none appears on behalf of respondents to defend their case.

10. I have heard the counsel for the appellant and perused the records.

11. So far as the first submission made by the counsel for the appellant that the driver of the offending vehicle was possessing license to drive only Light Motor Vehicle whereas, he was driving Light Transport Vehicle at the time of accident is concerned, the law in this regard is settled by the Supreme Court in case of ***Mukund Dewangan Vs. Oriental Insurance Co. Ltd. 2017(14) SCC 663***, wherein in paragraph 45, the Supreme Court has held as under:

> “45. Coming to conflicting decisions of this Court entailing reference in Ashok Gangadhar Maratha (supra), this Court has considered the definition of 'light motor vehicle' and held thus:
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> > "10. The definition of "light motor vehicle" as given in clause (21) of Section 2 of the Act can apply only to a "light goods vehicle" or a "light transport vehicle". A "light motor vehicle" otherwise has to be covered by the definition of "motor vehicle" or "vehicle" as given in clause (28) of Section 2 of the Act. A light motor vehicle cannot always mean a light goods carriage. Light motor vehicle can be a non-transport vehicle as well."
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> No doubt about it, that in addition thereto the Court while dealing with the matter comprehensively has gone in question as to the pleadings and the evidence adduced and it was observed that since there was neither a pleading nor a permit produced on record, the vehicle remained a light motor vehicle. If we proceed on the basis of the definition itself, we reach to the same conclusion that for driving transport vehicle of light motor vehicle category, no separate endorsement is required on a licence. Even when a light motor vehicle is used for carrying goods or for hire or rewards, it becomes a transport vehicle, though it remains included in the category of light motor vehicle as per Section 2(21) of the Act. The interpretation of the definition in Ashok Gangadhar Maratha (supra), makes it clear that light motor vehicle cannot always be a light goods carriage. It can be a non-transport vehicle as well. The definition of a light motor vehicle includes light goods vehicle and light transport vehicle also. The interpretation of the definition of light motor vehicle in aforesaid extracted para 10 is sound and we are in unison with the same. It was not necessary for the Court to go into the question of pleadings and evidence in Ashok Gangadhar Maratha (supra).”

12. Therefore, even if the endorsement in the driving license of the driver of offending vehicle was Light Motor Vehicle, he was not debarred from driving Light Transport Vehicle because both the vehicles come under the

same category/class of vehicle and therefore, the submission made by counsel for the insurance company would not come to his rescue.

13. So far as next submission of the counsel for the appellant that the vehicle was not having any valid fitness certificate on the date of accident is concerned, this issue also stands settled by the Division Bench of this court as well as by Kerala High Court in ***Pareed Pillai Vs. Oriental Insurance Company Ltd.***

14. The fitness of a vehicle, which is a transport vehicle, is having great importance. Section 56 of the MV Act provides that a transport vehicle {subject to the provisions of Section 59 (power to fix the age limit of motor vehicle) and Section 60 (registration of vehicle belonging to the Central Government)} shall not be deemed to be validly registered for the purpose of Section 39, unless it carries a certificate of fitness as prescribed. For the purposes of valid permit of a transport vehicle, as provided under Section 34 of the MV Act, a certificate of fitness is required necessarily and in absence of the same, the situation automatically lead to the stage that a vehicle did not have valid permit. Using a motorcycle without any fitness certificate would be violation of policy condition.

15. Requirement of certificate of fitness is envisaged under Section 56 of the MV Act. Section 56(1) is reproduced below for ready reference.

> "Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorised testing station mentioned in sub-section (*2*), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder:
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> Provided that where the prescribed authority or the authorised testing station refuses is issue such certificate, it shall

supply the owner of the vehicle with its reasons in writing for such refusal."

16. Perusal of above provision would show that unless and until there is valid certificate of fitness, transport vehicle shall not be deemed to be validly registered. Requirement of certificate of fitness is mandatory and fundamental for its registration. Section 39 of the MV Act envisages for registration of vehicle, which reads as under:

> "39. No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:
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> Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government."

17. It prescribes that no person shall drive any motor vehicle in public or other places unless vehicle is registered. Conjoint reading of provisions of Section 39 and 56 of the MV Act makes it clear that if the transport vehicle is plied on public road or any place without certificate of fitness will be in breach of policy condition and such breach will be a fundamental breach.

18. This issue has been considered by the five judges Bench of Kerala High Court in case of ***Pareed Pillai Vs. Oriental Insurance Company Ltd., AIR 2019 Kerala 6*** and held as under:

> "17. The stipulations under the above provisions clearly substantiate the importance and necessity to have a valid Fitness Certificate to the transport vehicle at all times. The above prescription converges on the point that Certificate of Registration, existence of valid Permit and availability of Fitness Certificate, all throughout, are closely interlinked in the case of a transport vehicle and one requirement cannot be segregated from the other. The transport vehicle should be completely fit and road worthy, to be plied on the road, which otherwise may cause threat to the lives and limbs of passengers

and the general public, apart from damage to property. Only if the transport vehicle is having valid Fitness Certificate, would the necessary Permit be issued in terms of Section 66 of the Act and by virtue of the mandate under Section 56 of the Act, no transport vehicle without Fitness Certificate will be deemed as a validly registered vehicle for the purpose of Section 39 of the Act, which stipulates that nobody shall drive or cause the motor vehicle to be driven without valid registration in public place or such other place, as the case may be. These requirements are quite 'fundamental' in MACA No. 2030 of 2015 and connected cases nature; unlike a case where a transport vehicle carrying more passengers than the permitted capacity or a goods carriage carrying excess quantity of goods than the permitted extent or a case where a transport vehicle was plying through a deviated route than the one shown in the route permit which instances could rather be branded as 'technical violations'. In other words, when a transport vehicle is not having a Fitness Certificate, it will be deemed as having no Certificate of Registration and when such vehicle is not having Permit or Fitness Certificate, nobody can drive such vehicle and no owner can permit the use of any such vehicle compromising with the lives, limbs, properties of the passengers/general public. Obviously, since the safety of passengers and general public was of serious concern and consideration for the law makers, appropriate and adequate measures were taken by incorporating relevant provisions in the Statute, also pointing out the circumstances which would constitute offence; providing adequate penalty. This being the position, such lapse, if any, can only be regarded as a fundamental breach and not a technical breach and any interpretation to the contrary, will only negate the intention of the law makers."

19. Division Bench of this High Court also has applied the same analogy in case of ***Adesh Kumar & Another Vs. Smt. Satarupa Bai Yadav & Others*** (MAC No.1289 of 2014 and other connected matters, decided on 19.11.2020) and held that absence of fitness certificate of the offending vehicle is a fundamental breach of policy condition. It is not a technical breach.

20. So far as the submission of the insurance company that the offending vehicle was not involved in the accident as FIR has been registered against the unknown vehicle is concerned, the claimants have filed document of final report Ex.P/1, FIR, Ex.P/2, Merg Intimation Ex.P/3, Postmortem report Ex.P/5, Crime detail Form Ex.P/6, Seizure memo of the offending vehicle Ex. P/8, arrest memo Ex.P/9 and Supurdnama order Ex.P/10 & P/11 in which it has been mentioned that the accident was occurred due to offending vehicle Mahindra Pickup bearing registration No.CG-08-V-7022. The said criminal case or involvement of the vehicle in offence in question has not been challenged either by the driver of the offending vehicle or by the owner of the offending vehicle that their vehicle has wrongly been involved in the offence.

21. In the matter of ***Sunita and Others Vs. Rajasthan State Road Transport Corporation and Another, AIR 2019 SC 994***, in paragraph 20, 21 and 25 the Supreme Court has held as under :

> "20. It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.
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> 21. In the present case, we find that the Tribunal had followed a just approach in the matter of appreciation of the evidence/materials on record. Whereas, the High Court adopted a strict interpretation of the evidence on the touchstone of proof beyond reasonable doubt to record an adverse finding against the appellants and to reverse the well considered judgment of the Tribunal in a cryptic manner.

> 25. The Tribunal's reliance upon FIR 247/2011 (Exh. 1) and chargesheet (Exh. 2) also cannot be faulted as these documents indicate the complicity of respondent No.2. The FIR and charge sheet, coupled with the other evidence on record, inarguably establishes the occurrence of the fatal accident and also point towards the negligence of the respondent No.2 in causing the said accident. Even if the final outcome of the criminal proceedings against respondent No.2 is unknown, the same would make no difference atleast for the purposes of deciding the claim petition under the Act. This Court in Mangla Ram (supra), noted that the nature of proof required to establish culpability under criminal law is far higher than the standard required under the law of torts to create liability."

22. Considering the judgment passed in Sunita (Supra), the involvement of the offending vehicle in the accident in question cannot be overruled without there being any sufficient evidence on record to the effect that infact the vehicle was not involved in the accident.

23. In the present case, the deceased was third party and the claimants are dependent upon the deceased. Since the vehicle was being driven in violation of policy condition as there was no valid fitness certificate, the insurance company is exonerated from its liability to pay compensation on the ground that on the date of accident there was no valid fitness certificate of the offending vehicle.

24. Therefore, in view of the judgment passed by the Supreme Court in the matter of ***Amrit Paul Singh and Another Vs. Tata AIG General Insurance Company Limited and Others, 2018 (7) SCC 558***, it is directed that the insurance company shall first deposit the entire awarded amount of compensation along with interest and thereafter, may recover the same from the owner and driver of the offending vehicle i.e. respondents No.4&5.

25. In the result, the appeal is partly allowed. The appellant-insurance company is directed to pay the compensation amount to the claimants as awarded by the Tribunal and thereafter they may recover the same from the driver and owner of the offending vehicle i.e. respondents No.4&5.

26. With these modification, the appeal is partly allowed.

Sd/-
(Ravindra Kumar Agrawal)
Judge

inder