



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Misc. Appeal No. 1014/2014

United India Insurance Co. Ltd. Branch Office Gouri Kunj,
Rajnagar Road, Kankroli, Distict Rajsamand through its Senior
Divisional Manager, United India Insurance Co. Ltd. Residency
Road, Jodhpur

----Appellant

Versus

1. Smt. Madni Bai W/o late Shri Sohan Lal Nat, aged 50 years
2. Sharda D/o late Shri Sohan Lal Nat, aged 15 years
3. Mahendra S/o late Shri Sohan Lal Nat, aged 11 years
4. Heera Lal S/o late Shri Sohan Lal Nat, aged 08 years
The respondents Nos.2 to 4 being minor through natural
guardian mother Smt Madni Bai W/o Late Shri Sohan Lal Nat,
resident of village Pakhand, Post Pakhand, Tehsil Nathdwara,
District Rajsamand.

----Respondent

5. Rameshwar Lal S/o Shri Shankar Lal Bhand, resident of Jat
Mohalla, Charna, Tehsil Relmagra, District Rajsamand.

[Registered owner of Pickup Van No.RJ 06GA 3178]

-----Respondent/Non Claimaint

For Appellant(s) : Mr. Anil Kaushik
For Respondent(s) : Ms. Tamanna K Trivedi for Mr. Rakesh
Matoria

HON'BLE DR. JUSTICE NUPUR BHATI

Order

08/08/2024

1. The instant misc. appeal has been filed against the Judgment
& Award dated 19.12.2013 passed by the learned Commissioner,
Workmen Compensation, Rajsamand in Claim Case No.11/2011
whereby, the learned Commissioner decided the claim petition
filed by the respondents/claimants and an amount of
Rs.4,52,760/- @ 12% per annum was awarded in thier favour. The



learned Commissioner to satisfy the award, held respondent-Insurance Company responsible liable.

2. The facts of the case are that the claimants/respondents filed a claim petition stating inter alia that on 21.04.2011 at around 2:00 PM, the driver of Mahendra Pickup Van bearing No.RJ 06GA 3178 along with Ram Lal (since deceased) were carrying wheat bags from village Mohanti to village Charna. Suddenly the vehicle has unbalanced because some work was going on Kapasan and Mungana Highway road and due to pressing the brake by the driver, the vehicle got turned, as a result whereof, Ram Lal sustained grievous injuries and succumbed to death when he was taken to Kapasan Hospital, Udaipur for treatment and claimants (family members of deceased) claimed compensation before the Commissioner Workman Compensation under Section 10 and 22 Workman Compensation Act, 1923. In the claim petition, it was alleged that deceased Ram Lal (son of respondent No.1) was employed as a *Khalasi* on vehicle insured with the appellant-Insurance Company. In this regard, FIR No.194/2011 was lodged before the Police Station Kapasan District Chittorgarh.

3. Notices of the claim petition were issued by the learned Commissioner. A reply was filed by the respondent No.5 (owner of the vehicle) stating therein that at the time of accident, the vehicle was insured with the appellant-Insurance Company, hence the Insurance Company is liable to satisfy the award. He further stated that number of the vehicle in the FIR was mentioned as RJ 06GA 3178, however, challan has wrongly been filed against the vehicle.



4. The appellant-Insurance Company in its reply denied all the averments made in the claim petition for want of knowledge. It was further stated in reply that at the time of accident, the vehicle was driven by Kailash Chand who was not having valid and effective driving license and also alleged the driver- Kailash Chand was possessing the driving license to drive light motor vehicle only, apart from this, legal notice was also given to the insured to provide particulars of the driving license in this regard. Thus, craved for dismissal of the claim petition.

5. As per pleadings, learned Commissioner framed following issues:-

- 1-आया मृतक श्री रामलाल नट अप्रार्थी संख्या-1 के नियोजन व निर्देशन से बतौर खलासी का कार्य करने के दौरान घटित दुर्घटना में दिनांक-21.04.11 को मृत्यु कारित हुई ?
- 2-आया वक्त दुर्घटना मृतक की उम्र 18 वर्ष व वेतन रु.5,000/- प्रतिमाह था ?
- 3-क्या बीमा पॉलिसी की शर्तों का उल्लंघन हुआ है और बीमा कम्पनी के क्षतिपूर्तिव ब्याज अदायगी के उत्तरदायित्व पर इसका क्या प्रभाव होगा ?
- 4-क्या वक्त दुर्घटना नियमानुसार प्रार्थीगण ही मृतक के आश्रित थे ?
- 5-अनुतोष ।

6. In support of the claim petition, 1 witness Smt. Madni Bai was examined and exhibited the police documents prepared during investigation. On behalf of appellant Insurance Company, one Shri Vinod Kumar Bhardwaj (D.W.1) was examined and exhibited the insurance policy along with the notice given to the owner insured and after hearing both the parties as well as the evidence led thereto, the learned Commissioner decided the claim petition by awarding a compensation of Rs.4,52,460/- in favour of the claimants along with the 12% interest per annum and thus, being aggrieved of the same, the appellant-Insurance Company preferred the present misc. appeal.



7. The only plea raised by learned counsel for the appellant is that the vehicle in question was a transport vehicle, however, the driver of the vehicle was having the licence to ply Light Motor Vehicle ('LMV') only. Thus, there was breach of conditions of the policy as the driver of the offending vehicle was not having the valid and effective licence to ply the vehicle in question and the learned Commissioner has erred in fastening the liability upon the appellant-Insurance Company.

8. *Per contra*, learned counsel representing the respondent/claimant vehemently and fervently opposes the submissions advanced at Bar by the appellant-Insurance Company and submits that the award passed by the learned Commissioner is just and proper and the does not warrants any interference by this Court, as the vehicle in question being driven at the time of accident, was an 'LMV' and weighed well less than 7,500 kgs.

9. I have given my thoughtful consideration to the submissions advanced by the parties and have carefully gone through the material available on record.

10. Suffice it to say that the controversy which is raised by the Insurance Company in this appeal is no longer *res integra* and rests in view of the law laid down by Hon'ble the Supreme Court in the case of ***Mukund Dewangan vs. Oriental Insurance Company Ltd.*** reported in **(2017) 14 SCC 663** wherein, it has been held as below:-

"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 of 1994 and 28-3-2001 in the form."

11. In wake of the discussion made hereinabove and applying the ratio of the judgment rendered by Hon'ble the Supreme Court in the case of **Mukund Dewangan (supra)**, that there is no requirement to obtain a separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive a transport vehicle of such class without endorsement to that effect, I find no merit in the instant appeal filed by the Insurance Company, which stands rejected as being devoid of any force. No order as to costs.

(DR. NUPUR BHATI),J

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