

(2016) 05 OHC CK 0035

ORISSA HIGH COURT

Case No: MACA No. 932 of 2012

Birendra Giri

APPELLANT

Vs

M/s. Bajaj Allianz General
Insurance Co. Ltd.

RESPONDENT

Date of Decision: May 4, 2016

Acts Referred:

- Motor Vehicles Act, 1988 - Section 173

Citation: (2017) 1 ACC 476 : (2016) 4 TAC 378

Hon'ble Judges: Mr. S.C. Parija, J.

Bench: Single Bench

Final Decision: Allowed

Judgement

Mr. S.C. Parija, J. - Receipt showing payment of cost to the Orissa High Court Bar Association is filed in Court today which is taken on record.

2. Heard learned counsel for the parties.

3. This appeal by the appellant-owner of the offending vehicle is directed against the judgment award dated 24.4.2012 passed by the IIIrd Motor Accident Claims Tribunal Balasore in M.A.C. Case No. 5711 of 20072011 awarding an amount of Rs. 97200-(rupees Ninety Seven Thousand Two Hundred) as compensation along with interest @ 7.5% per annum from the date of filing of the claim application till realisation and directing the Insurance Company-respondent No. 1 to pay the same with liberty to recover from the owner-appellant.

4. Learned counsel for the owner-appellant submits that as the accused driver Manas Kumar Tiadi was driving the offending vehicle (Tempo) No. -O1K-4407 which has been registered as a "light motor vehicle" and the driver was possessing a driving licence authorising him to drive "light motor vehicle" learned Tribunal erred in holding that the accused driver was not authorised to drive a "transport vehicle"

and accordingly granting liberty to the Insurance Company to recover the compensation amount from the owner of the vehicle.

5. It is submitted that as the offending vehicle (Tempo) No. -01K-4407 was admittedly a "light motor vehicle" and the accused driver was possessing a driving licence (Ext. A) authorising him to drive such a "light motor vehicle" learned Tribunal was not justified in holding that the said driving licence was not valid and effective at the time of the accident as the same did not bear the endorsement authorising the holder to drive a transport vehicle.

6. Learned counsel for the owner-appellant has relied upon a decision of the apex Court in **S. Iyyapan v. United India Insurance Company Limited and another (2013) 7 SCC 62** and a recent decision of the apex Court in **Kulwant Singh and Others v. Oriental Insurance Company Ltd. 2014 (4) T.A.C. 676 (S.C.)** in support of his contention that when the accused driver was possessing a valid and effective driving licence authorising him to drive a "light motor vehicle" merely because there was no endorsement in the driving licence authorising him to drive a "transport vehicle" the same does not render the said licence invalid and or ineffective.

7. Learned counsel for the Insurance Company-respondent No. 1 while supporting the impugned award submits that as the same has been passed on the basis of the materials available on record no interference is warranted. Learned counsel for the Insurance Company-respondent No. 1 has relied upon a decision of the apex Court in **Mukund Dewangan v. Oriental Insurance Co. Ltd. etc. 2016 (1) T.A.C. 673 (S.C.)** wherein the question whether the definition of "light motor vehicle" as defined under Section 2 (21) of the M.V. Act includes "transport vehicle" has been referred to a larger Bench which is pending final adjudication.

8. On a perusal of the impugned award it is seen that the accused driver was driving the offending vehicle (Tempo) No. -01K-4407 which was a "light motor vehicle". The driving licence (Ext. A) issued in favour of the accused driver authorised him to drive a "light motor vehicle". However learned Tribunal has come to find that as the offending vehicle was a "transport vehicle" being used as a "goods carriage" and there was no endorsement in the driving licence authorising the accused driver to drive such a "transport vehicle" the accused driver was not authorised to drive the offending vehicle on the date of the accident.

9. In *S. Iyyapan* (supra) relied upon by the learned counsel for the owner-appellant the question which came up for consideration was whether the Insurance Company can disown its liability on the ground that the driver of the vehicle although admittedly licenced to drive a "light motor vehicle" but there was no endorsement in the licence to drive "light motor vehicle" used as commercial vehicle. Hon"ble Court relying upon its earlier decision in **National Insurance Co. Ltd. v. Annappa Irappa Nesaria (2008) 3 SCC 464** came to hold that the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor

vehicle but before driving light motor vehicle used as commercial vehicle no endorsement to drive commercial vehicle was obtained in the driving licence.

10. Accordingly the Hon"ble Court proceeded to hold as under:-

"In the instant case admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question by which accident took place was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab which is a light motor vehicle the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is therefore liable to be set aside."

11. In Kulwant Singh (supra) relied upon by the learned counsel for the owner-appellant the question which came up for consideration was whether the driver of the offending vehicle who was possessing a driving licence to drive a "light motor vehicle" was authorised him to drive "light goods vehicle". Hon"ble Court referring to its earlier decisions in Annappa Irappa Nesaria (supra) and S. Iyyapan (supra) proceeded to hold that the driver of the offending vehicle who was holding a driving licence to drive a light motor vehicle was authorised to drive a "light goods vehicle" and therefore there was no breach of the condition of the insurance policy entitling the Insurance Company to right of recover.

12. Applying the principles of law as discussed above to the facts of the present case the conclusion is irresistible that the accused driver was holding a driving licence authorising him to drive "light motor vehicle" and the offending vehicle being admittedly a "light motor vehicle" notwithstanding the fact that same had been registered as a transport vehicle the driving licence was valid and effective and therefore learned Tribunal was not justified in holding the same to be a breach of condition of the policy and accordingly granting right of recovery to the Insurance Company.

13. In view of the above the findings of the learned Tribunal that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident and accordingly granting right of recovery to the Insurance Company is not proper and justified and the same is accordingly set aside.

14. The appeal is accordingly allowed.

The statutory amount deposited in the Registry of this Court along with the accrued interest thereon be refunded to the appellant-owner forthwith.

Issue urgent certified copy as per rules.