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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 15th OF DECEMBER, 2022

MISC. APPEAL No. 1176 of 2021

BETWEEN:-

**THE NEW INDIA ASSURANCE THROUGH BRANCH
MANAGER BRANCH DAMOH CIVIL WARD NO. 3, PB 32
DAMOH, DISTT. DAMOH M.P. (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI DINESH KAUSHAL - ADVOCATE)

AND

- 1. NANDINI KORI D/O GANESH KORI, AGED ABOUT 20 YEARS, RAMGOPAL I WARD, HATA, TEHSIL AND THANA HATA, DISTT. DAMOH M.P. (MADHYA PRADESH)**
- 2. AMAN KORI S/O GANESH KORI, AGED ABOUT 15 YEARS, OCCUPATION: THROUGH GUARDIAN SISTER NANDINI KORI RAMGAPAL JI WARD HATA TEHSIL AND THANA HATA, DISTRICT DAMOH (MADHYA PRADESH)**
- 3. M.MURAD BEG S/O M.ABID BEG, AGED ABOUT 36 YEARS, NAVODAY WARD HATA TEHSIL AND THANA HATA, DISTRICT DAMOH (MADHYA PRADESH)**
- 4. DHARMENDRA KUMAR RAI S/O DAULAT RAI, AGED ABOUT 31 YEARS, VILLAGE PATERIYA TEHSIL PATERA THANA KUMHARI (MADHYA PRADESH)**
- 5. GANESH S/O MOHAN KORI, AGED ABOUT 42 YEARS, SHRIVASTAVA COLONY NEAR BHAI KIRANA GENERAL STORE CHHINDWARA, DISTRICT CHHINDWARA (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI BEERENDRA KUMAR UPADHYAY - ADVOCATE FOR

This appeal coming on for orders this day, the court passed the following:

ORDER

This appeal is filed by the appellant under Section 173(1) of the Motor Vehicles Act, 1988, being aggrieved of award dated 29.01.2021, passed by II Addl. Motor Accident Claims Tribunal, Hata, District Damoh (M.P.), in M.A.C.C.No.06/2019, on the ground that accident took place on 09.10.2018, when he was hit by a motorcycle bearing registration No.MP-34-MB/8134, driven by the respondent No.3, herein, Mohd. Murad Beg, son of Mohd. Abid Beg and owned by Shri Dharmendra Kumar Rai, son of Shri Daulat Rai, on the ground that driver of the said motorcycle Mohd. Murad Beg, was having a driving licence to drive a Light Motor Vehicle, Non Transport, and was not authorised to drive a motorcycle with gear and, therefore, there being no licence to drive a motorcycle, Insurance Company should have been exonerated.

2. Reliance is placed on Ex.D/2, so also the evidence of Shri Sanjay Rathore, Assistant Grade-II, who was examined from the office of District Transport Office, Damoh, who categorically mentioned that driving licence issued in favour of Mohd. Murad Beg, bearing registration No. MP-34-R-2007-0014601, was issued from his office and was effective from 19.12.2001 to 10.05.2019 to drive a Light Motor Vehicle, Non Transport category. There is no endorsement to drive motorcycle with gear. Thus, it is pointed out that once there is an evidence to the effect that driver was not having valid driving licence, then Insurance Company should have been exonerated and liability should have been fastened on the owner & driver of the motorcycle to satisfy the award.

3. Shri Beerendra Kumar Upadhyay and Shri Gopal Jaiswal support the award

and submits that the suspension of licence was erroneous. Tribunal has passed the correct award.

4. Hon'ble Supreme Court in case of *Oriental Insurance Company Limited Vs. Zaharulnisha and others [(2008) 12 SCC 385]*, wherein it is held that driver was possessing licence for HMV and not for two wheeler. Held, that driver violated Section 10(2). Thus, Appellant Insurance Company had a valid defense under Section 149(2)(a)(ii) to avoid its liability. It is held that driving licence for a particular type of vehicle specified in the licence then vehicles of a totally different class from that specified in the licence, is not covered.

5. After hearing learned counsel for the parties and going through the record, it is evident that driver of the offending vehicle Mohd. Murad Beg was having a licence to drive only a Light Motor Vehicle and not a motorcycle with gear. In view of this fact when there is no specific authorisation to drive a motorcycle with gear and the offending vehicle is a motorcycle with gear, finding of the Tribunal is erroneous and not based on any proper and cogent appreciation of evidence. Even if, it is presumed that suspension of licence is illegal that will also not give any benefit to the claimant, owner & driver of the offending vehicle, inasmuch as, in absence of endorsement, even if it is declared that the suspension was illegal and the licence was valid, it was not valid authorising the driver to drive a motorcycle in absence of specific endorsement. Therefore, impugned award to the extent that liability has been fastened on the Insurance Company deserves to be set aside and is set aside. It is directed that the award shall be satisfied by the owner & driver of the offending vehicle.

6. In above terms, this Misc. Appeal is disposed of.

7. Let record of Claims Tribunal be sent back.

A.Praj.

