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

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

ON THE 18th OF JULY, 2023

MISC. APPEAL No. 1128 of 2023

BETWEEN:-

**SUFIYAN ALI QURESHI S/O LAEEK AHMED QURESHI,
AGED ABOUT 22 YEARS, OCCUPATION: (OWNER OF
BULLET MOTOR CYCLE NO. MP -21-MG/5577) R/O NEAR
NAGINA MASJID ISWARIPURA WARD POLICE STATION
KATNI DISTRICT KATNI (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI A.T. FARIDI - ADVOCATE)

AND

- 1. RISHABH SHANRM A S/O SHRI JAMUNA PRASAD SHARMA, AGED ABOUT 26 YEARS, R/P C.L.P. WARD POLICE STATION RANGNATHNAGAR DISTRICT KATNI (MADHYA PRADESH)**
- 2. KALICHARAN KEWAT S/O MURARI KEWAT R/O BANDHWA TOLA MADAN MOHAN CHOUBEY WARD PS RANGNATHNAGAR DISTRICT KATNI (MADHYA PRADESH)**
- 3. IFCO TOKYO GENERAL INSURANCE COMPANY LIMITED THROUGH BRANCH MANAGER BRANCH OFFICE SHIVHARE COMPLEX ABOVE BANK OF INDIA 2ND FLOOR NEAR MADHAV NAGAR GATE KATNI PS MADHAV NAGAR DISTRICT KATNI (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENT No.3 BY SHRI RAKESH JAIN - ADVOCATE)

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

ORDER

This appeal is filed by the owner of the offending vehicle being aggrieved

of award dated 16.08.2022 passed by learned 5th Motor Accident Claims Tribunal, Katni in MACC No. 261 of 2020 whereby learned Tribunal placing reliance on the judgment of Hon'ble the Supreme Court in ***Oriental Insurance Company Ltd. Vs. Jahrul Nisha (2008)3 DMP 352 SC*** has held that since the driver of the offending vehicle which is motorcycle namely Kalicharan Kewat was not having a driving license to drive a two wheeler but was only having a license to drive a Light Motor Vehicle Non-transport and Heavy Motor Vehicle, therefore, the compensation assessed in favor of the claimant will be paid by the Insurance Company but Insurance Company will be entitled to recover the same from the owner/driver of the offending vehicle.

2. Placing reliance on the Government of India, Ministry of Road Transport and Highways, Transport Bhawan, 1-Parliament Street, New Delhi-110001 notification signed by the Joint Secretary (T) it is submitted that there was no need to possess a separate driving license to drive a motorcycle without gear or a motorcycle with gear.

3. Shri Rakesh Jain, submits that the meaning and import of the said notification is that there will be exemption from the requirement to obtain an endorsement for commercial vehicles to a motorcycle without gear, motorcycle with gear, Light Motor Vehicle (Goods/passenger) E-rickshaw/E-cart. Thus, endorsement is exempted and not possessing license to drive a particular category of vehicle, therefore, there will be violation of provisions contained in Section 10 of the Motor Vehicle Act, 1988 which deals with form and contents of licenses to drive.

4. After hearing learned counsel for the parties and going through the record, the circular which has been relied on by the appellant is in regard to exemption from endorsement to drive a commercial vehicle and it is not in

regard to a particular category of vehicle whereas law laid down by Hon'ble Supreme Court in the case of *Oriental Insurance Company Ltd. Vs. Jahrul Nisha (supra)* is that a person is required to have a particular category of license to make him enable to drive that vehicle. In case, a person is licensed to drive a particular category of vehicle and possesses license to drive that category of vehicle but there is lack of endorsement to drive a commercial vehicle then that endorsement will not exonerate the Insurance Company. That being not the case in the present case, where admittedly driver of the motorcycle was not having a valid license to drive a motorcycle, impugned award cannot be faulted with.

5. At this stage, Shri A.T. Faridi submits that the decision of Hon'ble the Supreme Court in the case of *Mukund Dewangan v. Oriental Insurance Company Limited, (2017) 14 SCC 663* is referred to the larger Bench. That too will be of no avail to the appellant because reference is on the aspect of exemption from endorsement as has been held in case of *Mukund Dewangan (Supra)* and it is not in regard to exemption from possessing a particular category of license to drive a particular type of vehicle, be it a motorcycle with gear or without gear as is the requirement of Section 10 of the Motor Vehicles Act, 1988.

6. Appeal fails and is **dismissed**.

(VIVEK AGARWAL)
JUDGE