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HIGH COURT OF CHHATTISGARH, BILASPUR

MISC. APPEAL (C) NO. 988 OF 2010

Sanjeev Kumar, S/o Shri Chamanlal, aged about 39 years, R/o Milan Chowk, New Khursipar, Bhilai, Tahsil and District Durg (C.G.)

… Appellant

Versus

1. Ku. Shana Parween, D/o Abdul Alim, aged about 7 years, through her guardian Father Abdul Alim, S/o Ali Hussain, R/o Zone No.3, Street No.10, New Khursipar, Bhilai, Tahsil and District Durg (C.G.)
2. Hariram Yadav, S/o L.R. Yadav, New Khursipar, Bhilai, Tahsil and District Durg (C.G.)
3. Manager, United India Insurance Company Ltd., Tara Complex, G.E. Road, Power House, Bhilai

… Respondents

For Appellant	:	Mr. Pawan Kesharwani, Advocate.
For Respondent No.3	:	Mr. H.B. Agrawal, Senior Advocate, along with Ms. Meera Jaiswal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/09/2016

1. Aggrieved by the award dated 1.2.2010 passed by the 8th Additional Motor Accident Claims Tribunal (F.T.C.), Durg, in Claim Case No. 27 of 2009, the present appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed by Appellant, who was the driver of the Motorcycle No. CG07-LB/9546 in the instant case, in so far as it relates to exonerating Respondent No.3-Insurance Company from the liability to pay the compensation to the Claimant.

2. Brief facts of the case, as per the claim petition, are that on 12.7.2008 at around 4:30 p.m., the Claimant Ku. Shana Parween was playing near Khursipar road and at the same time it is said that Appellant Sanjeev Kumar came rashly and negligently driving the Motorcycle, bearing Registration No. CG07-LB/9546 and hit Ku. Shana Parween on account of which she fell down and sustained grievous injuries. She was thereafter admitted in the Chandulal Chandrakar hospital where her leg was shortened after treatment and she became permanently disabled. The Claimant Ku. Shana Parween therefore filed a claim petition under Section 166 of the Act before the Claims Tribunal claiming a total compensation of Rs.3,20,000/-.

3. Learned Claims Tribunal, on a close scrutiny of the evidence led, the material placed and submissions made by the parties, has awarded a sum of Rs.45,035/- fastening the liability upon the driver and owner of the said Motorcycle to pay the same to the Claimant along with 6% simple interest per annum from the date of filing of the claim petition till its realization excluding the period from 24.10.2009 to 2.12.2009, and exonerated the Insurance Company from its liability to pay compensation. Hence, this appeal.

4. It is apposite to mention here that the owner of the motorcycle involved in the accident in the instant case has not preferred any challenge to the impugned award and has accepted his liability part and the present appeal has been preferred only by the driver of the motorcycle.

5. Heard learned Counsel for the parties and perused the record of the case as well as the impugned award.

6. Learned Counsel for the Appellant has contended that the Claims Tribunal has wrongly exonerated Respondent No.3-Insurance Company despite the fact that the driving licence of Appellant was produced to prove before the Claims Tribunal which was valid and effective for driving only LMV (Light Motor Vehicle) and HGV (Heavy Goods Vehicle) and the witnesses of the Insurance Company in their statements have stated that the licence was initially issued for LMG and thereafter it was upgraded HGV. He has further contended that in view of this, absolute liability to pay compensation ought to have been fastened upon Respondent No.3-Insurance Company but the Claims Tribunal has wrongly exonerated Respondent No.3-Insurance Company, and this regard he has relied upon 2013 (7) SCC 62 (**S. Iyyapan** Vs. **United India Insurance Co. Ltd.**).

7. On the other hand, learned Senior Counsel for Respondent No.3-Insurance Company has supported the impugned award.

8. The liability of Respondent No.3-Insurance Company was discharged on the ground that the person who was driving the motorcycle involved in the accident did not have a valid licence to drive the motorcycle. From the perusal of the driving licence of Appellant/driver, it is found that although he was granted licence for LMV and subsequently for HGV which was valid and effective on the date of accident, but there was no endorsement regarding authorization to drive motorcycle which belongs to a different category and class. As such, it cannot be said that on the date of accident, the Appellant was having a licence to drive motorcycle and the same was valid and effective. Thus, the finding of the Claims Tribunal exonerating the Insurance Company from its liability to pay the compensation cannot be said to be erroneous and the same deserves to be affirmed.

9. So far as the judgment relied upon by the Counsel for the Appellant, the said judgment would not be applicable in the facts and circumstances of the present case for the reason that in the said case the dispute was that though the driver in the said case was having a valid licence to drive LMV, the endorsement of commercial LMV was not there and therefore the Supreme Court had saddled the liability upon the Insurance Company. But, in the instant case, the category of vehicle itself has been changed. The Appellant in the instant case has a licence but that was for LMV and HGV; whereas, at the time of accident he was riding the motorcycle and he did not have a licence for driving the motorcycle. Therefore, in the opinion of this Court, the judgment sought to be relied upon by the Appellant is distinguishable on its own facts itself. Thus, the Tribunal has not committed any error in imposing the liability of payment of compensation on the owner and driver of the vehicle involved in the accident.

10. In the result, the appeal fails and is accordingly dismissed. There shall be no order as to costs.

Sd/-
(P. Sam Koshy)
Judge

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