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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1123 OF 2009

IFFCO TOKIO General Insurance Company Limited, through the Branch Manager, Iffco Tokio General Insurance Co. Ltd., 3rd Floor, 345-347, Lalganga Shopping Mall, G.E. Road, Raipur (C.G.)

… Appellant

versus

1. Amrish Dubey, S/o Umesh Dubey, aged about 30 years, R/o MIG 02/01, Mahavir Nagar, Police Station- New Rajendra Nagar, Raipur, Tahsil and District Raipur (C.G.)
2. Krishna Kumar Pradhan, S/o Mangal Ram Pradhan, aged about 20 years, R/o Village Semariya, Police Station- Pamgarh, District Janjgir (C.G.)

… Respondents

For Appellant	:	Mr. P. Acharya, Advocate, under instructions of Mr. Amrito Das, Advocate.
For Respondent No.1	:	Mr. P.K. Tulsyan, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

30/10/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the insurance company assailing the award dated 25.4.2009 passed by the Seventh Additional Motor Accident Claims Tribunal, Raipur, in Claim Case No. 45/2008.

2. Vide the impugned award, the learned Tribunal, in an injury case, in a proceeding under Section 166/140 of the Motor Vehicles Act, has awarded a compensation of Rs.1,81,000/- to respondent no.1/claimant with interest thereon at the rate of 6% per annum from the date of presentation of the claim application till realization and fastened the liability for payment of compensation upon the appellant/insurance company indemnifying the owner-cum-driver/respondent no.2 of the offending motorcycle.

3. Facts of the case in nutshell are that on 5.11.2007 the respondent no.1/claimant was travelling on his motorcycle when the respondent no.2 came from behind on his motorcycle i.e. Hero Honda No. CG04-CV-4704 and hit the claimant from back. As a result of the said accident, the claimant received multiple grievous injuries over his body. He later on filed a claim case under Section 166/140 of the Motor Vehicles Act which stands decided by the award which is under challenge in the present appeal.

4. Challenge to the impugned award by the appellant-insurance company is primarily on the ground that the respondent no.2/owner and driver of the offending motorcycle did not have a valid licence at the time of accident. According to the insurance company, it is a case where the owner himself was driving the offending motorcycle. Though a police case was registered against him but the documents pertaining to the vehicle particularly the licence was not recovered from his possession. Likewise, he did not produce his license with which the insurance company could have indemnified him. Though he was properly served before the Tribunal yet he did not chose to represent himself and produce the factual matrix of the case before the Tribunal by adducing proper documents in respect of his defence. Therefore, an inference ought to had been drawn against him and the liability should had been fastened upon him instead of insurance company.

5. Learned counsel for the appellant-insurance company has also questioned the amount of compensation awarded, on the ground that no proper medical certificate was produced to show the actual permanent disability which the claimant had sustained and the income assessed being on the higher side.

6. In spite of proper paper publication being made so far as notice to respondent no.2 is concerned, there is no appearance on his behalf either in person or through a counsel.

7. Perusal of the record would show that respondent no.2 seems to have been deliberately avoiding his appearance before the Tribunal so also before this Court. He has also not produced relevant documents so far as the licence which he has in his custody. Perusal of the provisions of Section 134 of the Act clearly reflects that it is the duty which has been casted upon the driver of the offending vehicle in respect of the accident and the injury to a person to give necessary details so far as the driver is concerned as also in respect of the vehicle involved in the accident. Avoiding the hearing and also suppressing material facts from the Tribunal by the respondent no.2, the only inference which could be drawn against him is that of an adverse inference.

8. It is therefore ordered that in the given facts and circumstances of the case, the impugned award deserves to be and is accordingly modified to the extent that the compensation awarded shall be first deposited by the appellant-insurance company and it shall have the liberty of recovering the same subsequently from the respondent no.2/owner-cum-driver applying the principle of 'pay and recovery'.

9. Appeal of the insurance company thus stands allowed in part. Interim order if any passed earlier in the instant case shall stand merged with this order. Appellant-insurance company is directed to deposit the balance amount also before the Tribunal at the earliest with a liberty to recover the same from respondent no.2.

Sd/-
(P. Sam Koshy)
Judge

/sharad/